

14<sup>th</sup> December 2020

**RE: A NEW ANIMAL WELFARE ACT FOR VICTORIA – DIRECTIONS PAPER SUBMISSION**

Animal Care Australia (ACA) is a national incorporated association established to lobby for real animal welfare by those who keep, breed and care for animals. ACA welcomes the opportunity to contribute to this review and we thank you for including us as a stakeholder.

In relation to the survey, ACA has found many of the questions and proposed options to be ambiguous and requiring further detail or explanation. To this effect, we have opted to respond in writing to ensure our views are not lost within the statistical reporting process of a survey in doing so providing inaccurate feedback.

We make the following responses:

1.1 Recognising animal sentience in a new Act.

**ACA acknowledges sentience and proposes it is included as Option 3 - in the Definition of animals.**

1.2 Introduce a requirement to provide a minimum standard of care for animals

**ACA supports introducing a requirement to provide a minimum standard of care for animals in a new animal welfare Act?**

1.3 Introduce a set of general escalating offence categories covering the things a person must not do to animals.

**ACA partly supports escalating offence categories.**

1.4 Provide a single regulatory framework for performing controlled procedures on animals

**ACA supports a single regulatory framework for performing controlled procedures conceptually,  
however yet again ACA finds the proposals to be lacking of definition and detail.**

2.1 Consider the need for broad exemptions.

**Option 2 – Apply the requirements of the new animal welfare Act to all animals and activities – with appropriate exceptions for lawful activities.**

2.2 Reform the current framework of 'Act, Regulations and Codes of Practice' to improve clarity.

**Option 1 – A limited set of Regulations supported by mandatory Codes of Practice that would demonstrate compliance with the Act, complemented by best practice Guidelines.**

2.3 – Introduce a mechanism to incorporate agreed national animal welfare Standards as mandatory requirements.

**ACA partly supports the need to provide consistent animal welfare legislation and enforcement across Australian states and territories.**

2.4 Allow for the recognition of appropriate co-regulatory schemes in the new Act.

**ACA requires further explanation before committing to a response.**

2.5 Formalise a role for scientific knowledge and expert opinion to inform decisions under the new Act .

**ACA does not support ANY of the available options.**

3.1 – Enhance powers to proactively monitor compliance.

**ACA partly supports this proposal**

3.2 Introduce a risk-based framework for permitting restricted activities.

**ACA supports a risk-based framework.**

3.3 Set out clear alternatives for managing seized animals.

**ACA supports the need for clear alternatives.**

For further explanation please refer to the attached submission.

ACA looks forward to further consultation and welcome the opportunity to provide further clarification on this submission should you require it.

Kind regards,

A handwritten signature in black ink, appearing to read "Michael Donnelly".

Michael Donnelly  
President, Animal Care Australia.  
0400 323 843



# ANIMAL WELFARE ACT FOR VICTORIA – DIRECTIONS PAPER SUBMISSION 2020

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DECEMBER 14 2020

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ANIMAL CARE AUSTRALIA  
STAKEHOLDER SUBMISSION

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# A NEW ANIMAL WELFARE ACT FOR VICTORIA – DIRECTIONS PAPER SUBMISSION

## **What is your primary animal welfare interest?**

Our goal is to promote and encourage high standards in all interactions with the animals in our care.

## **What is your primary involvement with animals?**

ACA is in the unique position of lobbying and advocating for all animals within our care. The association represents each of the following major animal groups – dogs, cats, birds, horses, reptiles, farm animals(hobby-farming), small mammals, native mammals and mobile and wildlife educators.

### **1.1 Recognising animal sentience in a new Act.**

#### **ACA acknowledges sentience and proposes it is included as Option 3 - in the Definition of animals.**

ACA acknowledges sentience is proven and in no way disagrees with or objects to the basis of its definition, that being: ‘Animal sentience is the capacity of an animal to experience different feelings such as suffering or pleasure’. The term sentient has no relevance to the Objectives or Principles of the Act as these are goals and expectations of the Act. Sentience is not a goal or an expectation.

