

25<sup>th</sup> March 2024

Legislation Reform  
Department of Jobs, Precincts and Regions  
Animal Welfare Victoria  
E: legislationreform@agriculture.vic.gov.au

**RE: Draft Animal Care & Protection Bill**

Animal Care Australia (ACA) is a national incorporated association established to consult with government in advocating for real animal welfare by those who keep, breed and care for animals. Our goal is to promote and encourage high standards in all interactions with the animals in our care.

Animal Care Australia reiterates that we **do not support** the renaming of the legislation to ‘Animal Care and Protection.’

**Animal Care Australia reminds Animal Welfare Victoria: Animal rights and animal welfare are not the same thing.**

Due to the vast number of recommended edits required to this Bill, Animal Care Australia highlights the following points which are of highest importance, outcome, and impact:

1. The Infiltration of animal rights ideology into this draft Bill is clear and abundant and is TOTALLY OPPOSED by Animal Care Australia.
2. Animal Care Australia opposes granting any powers to the RSPCA as Authorised Officers.
3. Animal Care Australia cannot support this Bill with its level of ambiguity without sighting the new Regulations that ‘may’ clarify the ambiguity.
4. Animal Care Australia STRONGLY OPPOSES ‘below the normal mid-point of gestation or incubation’ within the definition of ‘animal.’ It MUST be removed.
5. Animal Care Australia STRONGLY OPPOSES the inclusion of ‘(b) being found not guilty because of mental impairment;’ within the definition of ‘convicted.’ A person found not guilty cannot suddenly be considered guilty.
6. Animal Care Australia recommends an exception for hobby-based associations and activities be included in the definitions of ‘entertainment production;’ ‘events involving animals;’ and ‘intensive environments.’ To apply to all related sections.
7. Animal Care Australia recommends: ‘Industry and peak body codes of practice must be considered when determining whether care is appropriate for an animal.’
8. Animal Care Australia cannot support Section 47 relating to: ‘Using electronic shock devices generally’ without sighting the new Regulations – in order to ensure appropriate exemptions are included.
9. Animal Care Australia is astounded that authorised officers may possess, and use specified killing equipment to euthanise animals that is prohibited for use by everyone else.
10. Animal Care Australia does not support the requirement of having to ‘license’ every event, activity, or participation of animals. This again is derived by the animal rights indoctrination that ‘animals should not be used.’ This misconception appears throughout the Bill.
11. Animal Care Australia DOES NOT support the appointment of Council staff as authorised officers who are acting in the same (if not greater) capacity as Victoria Police.
12. Animal Care Australia supports the notion of the Minister requiring authorised officers to be trained, as long as the Minister also stipulates the level of qualifications needed AND the content of which they are to be trained.
13. Animal Care Australia recommends all material used to train authorised officers must be consulted with key stakeholders and not just the intended authorised officers’ organisations.
14. ALL authorised officers MUST be employed by the State and not charitable organisations.
15. Animal Care Australia OPPOSES the right of entry by an authorised officer without consent, a warrant or imminent danger to an animal.
16. Animal Care Australia STRONGLY QUESTIONS the purpose of Division 6: Adverse publicity orders. This appears to be unethical and a breach of right to privacy.

17. Animal Care Australia OPPOSES the right of entry by an authorised officer to collect samples from an animal. If samples are required these MUST be taken by a veterinary practitioner.
18. Animal Care Australia supports the use of magistrate issued search warrants in all cases where Authorised Officers have a need to enter any premises and consent is not provided.
19. Animal Care Australia opposes Section 225: 'Powers in relation to things not mentioned in the warrant' in its entirety.
20. Animal Care Australia STRONGLY OPPOSES Section 236: 'Requirement to give information to authorised officer during entry' and STRONGLY recommends it be removed. The blatant disregard of a person's rights (to be silent) is APPALLING!
21. Animal Care Australia STRONGLY OPPOSES Section 239: 'Power to use reasonable force' and strongly recommends it be removed. This is what Victoria Police are trained for – not employees of a charitable organisation.

Animal Care Australia does not support a number of Sections in their current form, however, would support them if our suggested amendments are implemented.

Additionally:

22. Animal Care Australia strongly recommends that the category of Animals in Entertainment be re-defined.
23. Animal Care Australia specifically opposes right of entry to monitor compliance without consent or warrant.
24. Animal Care Australia strongly recommends continual funding for education be written into the Act.
25. Animal Care Australia objects to the details of the Act being written into Regulations, rather than the Act itself.
26. Animal Care Australia suggests the Bill has a Section added that provides for people issued an infringement notice to have a right of appeal to the court.
27. Animal Care Australia strongly recommends focused stakeholder consultation is needed moving forward to prevent unintended consequences due to the current 'implied' restrictions under Regulations. This includes reviewing ALL codes of practice as part of ratifying the Regulations.

Animal Care Australia provides the attached submission for further explanation of our position.

We respectfully request a meeting with you and look forward to working with you as you work through our intensive feedback.

Kind regards,



Michael Donnelly  
President  
0400 323 843

# **Draft Animal Care and Protection Bill – Victoria 2024**



**Animal Care Australia submission**

**Approved: 24<sup>th</sup> March 2024**

**“Animal welfare is animal care”**



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## ACA Background

Animal Care Australia Inc. (ACA) represents the interests of all hobbyist and pet animal keepers nationally. Our members are comprised of most major animal keeping representative bodies including those representing dogs, cats, birds, horses, small mammals, reptiles, fish and exhibited animals. Some individual members also work in the rescue, care, and rehabilitation sectors.

## Opening statement

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**The Infiltration of animal rights ideology into this draft Bill is clear and abundant and is TOTALLY OPPOSED by Animal Care Australia.**

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As a nationally recognised animal welfare organisation, Animal Care Australia continues to oppose the metamorphosis of the title of the new Act from POCTAA, to the Animal Welfare Act for Victoria and now the Animal Care and Protection Act.

This is concerning for Animal Care Australia as it is a very clear animal rights-oriented influence. The draft Act now excludes the correct advancement of 'animal welfare' with preferential labelling given to the 'protection of' animals and the anthropomorphising of activities involving animals in order to re-classify them as 'cruel or inappropriate', for example through the continual statement that 'animals are used to ...' The term 'used' appears regularly throughout the Bill. Animals, particularly pets are not 'used'. This 'enslavement implication' is standard animal rights ideology.

Animal Care Australia reminds the Victorian Parliament, in particular the Minister for Agriculture and Animal Welfare Victoria that **Animal Rights and Animal Protection IS NOT Animal Welfare**.

The very department responsible for overseeing the development of this Act is called **Animal Welfare Victoria** and yet the Act designed to ensure that welfare is maintained and enforced is NOT? How can this be?

Animal Welfare is much broader than just animal protection or animal care. It encompasses the whole of life and death experience for animals; from husbandry standards to prevention of cruelty, to humane euthanasia, to breeding programs. Animal Welfare Science forms the sound basis to guide the continual improvement of welfare legislation. The removal of the word 'welfare' from the name of the Act AND the actual Act itself suggests that welfare is no longer a priority to the Victorian government, as was set out in the Animal Welfare Action Plan of 2018.

This draft Act mentions animal welfare no more than a dozen times within its entire 230 plus pages. Those mentions are within three sections:

- 1) The description of, powers of, and offences against a Saleyard Animal Welfare Officer.

- 2) During a clause providing an exception as part of a veterinary procedure, and
- 3) The reason for a payment from the Animal Care & Protection Fund

To be clear – the fund that is not titled ‘Animal Welfare Fund’ will pay out monies for animal welfare improvements – but it is called ‘Animal Care & Protection Fund’ ??

Animal Protection is not synonymous with Animal Welfare but appears to be used this way throughout this Act. This is a grave mistake with serious potential unintended consequences.

Animal Rights/Animal Protection does not belong in animal welfare legislation.

Using the term Animal Protection in this legislation is misleading to the general public. Animal Welfare goes beyond just Prevention of Cruelty and is the correct terminology for this legislative reform. Animal Welfare MUST be the primary concern of the legislative reform and this MUST be reflected throughout the Act.

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**Animal Care Australia STRONGLY recommends the name of the Bill be returned to its former name: “Animal Welfare Act 202\_”**

**Accordingly, within the Act the objectives of animal welfare be re-instated.**

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### **Animal Care Australia opposes granting any powers to the RSPCA as Authorised Officers.**

Authorised Officers, in particular those not in the employ of the state, such as RSPCA, are currently operating without appropriate oversight, transparency and accountability. The current Act and the proposed draft places RSPCA enforcement officers above the law, with no ombudsman or accountability.

This has come under increased scrutiny nationwide by the public as well as government, leading to several Parliamentary Inquiries. Maintaining (and increasing) enforcement powers for the RSPCA is inappropriate.

The Prevention of Cruelty to Animals Act and even this draft Act have only captured pre-existing modes of accountability without taking the opportunity to place the responsibility of the organisations and authorised officers who are charged with enforcing legislation on behalf of the Victorian Government **WITH** the Victorian government where it belongs!

Charitable organisations **SHOULD NOT** be permitted to operate as enforcement agents for the government.