The concern we have is its inclusion within the Act or the Standards & Guidelines. The inclusion of sentience in any section of the Act itself is fraught with inconsistency and is open to interpretation by the owner of the animal, the compliance officers, or the courts. The purpose of this review is to remove those ambiguities.

The Animal Rights Extremist (ARE) movement has successfully hijacked the use of ‘sentience’ to enforce their own agenda. This agenda has resulted in the ARE’s anthropomorphising all animals and their keeping. This anthropomorphism will open a door that may not be so easily closed.

For example other states and jurisdictions that have introduced sentience into their welfare Act have mandated such things as a minimum 1hr a day walk for a dog. While this is possible and seems reasonable, it does not consider elderly animals or those with health conditions and also at times animals ‘in heat’ that should not be taken off the property due to other risks. The owner would understand this and by ensuring their pets’ best welfare are in breach of the Act. Compliance Officers (whose primary objective is to enforce compliance) are left with no option but to fine the owner and in doing so should they insist the animal is walked, will NOT be in the best interest of the animals’ welfare.

### **1.2 Introduce a requirement to provide a minimum standard of care for animals**

#### **ACA supports introducing a requirement to provide a minimum standard of care for animals in a new animal welfare Act.**

All animals that are dependent on people should always be afforded the minimum standard of care, and these should reflect the 5 freedoms:

- *Freedom from hunger and thirst*: by ready access to fresh water and a diet to maintain full health and vigour.
- *Freedom from discomfort*: by providing an appropriate environment including shelter and a comfortable resting area.
- *Freedom from pain, injury or disease*: by prevention through rapid diagnosis and treatment.
- *Freedom to express normal behaviour*: by providing sufficient space, proper facilities and company of the animal's own kind.
- *Freedom from fear and distress*: by ensuring conditions and treatment which avoid mental suffering.

The above 5 freedoms should be used to build the minimum standards of care within the Act. These standards are then expanded within the standards and guidelines for each animal group to provide the guidance required for enforcement.

The basic elements to be included in the minimum standards of care are:

- Food & water
- Health Care
- Appropriate shelter & accommodation
- Social and environmental enrichments that meet specific species needs.

**It should be an obligation to provide a minimum standard of care.**

### **1.3 Introduce a set of general escalating offence categories covering the things a person must not do to animals.**

**ACA partly supports escalating offence categories.**

ACA supports the concept of a tiered or escalating scale of offence categories, however the proposed 4 categories are too ambiguous. Only one of the outlined proposed offences in the categories defines acts as deliberate. Categories 1,2 and 3 are very open to situations where a person may be unknowingly committing an offence due to lack of knowledge and/or support.

Under these proposed terms it is likely each potential offender would be 'painted with the same brush' without individual situations being brought into consideration, and as such there will be people unknowingly committing offences due to lack of knowledge and/or support. The Inquiry into RSPCA Victoria showed there were issues with the processes within the current system, highlighting that with the RSPCA as the only authorised officers able to investigate and prosecute, discrepancies in interpretations of the Act have resulted in it not being a reliable or trustworthy system. The current proposal does nothing to alter the ambiguity already being experienced.

ACA proposes the Act should include 3 levels of offence, the first being dealt with by education and warnings.

1. **Neglect** – accidental or unintended neglect for the welfare of an animal. This is a non-offence and would be responded to with assistance and education.
2. **Deliberate** – deliberate or intended failure to provide for the welfare of an animal, as specified in the Standards.

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3. **Aggravated** – wilful intent that causes harm resulting in death, deformity or serious disablement of an animal.

Animal welfare requirements need to be specified (for e.g. mandatory Standards) if they are to be legislated. ACA supports maximum financial penalties or imprisonment for cruelty-related offences, however, due to the ambiguity of this proposal and without being provided any information on how those maximums would be determined and applied, ACA can only support this in principle at this point in time.

**“Should the proposed escalating cruelty offences apply to all animals and all circumstances?”** - Again ACA finds it difficult to answer this question as it is stated. Applying the escalating offense to all animals IS EXTREMELY DIFFERENT to applying it to all circumstances.

For example, the term ‘luring’ is utilised as an aggravated offence within the current Act in reference to using an animal as a lure or bait for trapping, or animal fighting. However, ‘luring’ is also a term used in dog training. Lures, usually food treats and sometimes toys are utilised to help train/shape behaviours. ACA is concerned that dog trainers would have to justify their use of the word ‘lure’ or ‘luring’ to avoid penalty. Equally, without a specific definition of a ‘lure & luring’ legally/technically the offence could be applied to ‘luring’ an animal during training. We are concerned the next step for animal rights extremists/groups would be to utilise this to claim breeders and keepers cannot ‘train’ an animal to ‘perform’ tasks. As we know animals have the right to choose the behaviour they provide their handler – they’re usually motivated to provide the behaviour because of the promise of something rewarding - often the ‘lure’ of food.

Luring is just one example, another is the use of a tether, and there are many others that apply differently to each species of animal, and this is why ACA proposes the use of these terms IS NOT included in the Act of cruelty, instead they are defined and included within species specific standards & guidelines to ensure they are appropriately applied and utilised.

#### **1.4 – Provide a single regulatory framework for performing controlled procedures on animals**

**ACA supports a single regulatory framework for performing controlled procedures conceptually, however yet again ACA finds the proposals to be lacking of definition and detail.**

- **Restricted procedures** – People would require a certain level of competency and/or need to comply with requirements detailed in Regulations. A restricted procedure might include castration and tail docking.
- **Prohibited procedures** – These would continue the 'prohibited procedures' approach of the current POCTA Act and would be prohibited for all persons, except for registered veterinarians for some procedures for therapeutic purposes, such as ear cropping and de-clawing.
- **Scientific procedures** – The existing definition and framework for the use of animals in science and teaching provided under the POCTA Act would likely be maintained in principle under the new Act, but would be reviewed to ensure consistency with the overarching aims of the reform.

The examples provided in the descriptions above are concerning. Tail-docking (outside of the sheep industry), de-clawing, and ear cropping are already deemed as cosmetic and illegal to perform. Using out dated practices such as tail docking, ear cropping and de-clawing as part of a legislation proposal on who can and cannot perform these prohibited practices is of concern. ACA will need to be provided with a more appropriate and extensive list of the procedures before being able to comment or support this any further.

We are also concerned by allowing sentience to be acknowledged within the Act would drastically alter the list of procedures – for example, artificial insemination is prohibited in countries where the inclusion of sentience has deemed that procedure to be too invasive and causes undue pain and stress on the animal, even when performed by a veterinarian.

**What types of short-term and long-term effects on an animal, and what skills or training could apply to restricting or prohibiting a controlled procedure?**

Responsible consultation with key stakeholders needs to be undertaken before this question can be satisfactorily responded to. Again this question is too ambiguous to respond to given the numerous species this Review covers.

Rushed or influenced decisions have led to decisions regarding procedures being implemented without consideration of the long term effects. For example: tail docking of dogs was banned in Australia and since then we have seen an increase in injuries to tails in breeds that are traditionally docked. This has led to medical-intervention (docking) which is a painful procedure in older dogs. This raises the question of whether had these dogs been docked as puppies under the right medical supervision would they have to endure the pain of the injury and the subsequent surgery later in life.

**A SIMPLIFIED AND FLEXIBLE LEGISLATIVE FRAMEWORK**

The need for a simplified and flexible legislative framework sounds great in theory, however the more simplified the framework the more open to modification it can be. This is of high concern for ACA as the capacity for politicians and governments to be influenced by animal rights extremists and their agendas is proving more prevalent every year. The recent announcement that the government will support the Animal Justice Party's push to have dogs handed to rescue services rather than being euthanised is the perfect highlight. Rescues are not regulated, dogs will be handed to untrained individuals raising the potential for dogs with behavioural issues making their way back into the community – to start the cycle all over again when the dog creates a new issue – potentially injuring itself, another animal or human. The animal rights extremist (ARE) movement is becoming too vocal and too influential.