### Non-existent Regulations

Animal Care Australia acknowledges the current Prevention of Cruelty Regulations 2019<sup>1</sup>, however a high proportion of the draft Bill includes Sections that refer to non-existent Regulations?

It is beyond comprehension how the Victorian Government can expect any organisation/stakeholder to confidently support a draft Act that is riddled with ambiguous clauses referring to potentially blank/open Regulations, which may at any time NOT be consulted upon with the very same stakeholders that it is seeking the support from?

## Responses to the Draft Bill.

### Section 2: Object

Animal Care Australia recommends the Object should include an aspirational element such as:

- (d) ongoing improvement in animal welfare outcomes.

### Section 4 Definitions:

Animal Care Australia has concerns with the following definitions:

**“activity involving animals means a recreational activity in which animals are used;”**

This definition is far too ambiguous especially when there is no current Regulation to refer to. Walking your dog is a recreational activity involving an animal.

This also has massive overlap with the Domestic Animals Act for animal keeping and/or breeding associations who have basic activities that may include the attendance of their animals.

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**Animal Care Australia cannot support such ambiguity without sighting the new Regulations that ‘may’ clarify the ambiguity.**

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**“animal means any of the following—**

- (i) a fish or an amphibian that is capable of self-feeding; or**

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<sup>1</sup> [Prevention of Cruelty Regulations 2019](#)

The inclusion of this raises issues particularly relating to Aquarium fish also an issue. Fish, particularly live-bearing fish are used as food for a number of species including other fish. Live bearing fish like Guppies regularly consume their own young, and this opens the proverbial floodgates for numerous other issues.

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**Animal Care Australia strongly suggests fish and decapods should be separated out of the ‘animal’ definition into their own identifying definition. Especially given their ability to feel pain and suffering is different to that of the other animals included in this definition.**

**This will become more useful when considering the appropriate Regulations and Codes of Practice for these species.**

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***“animal means any of the following—***

(ii) a reptile, bird or mammal, other than any human being or any reptile, bird or other mammal that is **below the normal mid-point of gestation or incubation** for the particular class of reptile, bird or mammal;”

The inclusion of the underlined section is absurd. This will make a number of naturally-occurring circumstances, which are out of the control of the animal owner – an offence! Of particular note are eggs that are being incubated. At any point in time until hatch due date – that incubator could fail effectively killing ALL within. The inclusion of half-incubated eggs as an animal would make that an offence as the animal have all died under the care of their owner.

Mammals with shorter gestation periods do develop quicker in the womb, however, do not have a great chance of survival until far further along than the half-way point. This will create a vast array of issues for all animal owners right across the species mentioned.

This sounds more like a ‘right to life’ insertion – ideologically driven from an animal rights source - than an ‘in the best interest of animal welfare’ inclusion.

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**Animal Care Australia STRONGLY OPPOSES ‘below the normal mid-point of gestation or incubation’. It MUST be removed.**

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***“animal transporting means any of the following—***



(b) in relation to all animals (including livestock), transporting the animals **in the course of carrying on a business**.”

This entire point is too far reaching. Firstly, there needs to be a definition of what a ‘business’ is. An animal being transported to an animal groomer ‘could’ be considered to be being transported in the course of the grooming business. A puppy being transported by a breeder to the veterinary practitioner WOULD be considered as an act occurring during the course of carrying on a business given the breeder is registered in Victoria as a Domestic Animal Business. A young child and their parent transporting their goldfish to a pet shop for sale, ‘could’ be considered to be transporting those animals in the course of carrying on a business.

Animal Care Australia would suggest the definition provided by the Australian Taxation Office<sup>2</sup> might be a good reference point for re-wording this clause.

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**Animal Care Australia strongly suggests ‘animal transporting (b)’ be re-defined.**

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**“baiting means encouraging an animal to fight another animal;”**

Animal Care Australia questions this definition? The definition does not align with the general public’s perception or understanding of baiting, which is:

- deliberately annoy or taunt (someone)
- put bait on (a hook) or in (a trap, net, or fishing area) to entice fish or animals.

While we can see that this is likely where the intention has come from – this is not how it is used within **Section 44 Fighting & Baiting** - where ‘fighting’ is already clearly stipulated:

“(2) A person must not—

(a) keep or use premises—

(i) for the purpose of causing an animal to fight; or

(ii) for the baiting or mistreating of an animal; or

(b) assist in the management of premises kept or used—

(i) for the purpose of causing an animal to fight; or

(ii) for the baiting or mistreating of an animal.

(3) A person must not keep or use an animal—

(a) for the purpose of causing the animal to fight; or

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<sup>2</sup> [Australian Taxation Office](#)

(b) for the purpose of baiting or maltreating the animal.

There is a real danger that people will not interpret baiting as intended by the provided definition and will be confused by its use within the Act especially when being included among terms of ‘killing’ and ‘trapping’ (see Section 55) – both of which are more likely associated with hunting etc than a ‘dog fighting’.

“convicted, in sections 24, 195, 196, 197, 271 and 307, includes—

(a) being found guilty; and

**(b) being found not guilty because of mental impairment;”**

The inclusion of mental impairment within this definition is not ethical. Being found NOT guilty due to mental impairment IS NOT and in no way should be the equivalent of being convicted of an offence. This is an attempt to circumnavigate the outcome of a legal judgement/decision.

While Animal Care Australia can see the reason why people with mental impairment should have some conditions applied to them, there is no reason why a ‘control order’ can be applied because you were found not guilty due to a mental impairment in the past and may well no longer be suffering from that impairment.

The Court states you were not guilty - for whatever reason - then you are **NOT GUILTY**. A separate definition and section with an appropriate inclusion of a determination of current ‘impairment’ or ‘continual impairment’ should be added to this Act rather than bundle both under the one definition. This would allow for circumstances involving mental impairment to be assessed on individual circumstances and whether the person: still has; will continue to have; had but is now recovered from, a mental impairment. Often animals are beneficial for persons with mental impairment and should not lose those animals simply because an authorised officer is under their impression the person is incapable of caring for an animal.

Authorised Officers are not trained in animal husbandry let alone human mental illness and should not be making such determinations.

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**Animal Care Australia STRONGLY OPPOSES the inclusion of ‘(b) being found not guilty because of mental impairment;’ within the definition of ‘convicted’.**

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**“dwelling means a building or vehicle in which a person lives;”**

Animal Care Australia recommends the definition of a dwelling must include the land on which the dwelling buildings are built. In a residential area this would include the entire block of land. In a rural setting the area surrounding the home, maybe to some distance limit - say 200m.

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**Animal Care Australia recommends redefining ‘dwelling’ as above.**

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**“enforcement agency means—**

- (a) a Council within the meaning of the Local Government Act 2020; or**
- (b) The Royal Society For The Prevention Of Cruelty to Animals (Victoria);”**

As previously stated in our Opening Statement Animal Care Australia does not support the RSPCA as an enforcement agency in Victoria – or anywhere in Australia.

Animal Care Australia does not support Local Council Officers as enforcement officers without them meeting the same level of qualifications and training as other authorised officers. Animal Care Australia notes there are currently authorised officers with varying degrees of any training and even less with qualifications.

Enforcement Officers MUST be employed by the government, and be subject to all transparency, accountability, disciplinary and other measures to which officers of the state are subject.– which can only occur when employed by the government.

On this note: Animal Care Australia questions the absence of Victoria Police listed as an enforcement agency.

Having stated that – the term enforcement agency is not mentioned anywhere within the draft Bill outside of this listed definition.

**“entertainment production”**

Animal Care Australia recommends an exception be included to this definition for ‘hobby-based displays. There have been issues distinguishing between club type promotional activities and commercial entertainment productions.

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**Animal Care Australia recommends an exception for hobby-based displays be included in the definition of ‘entertainment production’.**

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**“event involving animals means—**

- (a) a sporting event in which animals are used; and**
- (b) a competition in which animals are used;”**

This definition is absurd and requires far greater explanation.

Dog agility or flyball events and horse carriage driving are just two events that would be considered 'sporting events'

Best Bird or Best Pet Rat and so on are competitions in which animals are included.

Would these all be included as Events? Again, it states: "contravention of the regulations (if any)"

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**Animal Care Australia cannot support such ambiguity without sighting the new Regulations that 'may' clarify the ambiguity.**

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**"intensive environment" in relation to the keeping of more than one animal, means an environment—**

**(a) in which the animals are mostly confined to a small area, such as a cage, stall or pen; or**

This literally describes the manner in which many pet species are regularly housed and maintained – for example, a fish aquarium; a reptile enclosure; a bird aviary; a pet mouse/rat enclosure and so on. An exemption for hobbyists and approved organisations is required for this definition. The exemption can include a reference to conditions that exceed those outlined within the relevant species codes of practice.

**(b) in which the animals are kept in close confinement with each other, such as a barn, feedlot or saleyard.**

Examples

The following are examples of intensive environments—

**(e) rabbit breeding.**

This is misleading. Part (e) should stipulate rabbits in the meat industry – not simply rabbit breeding. Pets are not "bred intensively".

The inclusion of a barn is equally disturbing and a misrepresentation of reality. Barns, stables and stalls are NOT intensive environments. Horses owned as pets or for recreation should not be collectively pooled with agricultural similarities.