**2.1 Consider the need for broad exemptions.**

**Option 2 – Apply the requirements of the new animal welfare Act to all animals and activities – with appropriate *exceptions* for lawful activities.**

If the new animal welfare Act is to include all animals, then the same minimum welfare standards should apply to other animal related industries but with appropriate exceptions that are specific to those industries and/or practices and do not risk reducing the animal welfare standards.

ACA recognises the need for some exemptions to apply such as the management of pest species. This would involve the regulation of poisons and other pest and feral management tools.

ACA acknowledges these should be managed within other Acts however intentional cruelty offences should still apply for pest and feral management within the new Act

**2.2 Reform the current framework of 'Act, Regulations and Codes of Practice' to improve clarity.**

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**Option 1 – A limited set of Regulations supported by mandatory Codes of Practice that would demonstrate compliance with the Act, complemented by best practice Guidelines.**

ACA supports having a limited set of Regulations supported by Codes of Practice that include both mandatory ‘Standards’ and best practice ‘Guidelines’ designed to improve and encourage higher welfare standards. These Standards & Guidelines MUST be drafted with the inclusion of key stakeholders that directly represent the species and industries responsible for each Code of Practice.

**2.3 – Introduce a mechanism to incorporate agreed national animal welfare Standards as mandatory requirements.**

ACA supports the need to provide consistent animal welfare legislation and enforcement across Australian states and territories, however the current consultation process for the creation of national standards is in our opinion insufficient. Accordingly ACA will support **Option 2 to adopt relevant content from the national Standards into Regulations** so that the regulations would mirror the national Standards but would allow for adjustments as they apply in Victoria. Should the consultation process for national Standards become more inclusive of ALL key stakeholders ACA may be inclined to alter this opinion.

**Should the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes be treated in the same way as the Australian Animal Welfare Standards and Guidelines?**

The use and housing of scientific animals is very different to companion and agricultural animals. Experts working with these animals are highly skilled as are those that write and maintain these codes. This is another area that the Animal Rights Extremist agenda is dictating the future of the health of Australians by changing codes that are currently working. If the inclusion of the COP’s into the animal welfare standards also requires any changes to the Standards MUST be completed via full stakeholder consultation and not simply altered by a Minister responsible for the portfolio, then ACA would support this.

**2.4 Allow for the recognition of appropriate co-regulatory schemes in the new Act.**

In theory this proposal sounds logical – however ACA has reservations in supporting co-regulatory schemes. The directions document suggests conflicting concepts.

- i.     “**non-government regulatory arrangements**” - What does this mean?
- ii.    “**could be adopted into the new legislative framework where they meet or exceed the minimum legislated standards**” - who determines whether they meet/exceed?
- iii.   Co-regulation = industry and enforcement agencies working together “**to set and enforce standards**”- these being alternate standards to the those required under the legislation – by definition ‘exceeding’ the legislative standards – effectively creating two sets of standards and potentially opening up grounds of ambiguity or exclusivity. This is currently being highlighted in NSW with members of Dogs NSW being quoted as not needing to abide by the Standards for Breeding of Dogs & Cats ‘because they follow the Dogs NSW Code of Ethics’.
- iv.   Are the ‘new’ co-regulation standards ‘enforced’ on people affected by the legislation? How will they know what the new standards are? Will they have an opportunity to provide feedback/challenge the new standard? What are the penalties for not complying with the new standards over the Minimum Standards? What evidence will they need/have opportunity to provide, and to who, to show their non-compliance with the new standards ARE NOT causing

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- harm, injury, distress to their animals and that they ARE meeting the legislated requirements of animal welfare?
- v. The document states “**A co-regulatory arrangement would not alter or replace the enforcement powers of animal welfare regulatory agencies**”. How will changes introduced through co-regulation both ‘cut red tape’ and reduce regulatory burden? On who is the burden removed? But, NOT alter or replace enforcement powers – how is that workable?

ACA questions how this would actually work in practice? Who would be the ‘industry and enforcement agencies’ consulted and how can you challenge the ‘science’ their changes might be based on? Not every ‘change’ is ‘an improvement’.