Both of these inclusions in this section are yet again another example of Animal Welfare Victoria's clear bias towards the breeding of animals and their lack of real-life understanding of the keeping of animals.

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**Animal Care Australia recommends an exemption for hobbyists and approved organisations from the definition of intensive environment.**

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**Additional required definition:**

**‘business’** there is a strong cause for business to be defined for the purpose of this Act. Is this referencing a ‘commercial’ use or a general activity i.e.: going about your daily business?

The two incite very different outcomes wherever the word ‘business’ is currently utilised.

Throughout numerous consultations Animal Care Australia has been profoundly astonished and offended by the extreme vocalising that all animal breeding is commercial. This is a clear animal rights-based bias that has been consistently displayed by Animal Welfare Victoria staff. This appears to be the driving purpose here within this draft Bill.

Animals are not bred solely for commercial reasons. There are a variety of reasons why people keeping and breeding animal do so, including genetic protection and diversity, and in the case of several species, their mere short lifespans require regular breeding in order to prevent those species and their endearing varieties (breeds) from becoming extinct.

Placing an overriding ideology that animal breeding is commercial is biased and highlights a level of indoctrination where these staff members have simply been brainwashed into not being able or willing to see the beauty of an individual tree within what they perceive to be an overgrown forest.

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**Animal Care Australia recommends adding a clear definition of ‘business’.**

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**Section 6 Principle of sentience**

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**Animal Care Australia recommends inserting the following sub-clause:**

**(3) “The Parliament does not intend the perceived mental state of an animal to be a determining factor in determining whether an offence has been committed.”**

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The recommended ‘authorised officers’ within this draft Bill are not qualified to determine the mental state of an animal. This requires the assessment by a qualified professional and such an assessment should be mandated prior to any offence being considered. ‘A perceived mental state’ being assessed by an authorised officer is no different to a truck driver being asked to assess the mechanics of a Boeing 737. Might think he knows engines – but actually knows diddly-squat.

While Animal Care Australia recognises the inclusion of sentience in this Bill is due to a perceived promise made by the previous Premier, we were unable to find any transcript where the inclusion of sentience was actually stipulated. We are aware the previous Premier made statements to the media as part of election-based spiels only.

This inclusion is concerning given the situation in Europe where the Animal Rights movement have gone to the next level to ban an array of animal-related activities, including breeds, pony riding etc - all based on the 'anthropomorphising of sentience',

It remains the position of Animal Care Australia that the inclusion of sentience should be within the definition of 'animal' acknowledging they are sentient in their ability to feel emotions and pain etc.

#### **Section 12 Meaning of public authority – Subsection (3)**

Animal Care Australia believes this subsection refers to the RSPCA, however, it is not clear what it means. If it does apply to the RSPCA (and other non-state actors) are permitted as authorised officers then this needs to be much clearer. The clarity currently missing is outlined in the below recommendation:

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**Animal Care Australia recommends Section 12 (3) be amended to include:**

**“All accountability, transparency, oversight, disciplinary and ethical requirements of state employed officers apply equally and completely to authorised officers employed by other entities, when performing any duties under this Act.”**

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#### **Part 3:**

#### **Section 17 Care requirements – Subsection 3**

Compliance with accepted or peak body codes of practice should be used to determine whether care is appropriate. Such documents should be a valid defence in the event of charges, and a guide for authorised officers, particularly for species where they have no formal qualifications or expertise – that being all species with the possible exception of dogs and cats.

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**Animal Care Australia recommends Section 17 (3) be amended to include:**

**(4) “Industry and peak body codes of practice must be considered when determining whether care is appropriate for an animal.”**

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**Section 18 Duty to meet care requirements—person in charge**

Animal Care Australia recommends Section 18 be amended to include:

(4) “It is a defence to a charge for an offence against subsection (1) if the person charged was acting in compliance with an industry or peak body code of practice.”

**Section 19 Duty to meet care requirements—owner**

Animal Care Australia recommends Section 19 be amended to include:

(4) “It is a defence to a charge for an offence against subsection (1) if the person charged was acting in compliance with an industry or peak body code of practice.”

**Section 20 Duty to meet care requirements—person with authority to direct care**

Animal Care Australia recommends Section 20 be amended to include:

(5) “It is a defence to a charge for an offence against subsection (1) if the person charged was acting in compliance with an industry or peak body code of practice.”

**Section 21 Act of cruelty – Subsection (1)**

“(a) the person does or omits to do an act with the result that **unreasonable harm, pain or distress is caused, or is likely to be caused**, to an animal; or”

Animal Care Australia has major concern over the wording of (a).

How does an authorised officer determine something is unreasonable? Unreasonable to what criteria?

How does an authorised officer conclude the potential offender is likely to offend? Again what, if any, is the magical power (criteria) being provided to authorised officers to bring forward a charge of a ‘thought crime’.

How does an authorised officer or the court determine sufficient pain or distress in an animal?

It is the act or omission that is the offence but the prosecution must show the act or omission to be the cause of the pain or distress for an offence to be committed.

Animal Care Australia recommends it is better to list the acts or omitted acts that form the offence. Showing pain and distress was caused by some act or omission that is not specified in the Act is difficult and open to a range of different interpretations, particularly when an authorised officer has an animal rights ideological mindset.

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**Animal Care Australia recommends Section 21 (1) (a) be amended to include a list of the acts or omitted acts that form the offence.**

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**Section 23 Aggravated Cruelty – Subsection (1) (b)**

“(iii) serious physical or **mental impairment**, including but not limited to impairment due to injury or disease, to the animal”

Animal Care Australia is concerned at the use of “mental condition” and “mental impairment”.

We do not doubt such conditions do occur as a result of cruelty, however there are enormous difficulties identifying and diagnosing mental impairment in animals, let alone connecting the impairment to specific acts a person may have done. As is the case with humans, there are multiple reasons for mental conditions that are not all connected to the treatment or actions of others.

Animal Care Australia is therefore reluctant to support these terms and recommend their removal from the aggravated cruelty offence.

Animal Care Australia would be supportive of listing specific acts of cruelty that when performed by a person are highly likely to cause negative mental impairment in animals. The acts by the person should be the offence not the mental impairment that results.

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**Animal Care Australia recommends Section 23 (1) (b) (iii) be amended to include a list of the acts of cruelty that when performed cause negative mental impairment and those acts that form the offence.**

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**Section 26 Offence to attend certain events or places**

“(3) A person must not attend an event at which the person knows, or ought reasonably to know, that an act of cruelty is to be, or is likely to be, committed against any animal.



(4) In this section—

attend, in relation to an event or place, includes to attend the event or place in person or by means of an audio-visual link or audio link.”

Does this include the charge of an offence under Section 9(1)(e) of the Summary Offences Act 1966 (Vic)<sup>3</sup> that already makes it *‘a crime for a person to enter a private place without the owner or occupier’s consent or for a legitimate purpose. Going into a scheduled public place without permission is also an offence.’*

Does Subsection (4) make it illegal for The Farm Transparency, Animals Australia, PETA Australia, Oscars Law and other animal rights activists to post any audio or visual material of their trespassing activities on the internet?

**If so, how will this be enforced and by who? If not, why not?**

#### **Section 30 Exceptions for conduct regulated by Part 4**

“(1) A person who uses an electronic shock device in contravention, but for this subsection, of a Part 3 offence provision, does not contravene the provision if the person does not contravene any requirements of Division 6 of Part 4 in doing so.

(2) A person who sells an electronic shock device in contravention, but for this subsection, of a Part 3 offence provision, does not contravene the provision if the person does not contravene any requirements of Division 6 of Part 4 in doing so.”

Animal Care Australia acknowledges the use of these devices is currently permitted under the guidance of a qualified trainer.

It is vital that this remains during any review of the Regulations. Most people using these for their animals do so under the guidance of a trainer, not a vet. Trainers are the ones qualified in their use, and the more we ban the use of training devices the higher rates of euthanasia we will see as some dogs are not able to have behaviour modification successfully achieved with purely positive approaches. This is highlighted by the recent Inquiry in Queensland looking into dog attacks and the need to introduce more legislative penalties for aggressive dog behaviour – following the ban on these devices less than twelve months earlier.

#### **Section 31 Exceptions for conduct regulated by Part 5**

Animal Care Australia recommends an exemption for hobbyists and approved organisations from the definition of intensive environment as intended by this Section. Many birds, reptiles and other

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<sup>3</sup> [Summary Offences Act 1966](#)

animals are maintained in what could be considered intensive environments, for example, a fish aquarium; a reptile enclosure; a bird aviary; a pet mouse/rat enclosure and so on.

The exemption can include a reference to conditions that exceed those outlined within the relevant species codes of practice, included within Regulations.

This exemption needs to appear here in Section 31 and/or within the definition of ‘intensive environments’

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**Animal Care Australia recommends Section 31 (7) has an additional exemption for hobbyists and approved organisations and also incorporated within the definition of intensive environment.**

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#### **Section 31 - Subsection (7)**

Again, Animal Care Australia highlights the importance of defining ‘a business’ to ensure clarity for this subsection.

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**Animal Care Australia recommends defining a ‘business’ for the purpose of clarity when considering Section 31 (7)**

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#### **Section 35 – definitions (Control and regulation of certain uses of animals and related practices)**

##### **“specified heritable defect”**

Animal Care Australia acknowledges the current Regulations do not prohibit the more ‘common heritable defects’ such as brachycephalic breed concerns, etc HOWEVER it has been made clear by Animal Welfare Victoria that this could change when drafting the new Regulations. This is therefore a major concern for Animal Care Australia given the lack of guarantee from the current Minister that the Regulations will have any further stakeholder consultation than the three-question survey being conducted at this time. This survey is not only vague and misleading in its questions but also only applies to the current Regulations.

It should equally be noted that most animals have heritable defects (of one extent or another) – currently anything classified as a heritable defect can see the breeder refunding the full price of an animal. This is opening a pandoras box of issues.

Animal Care Australia believes it is fair and reasonable if a breeder can prove they have undertaken all available testing prior to mating and the results are within acceptable levels that they have done all possible to reduce the likelihood of that disease.

However, some diseases, e.g. hip dysplasia can be both hereditary or environmental. If a breeder can prove they have tested breeding stock and they are within the breed average then a progeny that is diagnosed as HD may be environmental and not the responsibility of the breeder. There is no way to guarantee that something will surface. We need to protect the breeders that are doing the right thing, while protecting buyers from those doing the wrong thing.

Therefore, without proper stakeholder consultation moving forward a free-for-all attitude of an Animal Welfare Victoria policy writer could result in a very large list of 'defects' being regulated to the detriment of everyone including the animals.

#### Section 37 Offence to perform controlled procedures on animals

"A person must not perform or carry out—

**(f) force feeding an animal that is poultry; or"**

Has Animal Welfare Victoria not heard of crop-feeding? While it is generally considered to be a method of feeding for other birds – it is absolutely an option for poultry in order to improve the health of that bird. Breeders and owners of ornamental poultry are more likely to use this method and it does not require a veterinary practitioner to perform.

Hypocritically part (g) makes it an offence to fast poultry and this makes it an offence to assist in feeding an unwell bird. Is Animal Welfare Victoria setting up poultry owners to be guilty of committing an offence when their animals are simply unwell? Damned if they don't feed them – damned if they do.

Animal Care Australia agrees that force feeding for the purpose of enlarging the liver, as used to produce "foie gras" should not be permitted. This should be specifically stated rather than outlawing all forms of force feeding.

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**Animal Care Australia recommends the removal of Section 37 (f)**

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#### Section 41 Offence to breed an animal with a specified heritable defect

"A person must not cause or allow an animal with a specified heritable defect to breed **if the person knows** the animal has the specified heritable defect or is reckless as to whether or not the animal has the specified heritable defect."

And.

**Section 42 Offence to sell an animal with a specified heritable defect**

“(1) A person must not sell an animal with a specified heritable defect if the person knows the animal has the specified heritable defect or is reckless as to whether or not the animal has the specified heritable defect.”

*‘If the person knows’* is simply too vague. Where does the burden of proof of the knowledge fall – with the current owner, the previous breeder/owner, or the authorised officer/legal representative making the claim against the owner?

Section 42 (2) provides for written documentation – this should apply equally to Sections 41 & 42

There must be documented proof (ie a veterinary statement) in order to substantiate the owner ‘knows of the defect’

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**Animal Care Australia recommends Section 42 (2) applies to Sections 41 & 42**

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**Section 47 Using electronic shock devices generally**

While the current Regulations do include some explanation of some electronic devices, Animal Care Australia cannot support this Section until after sighting any future Regulations.

Several required and regularly used devices are absent from the current Regulations, including but not limited to the electric control methods to keep out rodents and reptiles from aviaries.

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**Animal Care Australia cannot support Section 47 without sighting the new Regulations.**

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**Section 50 (3) A person must not use or set a permitted use trap unless the person does so—**

While this draft Bill includes a definition for ‘permitted use trap’ there is no mention of permitted use traps in the Regulations other than to identify the exceptions of where a ‘prescribed trap’ does not apply! Does this make those permitted uses of a trap?

It is questionable as to whether a ‘feed trap’ utilised by aviculturists in order to catch up their birds in large or free-flight aviaries as they are the most ethical welfare based tools – in preference to chasing birds down with hand-held nets.

**Animal Care Australia therefore recommends greater clarification is required IN THE ACT and not in the Regulations.**

### Section 55 Offences relating to specified equipment

“(1) A person must not sell, lend or possess any specified killing equipment except in accordance with the regulations.”

There is no current listed specified killing equipment listed in the Regulations. Are the current methods utilised for humane euthanasia (such as a gun for livestock etc) exempt or now non-exempt?

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**Animal Care Australia cannot support Section 55 without sighting the new Regulations.**

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### Section 57 Non-application of offences to authorised officers

“Section 55 **does not apply** to an authorised officer who possesses specified equipment for the purpose of exercising a power or carrying out a function under this Act or the regulations.”

Animal Care Australia is astounded by s.57. The implication is that authorised officers may possess specified killing equipment to euthanise animals. If such equipment is indeed a humane method of euthanising animals such that authorised officers can use said equipment with impunity then why is it prohibited by s.55 for all others?

### Section 59 Offence to kill, wound or capture an animal for a specified reason in contravention of regulations

“A person must not kill, wound or capture an animal for a specified reason in contravention of the regulations (if any) that **apply** to that killing, wounding or capturing.”

Animal Care Australia is very concerned about s.59. Although the Regulations ‘may’ go some way to alleviating our concerns, currently it seems the act of killing an animal is an offence for any of the specified reasons in s.58.

In reality, the majority of people who keep animals, at times, kill animals for any one of the reasons in s.58. All these reasons are legitimate reasons to kill animals.

### Section 61 Exceptions to offences under this Division

**Animal Care Australia opposes Part 5 Division 1 in its current form.**

The division should not prohibit the activities in s.58, and then make exceptions. Instead, it should directly prohibit actions that kill, wound or capture when NONE of the activities in s.58 apply.

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**Animal Care Australia opposes Part 5 Division 1 in its current form.**

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**Section 65 Exceptions to offences under this Division**

An exception is required for all use demonstrating a product that has no significant negative effect on the welfare of the animal.

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**Animal Care Australia recommends adding Section 65**

**(e): “the demonstration has no significant negative affect on the welfare of the animal.”**

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**Section 69 Offence to carry out certain procedures on an animal for a specified reason in contravention of regulations**

“A person must not carry out a **procedure** on an animal for a specified reason in contravention of the regulations (if any) that apply to a carrying out of that procedure on an animal for that reason.”

This is also a convoluted way to regulate inappropriate procedures. It prohibits all procedures (including pretty much all positive actions - refer s.67) and then permitting via the Regulations. Better to simply prohibit the actions that lead to poor welfare outcomes directly.

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**Animal Care Australia cannot support this Section in its current form**

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**Section 70 Exceptions to offences under this Division**

“A person who carries out a procedure on an animal for a specified reason in contravention, but for this section, of section 68 **or** 69, does not contravene the section if—”

Once again, an exception is required for all use situations where no significant negative effect on the welfare of the animal is likely.

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**Animal Care Australia recommends adding Section70**

**(d) “the procedure has no significant negative affect on the welfare of the animal.”**

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**Section 73 Offence to administer substance to an animal for a specified reason in contravention of regulations**

“A person must not administer a substance to an animal for a specified reason in contravention of the regulations (if any) that apply to the administration of the substance to animals for that reason.”

Once again, this is a convoluted way to regulate inappropriate administration of substances. It prohibits all substance administration (refer s.72) and then permitting via the Regulations. Better to simply prohibit the administration of substances that lead to poor welfare outcomes directly.

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**Animal Care Australia cannot support this Section in its current form**

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**Section 75 Exceptions to offences under this Division**

“A person who administers a substance to an animal in contravention, but for this section, of section 73 or 74, does not contravene the section if—”

Once again, an exception is required for all use situations where no significant negative effect on the welfare of the animal is likely.

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**Animal Care Australia recommends adding Section75**

**(f) “the administration of the substance has no significant negative affect on the welfare of the animal.**

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**Section 77 Offence to show or exhibit animals in contravention of regulations**

“A person must not carry on a business that wholly or partly involves the showing or exhibiting of animals in contravention of the regulations (if any) that apply to that showing or exhibiting of animals.”

Animal Care Australia again seeks clarity as to how is business defined? If this includes not-for-profit organisations running shows, sales and other displays with animals then ALL animal keeping and breeding associations will have a problem, particularly given we have no sight of the Regulations being referred to.

There have been numerous issues with sales/expos being classified as commercial in nature by an uneducated clearly biased Animal Welfare Victoria. This Act (the Minister) needs to specifically exclude events run by clubs/association from this offence.