Previously there has been discussions around the RSPCA signing agreements with other organisations and every time it has been a one way agreement where the RSPCA wanted information on the members of the organisations but were not willing to do anything to help the members of the organisations with such things as getting back animals surrendered that were bred by them. More often the animals were sold for inflated prices over being returned to the actual breeders.

## **2.5 Formalise a role for scientific knowledge and expert opinion to inform decisions under the new Act .**

### **ACA does not support ANY of the available options.**

Relying solely on scientific evidence is a ‘double-edge sword’ scientific experts can be found to justify most opinions. This has particularly become prevalent with the use of animal rights extremists providing science-based arguments against most current standing practices. Simply being a scientist doesn’t make one an expert. ACA would want to know where the scientific experts are coming from, and their qualifications and agendas.

ACA supports industry led development of codes of practice or standards and guidelines. ACA would support a process where scientific knowledge and expertise is included in panels that review drafts, rather than a scientific panel producing the draft.

We would be seeking to ensure the final document is scientifically sound, however it must be understandable and practical to implement for those who keep animals if it is to improve the animal welfare standards.

Currently, other States are looking to form advisory panels for species. A significant first task for each advisory panel would be to recommend whether existing codes or new codes are required, which areas should be addressed in codes and how those documents should be created and endorsed

### **3.1 – Enhance powers to proactively monitor compliance.**

#### **ACA reservedly supports this proposal**

Assessments of compliance should be done with the welfare of both animals and their carer in mind and based on individual circumstances without the current mindset of the authorities to solely achieve a prosecution, unless the situation is evident of cruelty with intent.

**Support and education over regulation should always be the first point of action.**

ACA also recommends the need for an Independent Panel to be established for matters dealing with and determining cruelty scenarios. This Panel would function similarly to the Stock Welfare Panel established in NSW.

ACA strongly supports consideration of alternative approaches to dealing with offenders to improve animal welfare outcomes. Re-adjusting or setting a new scope of investigation that requires an Inspector to provide proactive support to prevent poor animal welfare situations from arising, is in our opinion essential. Ensuring Courts have the capacity/scope to direct convicted persons to forms of training in addition to existing options such as seizing animals or issuing penalties would be of benefit.

**Under what circumstances would proactive monitoring be appropriate?**

Situations where there are ongoing concerns of animal welfare would justify the need for pro-active monitoring, particularly facilities such as livestock saleyards, feed lots, abattoirs, etc where animal welfare is often seen as an issue and the facility is licensed/commercial.

For individuals that have been convicted of aggravated cruelty some level of court instructed pro-active monitoring would be appropriate.

In general ACA opposes the entry of authorised officers onto private properties with just cause.

**3.2 Introduce a risk-based framework for permitting restricted activities.**

ACA is on record as supporting the proposed risk-based approach to animal welfare in NSW, and accordingly we will support the risk-based approach within this review. There are many instances where over regulated licensing of low risk activities is cumbersome and ‘record-keeping’ heavy which achieves little by way of improving animal welfare outcomes and only serves to discourage the keeping of animals. The removal of this burden in the research arena would be of benefit. The risk assessment for a research animal that is just living out its life in a colony with no experimental procedures being undertaken doesn’t need the level of reporting as an animal involved in a study receiving daily meds via oral gavage procedures. The impact of this approach would assist in many facilities being able to improve and become involved in educating the public, via more community-based threatened species projects or having aviaries in schools etc.

**The criteria used to classify activities based on risk MUST include experience and qualifications to undertake those activities.**

**3.3 Set out clear alternatives for managing seized animals.**

ACA does not find any validity for the seizure of animals that do not appear to be abused or in imminent danger. There is no justification for animals to be taken to already over-crowded and under-staffed shelters for testing. ACA strongly recommends the removal of animals where blatant abuse has occurred and where it can be proven without reasonable doubt the animal’s welfare is in imminent danger.

Every situation should be treated as case by case to determine if the animal should be seized or not to begin with. In situations of genuine cruelty and proven neglect, abandonment, and it is not in the best welfare interest of the animal to be returned to its owner, then ACA is in support of alternative methods appropriate to the situation of the animal and not to the convenience of the agency responsible for the seizure of the animal.