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**Animal Care Australia recommends adding to Section 81**

**(4) “A person is not carrying on a business that wholly or partly involves the showing or exhibiting of animals when the activity is operated under the management of a not-for-profit entity formed for the purpose of promoting the animals involved in the activity.”**

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**Section 79 Licence offence for showing or exhibiting animals**

While the definitions imply showing and exhibiting to only include those entities currently licensed by the Department of Jobs, Precincts and Regions (DJPR), and under the Code of Practice for the Public Display of Exhibition of Animals the ambiguity of the wording within this related Division suggests a broader agenda is at play by Animal Welfare Victoria.

Animal Care Australia refers you to our previous recommendation that a subsection providing a clear exemption is necessary.

**Section 82 Offence to carry on a business of keeping animals in intensive environment in contravention of regulations**

Again, the definition of a business must exclude hobbyist and approved organisations activities.

**Section 84 Exceptions to offences under this Division**

This entire section is not supported by Animal Care Australia in its current form. However:

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**Animal Care Australia recommends amending Section 84 as follows:**

**Make 84 (a)-(c), 84 (1) (a) -(c).**

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**Add 84 (2) “A person keeping animals as a hobby activity and is keeping the animals in compliance with a code of practice endorsed by one of the peak bodies representing that hobby does not contravene this Division.”**

(Refer our recommended Section 152A(2))

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**Section 86 Offence to carry on business of animal transporting in contravention of regulations**

“A person must not carry on a business that wholly or partly involves animal transporting in contravention of the regulations (if any) that apply to such a business.”

Again, the definition of a business must exclude hobbyist and approved organisations activities.

**Section 88 Exceptions to offences under this Division**

This entire section is not supported by Animal Care Australia in its current form. However:

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**Animal Care Australia recommends amending Section 88 as follows:**

**Make 88 (a)(b), 88 (1) (a)(b).**

**Add 88 (2) “A person transporting animals as a hobby activity and is transporting the animals in compliance with a code of practice endorsed by one of the peak bodies representing that hobby does not contravene this Division.”**

(Refer our recommended Section 152A(2))

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**Section 89 Offence relating to activities involving animals that contravene regulations**

“(1) A person must not carry on a business that wholly or partly involves organising or arranging an activity involving animals in contravention of the regulations (if any) that apply to the organising or arranging of such an activity.”

Again, how is business defined? If this includes not-for-profit organisations running shows, sales and other displays with animals then there are problems with this, particularly given we have no regulations. There have been numerous issues with sales/expos being classified as commercial in nature by Animal Welfare Victoria. There is a strong need to specifically exclude events run by clubs/associations from this offence.

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**Animal Care Australia recommends amending Section 89 to include:**

**(3) A person is not organising or arranging an activity involving animals when the activity is operated under the management of a not-for-profit entity formed for the purpose of promoting the animals involved in the activity.”**

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### **Section 93 Exceptions to offences under this Division**

Hundreds, if not thousands of animal-based events are organised and operated by hobby-based clubs and associations annually throughout Victoria. Animal Care Australia is unaware of any of these events ever creating animal welfare issues, as hobby-based animal clubs are the experts in terms of ensuring welfare of the animals under their purview.

Therefore, it needs to be clear in the Act that these community events can continue unimpeded by overregulation such as archaic (animal rights driven) licensing regimes.

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**Animal Care Australia recommends amending Section 93 to include:**

**(5) “A person representing a hobby -based animal organisation who organises or arranges an event that is run in compliance with a code of practice endorsed by one of the peak bodies representing that hobby does not contravene this Division.”**

(Refer our recommended Section 152A(2))

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### **Section 95 Grant of licences for certain classes of conduct controlled or regulated under Part 5**

It is both impossible and irresponsible to provide feedback on this section until the Regulations are available.

Animal Care Australia has concerns regarding the ability of the Regulations to be the decision document in terms of which activities require a licence.

As that is what is proposed here, Animal Care Australia recommends restrictions on the types of licences should be included in the Act to prevent overuse of licensing, which can and does have unintended consequences. In particular, increasing numbers of people decide against keeping animals as a hobby activity as the regulation and licensing increases burden on them increases.

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**Animal Care Australia recommends restrictions on the types of licences should be included in the Act to prevent overuse of licensing, which can and does have unintended consequences.**

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Animal Care Australia are aware of routine management practices that could be interpreted as applying to each subsection in Section 95.

We cannot support this open ended approach to licensing without sections that specifically excludes hobbyist activities. For example, some captive carnivorous animals require live or freshly killed food - birds of prey, reptiles. Hobbyists administer a range of medications and substances to their animals as part of good management practices. Hobbyist clubs organise events to show, exhibit, entertain and promote.

If the open-ended licensing proposed is to go ahead, we recommend the addition of the following:

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**Animal Care Australia recommends amending Section 95 as follows:**

**Section 95A “The regulations must not prescribe a license for any hobby-based animal activity operating in compliance with a code of practice endorsed by one of the peak bodies representing that hobby.”**

(Refer our recommended Section 152A(2))

**Section 95B “Prior to prescribing any licensing scheme, the Secretary must first request the relevant peak body produce or edit a code of practice to regulate the activity.**

(Refer our recommended Section 152A(2))

**Section 95C “A licensing scheme can only be prescribed in the regulations when:**

- (a) the peak bodies are unable to produce such a code of practice, or**
  - (b) the code of practice for the activity is proven to be insufficient due to proven ongoing lack of compliance accompanied by ongoing cruelty charges.”**
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#### **Section 96 Conditions on Part 6 licences**

This entire section is not supported by Animal Care Australia in its current form. However:

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**Animal Care Australia recommends amending Section 96 to include:**

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**96 (4) “If a licence is to be issued to more than an individual, then the Secretary must consult and obtain advice from the peak bodies representing that animal species with regard to proposed new or revised licence conditions.”**

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**Section 141 Making of submissions on suspension and cancellation**

“(2) Submissions made under subsection (1) must be made within the time fixed by the Secretary in the notice.”

Reasonable time should be provided for this to occur.

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**Animal Care Australia recommends appending the words “which must be not less than 30 days” to s.141(2)**

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**Section 145 Coming into effect of cancellation**

“Cancellation of a licence by the Secretary has effect on the service of notice of the cancellation on the licence holder.”

Those subjected to cancellation or suspension must be able to appeal the Secretary’s decision in court.

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**Animal Care Australia recommends amending Section 145 by adding:**

**Section 145A “A licence holder may appeal the decision of the Secretary to the local court.”**

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**Subdivision 1—Approval of industry arrangements and related approvals**

**152 Ministerial approval of industry arrangements**

The Applicable Organisation system which falls within this Section currently has a range of problems, mainly the inability of most organisations to be able to formally regulate their members. Of greater concern to Animal Care Australia is the existing inequality of requirements, currently determined by Animal Welfare Victoria and their ongoing insistence of ‘changing the rules on a whim’.

Many animal keeping organisations do have codes of practice that they seek their members to follow and they place this as a condition of membership. Some of the codes of practice are not recognised by Animal Welfare Victoria, and accordingly of greater concern, are not utilised by authorised officers when determining the appropriate care of those animals. Unskilled and knowledge-less officers would do well to follow these codes when trying to determine the appropriate care and husbandry for many species kept as pets.

Animal Care Australia calls on the Minister (and Government) to add a system to endorse peak hobbyist organisation's codes of practice. The peak body and its members could agree to endorse, support and educate their members regarding compliance with the code, but it is recognised that they cannot be responsible for enforcement due to the size of their organisation – predominantly not-for-profit and with smaller membership numbers than the current Applicable Organisations.

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**Animal Care Australia recommends amending Section 152 by adding:**

**“Section 152 A**

- (1) The Secretary will maintain a list of peak bodies for each animal hobby.**
- (2) The Secretary approves a code of practice produced by the peak bodies for each animal hobby.**
- (3) The approved code of practice, or any part thereof, can be used by a person as a defence against a charge of an offence under this Act.”**

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For further information as to the need for this amendment refer to Section 186.

### **Division 1—Authorised officers**

#### **180 Appointment**

“(1) (c) at the time of appointment, has **the prescribed qualifications or training** to perform those duties of an authorised officer that the person is authorised to perform.”

Firstly, this should read:

**“prescribed qualifications and training”**

Animal Care Australia is astounded that persons authorised to enforce and ensure the welfare of animals is being met are NOT required to have any qualifications<sup>4</sup> in the ‘animal studies certifications’. Ideally the qualifications should include Certificate II in Animal Care, or Certificate III in Animal Care Services, and MUST include Certificate IV in Animal Regulation and Management.

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<sup>4</sup> [Qualifications for an authorised officer – in this case RSPCA Inspector](#)

Currently they are not trained in the husbandry requirements for the broad range of species they are inspecting. Time and again there has been a demonstrated lack of any knowledge relating to the most common species, such as birds, reptiles and small mammals.

“(3) The appointment of an authorised officer who is a **Council officer** within the meaning of paragraph (c) of the definition of specified person in subsection (5) ... “

Animal Care Australia DOES NOT support the appointment of Council staff as authorised officers who are acting in the same (if not greater) capacity as Victoria Police and is shocked to know more than half of the Councils in Victoria currently have authorised officers within their staff.

Animal Care Australia also requires to understand the differences, if any, in the qualifications, training and other requirements for being appointed as a Council-based Authorised Officer, an RSPCA (or other) Authorised Officer, and a Council-based Animal Management Officer?

#### **Section 180 (5) (c)**

Again, Animal Care Australia have significant concerns appointing Authorised Officers that are not employees of the state. Such personnel are not subject to the accountability, disciplinary or transparency regime of state employees. So why is the RSPCA being singled out within this Section?

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**Animal Care Australia is OPPOSED to Section 180 (5) (c)**

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#### **Section 181 Identity card**

In a spirit of education over enforcement, Animal Care Australia recommends identity cards as the primary method of identification (apart from Police). We recommend uniforms, in particular those similar to police or military, are specifically prohibited within the Act.

Consider adding **181(4) “An authorised officer (other than a police officer) must dress such that an identity badge is the only means of determining their role.”**

#### **Section 182 Training of authorised officers**

This is supported by Animal Care Australia if it includes Authorised Officer classes for each species group.

Animal Care Australia would like input into the nature of the training required for different species groups.

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**Animal Care Australia supports Section 182 if it is amended to:**

**Make current s.182 subsection (1) and add subsections (2) and (3) as follows...**

**Section 182 (2) “Authorised Officers must hold a Certificate IV in Animal Regulation and Management <sup>5</sup>. and**

**Section 182 (3) (a) “Classes of officer to include classes based on species groups as prescribed in the regulations.**

**(b) Authorised officers may only perform their duties for species in classes for which they have been approved.”**

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**Section 184 Offences as to officers and registered veterinary practitioners**

“(2) A person must not refuse entry to an authorised officer if the authorised officer is exercising a power of entry under this Act.”

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**Animal Care Australia OPPOSES Section 184 (2) unless it is amended to:**

**Authorised Officers MUST BE REQUIRED to obtain a Warrant if they wish to force entry into any premises.**

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**Section 185 Authorisation to file charges**

“(1) (iii) an officer of The Royal Society For The Prevention Of Cruelty to Animals (Victoria).”  
Charges should not be able to be laid by those not in the direct employ of the state.

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**Animal Care Australia strongly recommends deleting Section 185 (1) (iii)**

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**Section 186 Notice to comply**

“(1) An authorised officer may issue a notice to a person requiring the person to act or not

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<sup>5</sup> [Certificate IV in Animal Regulation and Management](#)

act as set out in the notice, or to cease to act as set out in the notice, **if the authorised officer reasonably believes that the requirement is necessary because the person—**

**(a) is committing an offence under this Act or the regulations; or ...”**

Not complying with a notice to comply should not be an offence and cannot be an offence because the proposal as written enables an Authorised Officer to write the notice condition as they wish. Education is better.

**Animal Care Australia questions whether this “Notice to Comply” is needed in the Act.**

Perhaps it is better to legislate that Authorised Officers must give persons an opportunity to correct their management before formal proceedings commence, and/or the notice to comply specifically notes matters that will lead to a charge if not corrected.

If our recommendation regarding s.186 above is not heeded, Animal Care Australia recommends the codes of practice we recommend in s.152 are utilised for the purpose of specifying Notices to Comply by Authorised Officers. Should s.186 remain an offence then:

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**Should s.186 remain an offence then Animal Care Australia recommend inserting Section 186 (6) as follows...**

**“(6) All matters requiring a person to act or not act that are specified in a notice issued under subsection (1) must include a reference to the clause of a code of practice approved under Section 152A of this Act before compliance is enforceable under subsection (3).”**

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**Section 188 Enforceable undertakings**

“(1) The Secretary may accept an undertaking given by a person that the person, in relation to a contravention or alleged contravention of this Act or the regulations, will do either or both of the following—

- (a) cease taking an action.
- (b) take an action or not take an action ”

Animal Care Australia is unclear on the procedure intended to take place to initiate an enforceable undertaking. This needs to be specified.

Animal Care Australia would like to see this system implemented as part of an appeal process. If a person has contravened or is alleged to have contravened, they can apply to the secretary for a review. At the review the matter may be set aside by the Secretary if the person agrees to a suitable enforceable undertaking.



If this idea is implemented, then the ability of this power to be delegated must be restricted such that the delegate is sufficiently removed from the Authorised Officer who initiated the action.

### **Section 192 Guidelines**

- (2) Guidelines made by the Secretary under subsection (1) must be published on an Internet site of the Department.

These Guidelines, when made or edited, should be done so in consultation with stakeholders and the public.

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**Animal Care Australia recommends an addition to Section 192:**

- (3) “The Secretary may NOT delegate any part of this Division to any officer in the direct line of command to the Authorised Officer who initiated the action.”**
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### **Section 194 Offence not to comply with control order or registered interstate control order**

- “(1) A person who is subject to a control order must comply with the order”.

Animal Care Australia is currently dealing with an issue in NSW, whereby the court is REQUIRED to issue blanket automatic bans via Section 31AD of the NSW Prevention of Cruelty to Animals Act 1979 (POCTAA) and Section 30(1A) of the NSW Exhibited Animals Protection Act 1986 (EAPA).

Animal Care Australia is very concerned that Victoria will endorse such outrageous bans via Section 194. Therefore, we recommend that interstate control orders are by default enforced (for simplicity) but that an appeal can be made to the Secretary with grounds for appeal including that the control order would not have been in place in Victoria had the conviction occurred in Victoria.

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**Animal Care Australia recommends an addition to Section 194:**

- (6) “A person subject to an interstate control order may appeal to the Secretary to have the control order lifted in Victoria on the grounds that the control order would not have been in place had the conviction occurred in Victoria.”**
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### **Section 195 Power to make control order**

- “(1) If, in a court, a person is convicted of an offence under this Act or a specified offence, the court may order all or any of the following—”

Animal Care Australia agrees that courts should have the power to apply bans on owning or being in charge of animal or animals, but at the discretion of the court.

**Section 202 Registration of interstate control orders**

Please refer to our advice for Section 194 above.

**Division 6—Adverse publicity orders**

**Section 205 Court may make adverse publicity order**

**Animal Care Australia STRONGLY QUESTIONS the purpose of this Division.**

Is the aim to prevent the offender reoffending or is it to protect animals from an offender who is likely to offend by informing the public who will then act to restrain the offender?

In any case, this is not supported. It is the role of the state and media to publicise cases and at times offenders. To expect the offender to do so is not supported.

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**Animal Care Australia questions the efficacy and ethics of this Division.**

**Animal Care Australia OPPOSES Division 6 in its entirety and it MUST BE removed.**

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**Division 7—Remedial action notices**

**Section 211 Remedial action notice**

“(1) The Secretary may issue a notice that provides that the animal described in the notice will be seized and disposed of if the person to whom the notice is directed does not act or does not cease to act as set out in the notice within the period specified in the notice.”

This Division reads much like a threat that an animal will be killed (“disposed of”) if a person does not comply. The conditions in Section 211 (3)(b) enable such a notice even when the animal is not in any immediate danger.

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**Animal Care Australia OPPOSES Division 7 in its current form.**

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**Division 8—Urgent seizure and disposal notice**

**216 Urgent seizure and disposal authorisation**

Animal Care Australia does not oppose seizing and even disposing of animals on sound veterinary advice. However, this Division does not require any qualified independent veterinarian advice prior to the Minister authorising the disposal. In all circumstances relevant to this Division, a veterinarian, independent of the organisation seeking the seizure must be the decision maker or prime advisor to the Minister before seizing and disposing of animals. Therefore:

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**Animal Care Australia recommends Section 216 (1) be amended by inserting the words “based on qualified independent veterinary advice” after both occurrences of the word Minister to read:**

**“The Minister based on qualified independent veterinary advice may authorise an authorised officer to seize and dispose of an animal on a premises or in a vehicle if the Minister based on qualified independent veterinary advice believes on reasonable grounds that- ...”**

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**Section 218 Information gathering notices**

“(1) If an authorised officer reasonably believes that a person may have committed, or is likely to commit, an offence against this Act or the regulations, the authorised officer may issue a notice requiring a person—”

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**Animal Care Australia recommends a warrant be required to require information. Therefore, amend Section 218(1) to read as follows:**

**“If an authorised officer reasonably believes that a person may have committed, or is likely to commit, an offence against this Act or the regulations, the authorised officer must apply to a magistrate for the issue of a warrant requiring a person—”**

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**Part 12 Division 1—Entry of public places or with consent**

**Section 220 Entry of public place open to the public**

“Public place” has a very broad meaning under the Summary Offences Act 1966.<sup>6</sup>

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<sup>6</sup> [Summary Offences Act 1966](#)

This gives authorised officers extraordinary powers to enter premises and act as detailed in this section at all places where hobby club events are being held without notice or permission. Given the lack of transparency, accountability, etc, of RSPCA authorised officers and others not in the employ of the state, this cannot be supported.

Therefore, Animal Care Australia recommends excluding RSPCA (and other non-state employed) authorised officers completely or failing that, exclude them from this section.

For Animal Care Australia to support this Division, Section 220 (1) must be amended.