There needs to be defined timeframes on when or how the options provided would be triggered before ACA is willing to comment further.

See Annexure 1 – a case study of a horse – viewed from a different perspective - as further explanation for our current stance.

### **Who should make the decision on managing seized animals?**

ACA recommends the decision for managing seized animals should be made by an independent veterinary officer. This decision should be made in consultation with the animal's regular vet as well as the RSPCA vet involved in the inspection. More often than not the veterinary practitioner overseeing the regular care of the animals is not informed that there is an issue or even consulted.

Enforcement agencies should be required to find suitable alternative housing for seized animals until legal proceedings are completed – this does not imply the animal remains in an RSPCA shelter – foster caring is often a more viable and affordable arrangement. Fostering still allows for the responsibility of the animal's care to remain with the RSPCA.

### **Additional Information:**

**Definitions and key terms** – ACA recommends ALL definitions be reviewed and as stated previously many definitions have different meaning with different species and these need to be identified and clarified, within the Act and also the Codes of Practice and Standards & Guidelines.

All of the remaining Additional items listed in the discussion Paper require a greater level of consultation than simply asking such broad and open-ended questions.

Examples of each of these need to be provided before any confident responses can be given. It seems there is an attempt to 'brush-over' these important points – and it would be irresponsible of us to respond without more data and the intent or purpose to be achieved.

In addition commenting on notices or directions to be provided under compliance WITHOUT knowing what scales of offence or penalties will be approved is again completely irresponsible.

### **More about Animal Care Australia:**

ACA was founded in early 2018 to establish an organisation run solely by volunteers to lobby for real animal welfare based on actual expertise of keeping and breeding animals. Extreme animal rights and animal liberationist ideologies currently influencing government legislation, regulation and policy are at the expense of real animal welfare and hence to the detriment of our animals and pets. ACA provides government with a balancing voice.

By uniting the broad spectrum of animal groups, collectively we offer an experienced, sensible approach to animal welfare.

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#### **Annexure 1: RE: CASE STUDY OF HORSE ANNIE USED AS AN EXAMPLE – A different perspective.**

Annie is a horse who suffers from metabolic issues where high fructose (sugars) in new grass can cause increased toxin levels in her body causing her to become very overweight. This can occur over a very short timeframe, especially when the season is right and the horse has been feeding on young pasture.

Annie is very heavy and the damp conditions that have encouraged the green pasture is also contributing to developing abscesses in her feet, which can also happen in a very short timeframe.

One day Annie appeared healthy, not underweight, however she became lame overnight unbeknown to the owner who due to Annie's condition is financially burdened by ongoing expenses..

A passer-by seeing Annie lame and not looking comfortable makes a complaint. An RSPCA inspector comes out assesses the horse needs treatment then seizes Annie straight away without any investigation.

The owner was not instructed to arrange veterinary assessment treatment within the day, and there was no offer of support or ongoing monitoring of Annie's progress discussed even though the RSPCA was able to establish that the owner was in a bit of a financial bind.

Annie did not receive treatment first and foremost, she was seized from the property, forced to move painfully, loaded onto transport to be transported to a shelter facility, in additional pain bought on by being transported before she could be assessed and treated by a veterinarian.

Meanwhile, the owner is dragged through court proceedings all ensuring their financial ruin, and Annie's upkeep expenses are blown out of proportion, while still not being treated for her condition (because the Court has not concluded an outcome yet), and is only treated for pain until her future is decided.

Six months after first being seized the horse was still suffering from the same abscesses in the hooves while forcibly walked in pain every day. If an abscess is treated correctly, it is not as costly and indeed heals as fast as it would have originally occurred.

In this situation the RSPCA are now in fact responsible for that animals' unnecessary ongoing pain and suffering – raising the question is this particular RSPCA committing an act of cruelty?

Not every case is as simple as neglect, and in this case study support and monitoring progress would have resulted in a better outcome for everyone, and would have been less costly for all parties.

If the situation was that the owner refused the opportunity to arrange immediate veterinary treatment, then of course, seizing the animal would be necessary, but in this case study that option was never considered by the RSPCA Inspector involved..