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**Animal Care Australia recommends Section 220 (1) is amended to read:**

**“An authorised officer, excluding those not in the direct employ of the state, may enter and inspect any part of a public place that is, at the time of the entry and inspection, open to the public.**

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“(2) An authorised officer who is inspecting a public place under subsection (1) may do any of the following in relation to an animal in the public place, if the authorised officer reasonably suspects that the animal is experiencing or is likely to experience unreasonable harm, pain or distress or has been abandoned—

(b) take samples from the animal;”

**No authorised officer should be permitted to collect samples from animal.** What training, qualifications or veterinary background will an authorised officer be required to have in order to collect samples? Surely picking up faeces is not the type of sample that requires a clause in an Act? Therefore, what types of samples will be permitted?

#### **Section 221 Entry with consent**

In order to meet full fairness to the owner of the premises Animal Care Australia recommends the addition of the following to Section 221:

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**Animal Care Australia recommends additions to Section 221:**

**Insert Section 221(5): “A person may withdraw consent at any time. The Authorised Officer must depart forthwith.”**

**Insert Section 221(6) “When consent is given, an Authorised Officer must inform the person that their consent may be withdrawn at any time.”**

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**Section 222 Application to magistrate for search warrant**

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**Animal Care Australia supports the use of magistrate issued search warrants in all cases where Authorised Officers have a need to enter any premises and consent is not provided.**

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**Section 225 Powers in relation to things not mentioned in the warrant**

Animal Care Australia opposes this section in its entirety.

Section 225 means an Authorised Officer, once they have a warrant are able to investigate any matter regardless of whether it is related to the purpose of the warrant. This power essentially provides officers free access to search, secure, copy, etc. anything and everything regardless of the conditions specified in the warrant.

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**Animal Care Australia opposes Section 225 in its entirety.**

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**Part 12 Division 3—Entry without consent or warrant**

Animal Care Australia does not support inspections by Authorised Officers without consent or without a warrant without there being a clear urgent emergency. Random inspections are not supported under any circumstances. There is ample evidence to show such inspections are ineffective and that resources are better spent on education.

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**Animal Care Australia does not support entry without consent or without a warrant without there being a clear urgent emergency**

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If our advice is not heeded, then the definition of a dwelling (as opposed to premises) must be broadened as we recommend in Section 4.

Dwellings must require a warrant unless permission is given or it is a clear urgent emergency.

**Section 227** Entry of premises or vehicle to inspect for contraventions and,

**Section 228** Entry of premises or a vehicle to inspect for evidence without consent or a warrant  
and,

**Section 229** Entry of premises or a vehicle to monitor compliance with licences or compliance  
inspection program

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**Animal Care Australia does not support entry without consent or without a warrant  
without there being a clear urgent emergency**

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**Section 230** Entry of premises or a vehicle to monitor compliance with notices, undertakings or  
orders and,

**Section 231** Entry of premises or vehicle on non-compliance with remedial action notice, and,

**Section 232** Entry of premises or vehicle on urgent seizure and disposal authorisation

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**Animal Care Australia does not support without the authority of a court order requiring  
compliance to be monitored by Authorised Officers.**

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**Section 233** Entry of premises or vehicle to prevent or respond to unreasonable harm, pain or  
distress

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**Animal Care Australia supports Section 233 to enable the animal or animals under  
threat to be treated or seized.**

**If no evidence of immediate/imminent threat or harm is identified the Authorised  
Officers must leave forthwith.**

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**Section 234** Powers that may be exercised after entry in relation to documents or things not  
connected with the purpose of entry

Animal Care Australia is aware of circumstances where such powers have been routinely abused in a number of cases. The officers enter on one pretense and then commence a fishing expedition. If a search is required then the officers must obtain a search warrant from a Magistrate.

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**Animal Care Australia STRONGLY OPPOSES Section 234 without a search warrant**

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**Section 235 Powers that may be exercised after entry in relation to animals not connected with the purpose of entry**

Animal Care Australia recommends an officer may only act when harm or threat of harm is immediate or imminent. They cannot enter a premises on one issue and then commence a full search of the entire property. A warrant is needed and the search must comply with the conditions of the warrant.

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**Animal Care Australia STRONGLY OPPOSES Section 234 without a search warrant**

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**Section 236 Requirement to give information to authorised officer during entry**

Animal Care Australia strongly opposes this section, in particular requiring anyone to do anything when the officer has entered a premises without a warrant. A person has a right to remain silent, this is an important common law right.

Animal Care Australia is appalled that such a section has made it into a draft Bill in Australia.

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**Animal Care Australia STRONGLY OPPOSES Section 236 and STRONGLY recommends it be removed.**

**The blatant disregard of a person's rights is APPALLING!**

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**Section 238 Power to use the assistance of another person**

Animal Care Australia opposes this section. It is inappropriate for any persons who are not Authorised Officers to be involved in entry to private premises and dwellings. The only possible exception would be veterinarians.

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**Animal Care Australia STRONGLY OPPOSES Section 238 and strongly recommends it be removed**

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**Section 239 Power to use reasonable force**

If reasonable force is required then a Police Officer must be called. Authorised Officers (who are not Police Officers) should not be permitted to use force at all.

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**Animal Care Australia STRONGLY OPPOSES Section 239 and strongly recommends it be removed**

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**Section 242 Power to issue directions**

Currently there is no code of practice or guide as to what care requirements should be in different circumstances. Therefore, giving an Authorised Officer the power to specify care requirements, often to a person who has kept the species for decades, is inappropriate.

Animal Care Australia recommends such power to issue directions are only available when there is an animal in immediate or imminent danger.

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**Animal Care Australia recommends Section 242 (1) and (2) is amended to commence with “An authorised officer who determines an animal is in imminent or immediate danger and is exercising a power under this Part...” and to remove the words “to meet the care requirements of an animal or” To read as follows:**

**(1) An authorised officer who determines an animal is in imminent or immediate danger and is exercising a power under this Part, orally or in writing, may direct any person on the premises or vehicle in respect of which the power is being exercised to take any action the authorised officer reasonably believes is necessary to protect an animal.**

**(2) An authorised officer who determines an animal is in imminent or immediate danger and is exercising a power under this Part, orally or in writing, may direct a person in charge of an animal in a public place to take any action the authorised officer reasonably believes is necessary to protect an animal.**

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### Section 243 Protection against self-incrimination

Animal Care Australia notes Section 243 (1) also applies to Section 236.

Why include Section 236 only to have it essentially reversed in this section. How is someone to know if answers to questions and delivery of documents is incriminating or not when they have not yet been charged and have no opportunity to obtain legal advice?

### Section 244 Warning against self-incrimination

Animal Care Australia supports this warning. However, there is a disconnect here that needs to be resolved. Section 236 states the information MUST be provided when that is factually not the case.

### Section 247 Notice of entry where no search warrant

“(2) If an authorised officer is exercising a power of entry of premises or a vehicle in relation to an inspection under a compliance inspection program, the authorised officer must provide reasonable notice of the intention to enter, unless the authorised officer is reasonably satisfied that notice should not be given because doing so would—

- (a) risk an animal experiencing harm, pain or distress or the safety of a person; or
- (b) lead to the concealment or destruction of evidence of an offence under this Act or the regulations.”

In other words, the authorised officers want their cake and eat it too!

This effectively provides an authorised officer with an “it’s written in black & white” excuse to enter the property whenever they feel like it.

As stated earlier, Animal Care Australia does not support inspections by Authorised Officers without consent or without a warrant without there being a clear urgent emergency. **Random inspections are not supported under any circumstances.** There is ample evidence to show such inspections are ineffective and that resources are better spent on education.

### Section 250 Identification or notice by authorised officer exercising other power of entry

“(1) If an authorised officer is exercising a power of entry of premises under this Part, other than under a search warrant, subject to subsection (2) the authorised officer must—

- (a) show the authorised officer's identity card—
  - (i) to the occupier of the premises, if the occupier is present; or
  - (ii) **if the occupier is not present, to another person (if any) present at the premises who appears to be in management or control of the premises; and**”

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**Animal Care Australia does not support entry to any premises when the owner or occupier is not present, except under the authority of a warrant or with permission.**

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### **Section 253 Withdrawal of consent**

Please refer to our comments regarding Section 221 which could be relocated here as subsections to Section 253.

Animal Care Australia is of the view, that entry consent can be withdrawn in all circumstances except where an emergency is underway that involves imminent and immediate harm.

### **Section 257 Power to provide for care or treatment of an animal**

“(1) An authorised officer who is proposing to exercise a power under this Part to care for or treat an animal, before doing so, must allow the owner or person in charge of the animal an opportunity to arrange for a registered veterinary practitioner of their choice to care for or treat the animal.

(2) The owner of an animal cared for or treated under subsection (1) is liable for any costs incurred for the care or treatment of the animal.”

Animal Care Australia supports this Section and would like it extended more generally. We are aware of numerous cases in other jurisdictions where officers have not permitted the owner to obtain veterinary care from their own veterinarian, often with poor outcomes for the animal and owner.

Note that the level of veterinary care a person offers their animal before deciding on euthanasia varies considerably and is a significant role of veterinarians when discussing cases with their clients. The owner’s vet should be enrolled as much as possible.

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**Animal Care Australia FULLY SUPPORTS Section 257.**

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### **Section 261 Further powers as to seized animals**

Animal Care Australia recommends offences are included for Authorised Officers who do not perform the duties in this division satisfactorily.

For example, to not meet the care requirements of a seized animal should be an offence.

Sadly, there are cases we are aware in other jurisdictions where animals have been neglected after being seized by RSPCA.

If the intent of this Bill (and the Government) is truly about the welfare, care and protection of all animals then there should be zero difference as to who fails to provide that. As the persons responsible for the animals in our care we should all be held to the same standards.

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**Animal Care Australia recommends the inclusion of offences within Section 261 for Authorised Officers who do not perform the duties in this division satisfactorily.**

**As the persons responsible for the animals in our care we should all be held to the same standards.**

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#### **Section 262 Identifying and notifying the owner**

**To not notify the owner should be an offence.** Animal Care Australia are aware of cases where this has happened, including failing to notify an owner that their animal died or was euthanised whilst in RSPCA care.

#### **Section 263 Seizure notice**

Animal Care Australia recommends Section 263 **must confirm the owner has received the notification** of seizure.

We are aware of cases where the notice was sent to the wrong address or email address.

#### **Section 265 Service of seizure notice**

“(3) If a seizure notice is served under subsection (1)(c), the owner or person in charge of the animal must contact the authorised officer who served the notice within 14 days of the **service of the notice.**”

Refer to above comment regarding s.263. The Authorised Officer must verify the notice has been received within 14 days, would be a more rigorous requirement.

#### **Section 266 Forfeiture to Crown where authorised officer not contacted**

“If the owner or person in charge of animal in respect of which a seizure notice has been served under section 265(1)(c) does not contact the authorised officer who served the notice within 14 days of service of the notice, the animal is forfeited to the Crown.”

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**Animal Care Australia strongly opposes Section 266 given very little effort has been made on the part of the Authorised Officer to verify the owner has received the notice**

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**Section 268 Contents of recovery notice**

“A recovery notice must include the following information—

- (g) the amount of any reasonable costs payable in relation to seizure and maintenance of the animal while seized; “

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**Animal Care Australia recommends a schedule of prescribed maintenance fees is included in the regulations.**

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**Section 269 Service of recovery notice**

“A recovery notice must be served on an owner who has been identified and is able to be contacted by—”

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**Animal Care Australia recommends whatever system is used; receipt of the notice must be confirmed prior to any further action.**

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**Section 270 Animal forfeited to Crown if not recovered**

“An animal in respect of which a recovery notice is issued is forfeited to the Crown if—”

Often the costs charged to maintain the animals outweigh the means of the owner, hence the need for a schedule of fees to be prescribed.

Consideration should be given to the ethic of returning the animal to the owner and then recovering the charge over time, and if it cannot be recovered then it becomes a debt to the state.

**Section 271 Forfeiture of animal seized to minimise harm, pain or distress**

“(3) After making a decision under subsection (1), the Secretary must serve notice of the decision on the owner of the animal.”

**Animal Care Australia recommends the owner is afforded the opportunity to present to the Secretary as is described in Section 272**, and in addition the notice here should include advice on how to dispute the Secretary decision via the courts. The time to dispute is difficult as charges to maintain the animal will be building, however 7 or 14 days is problematic and requires further thought.

Animal Care Australia is aware of cases where animals have been euthanised and we suspect prematurely in terms of natural justice. On the other hand time is of the essence in many cases on welfare grounds so time is of the essence. A more nuanced solution is perhaps required.

#### Section 275 Internal review of forfeiture decision

“(3) If the Secretary requires payment of a bond or periodic fee under subsection (2), the Secretary **must give the owner written notice of the bond or fee** that specifies the amount payable and when payment is due.”

This is a difficult area. The fee/bond is often the determining factor rather than the merits of the matter. As we recommend above, a more nuanced and consultative resolution is needed.

#### Section 279 Animal required for court proceedings

The ability or resources of the state or the organisation contracted by the state (likely RSPCA) **should not be a determining factor** in terms of maintaining a seized animal. It is unreasonable to kill an animal simply because it has exhausted the resources of the state or RSPCA to maintain that animal to a suitable level of care. There are numerous other options for keeping such animals. This also places doubt on the balance of wisdom of seizing the animal in the first place, and by default the appropriateness of utilising a charitable organisation as an enforcement agency. If the organisation is unable or unwilling to maintain the care of the animals – due to the cost – that is not just an economic based justification it is an ethical one.

**Animal Care Australia strongly supports the notion of reconsidering return of the animal to the owner** or the owner’s delegate under the supervision of an independent veterinary practitioner. That is neither the owner’s vet nor that of the RSPCA. Paid for by the State.

#### Section 279

“(2) On an application under subsection (1), the Magistrates' Court may order—  
(b) if not satisfied of the matters specified in subsection (3)—  
(ii) the owner is to pay a bond or periodic fee by a specified time for the maintenance costs of the animal while it is kept by that agency.”

Again, as recommended above, **Animal Care Australia recommends a Schedule of fees for maintenance is prescribed in the regulations.**

#### Section 283 Disposal by destroying animal

“A registered veterinary practitioner may recommend that an animal to which section 281(1), (2) or (3) applies be destroyed—

- (a) on humane grounds; or
- (b) if the practitioner reasonably believes that the animal is aggressive or has behavioural problems.”

Animal Care Australia recommends the owner is provided the right to demand a second opinion. Most veterinary practitioners are not behavioural vets, in fact there is only a handful within Australia who are. Animals will exhibit behaviours based on environment. Who is undertaking this testing and where would it be undertaken?

We are aware of cases where the RSPCA veterinarians advise euthanasia when the owner’s vet says otherwise. Many such decisions are based on cost of treatment. Keeping in mind the RSPCA Vet is paid by the RSPCA and does have their employment to consider, Animal Care Australia does not believe veterinary decisions are always based on welfare grounds or best outcomes for the animals.

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**Animal Care Australia recommends the owner is provided the right to have their own Veterinarian offer a second opinion to the Courts.**

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#### **Section 287 Liability to pay costs incurred by authorised officer**

“(1) The owner of an animal seized by an authorised officer under Part 12 is liable to pay any reasonable costs (other than those paid under section 281(1) incurred by the authorised officer in—

- (a) providing or arranging for treatment of the animal or for the care requirements of the animal to be met under Part 12; or
- (b) seizing an animal under Part 12 and in meeting the care requirements of the animal after seizure.”

Animal Care Australia is aware of excessive costs by agencies for such services.

Animal Care Australia strongly disagrees with the owner of the animal(s) having to pay for the upkeep of a seized animal **BEFORE** there has been a finding of guilty for the offence(s) charged in a court of law.

Any costs relating to the maintenance/upkeep of a seized animal can be part of the agency’s petition for costs to the magistrate/judge at the conclusion of the court proceedings – and should only be applied if the plaintiff has been found guilty of the offence(s) charged. **We again recommend costs are prescribed in a schedule within the regulations.**

**Section 288 Receipt must be given for any thing seized**

“(2) If the authorised officer cannot identify a person apparently in charge of the thing, the authorised officer must leave the receipt at the premises from which the thing was seized or post it to the owner of the premises at the owner's last known business or personal address.”

**Again, Animal Care Australia recommends Authorised Officers must verify the owner of seized thing has in fact received the notice that the thing was seized.**

**Section 307 Compensation**

“(5) The Minister must determine not to pay compensation under this section—

(a) if the applicant is **convicted or found guilty of an offence** that relates to the animal or thing that is the subject of the application; or”

Returning to the definition of a convicted person and the inclusion of a mental impairment still being treated as guilty when they have in fact been found NOT guilty due to mental impairment – this clause is NOT appropriate when the person has a mental impairment.

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**Animal Care Australia conditionally supports Section 307 (5) (a):**

**Not appropriate when the person is mentally impaired.**

**The definition of conviction to include mental impairment is strongly disputed.**

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**Section 310 Membership of Expert Advisory Committee**

Animal Care Australia has specific recommendations regarding the membership of and responsibilities of advisory committees.

In summary, we recommend such committees are **comprised of expert representatives from the major animal industries and specifically excludes animal rights organisation representatives** and their members.

The proposed structure in s.310(4) is not specifically opposed, rather we have a preferred alternative structure. An adjustment of the proposed membership may resolve the issue.

**Section 314 Minister may authorise compliance inspection program**

There is potential for compliance inspection programs to be used as a means to enter property that would otherwise not be the case. This occurred in NSW under the guise of puppy farm inspections that were carried out on dog hobbyists who had owned a bitch in the last 5 years. In the first instance these were sanctioned by the Minister who later was forced to recant the sanction in Parliament due to the excessive nature of the RSPCA and the inspections.

Care is needed whenever an officer is given access.

**Animal Care Australia opposes random compliance inspections.** There is no evidence to show they improve animal welfare, particularly when they are compliance rather than education based and there are no codes of practice in place.

#### **Section 315 Preparation of draft inspection program**

“(1) Before authorising a compliance inspection program, the Minister must publish a draft inspection program—”

As stated above, Animal Care Australia opposes random compliance inspections for the reasons already outlined.

#### **Section 317 Publication of compliance inspection program**

While Animal Care Australia supports publicising the compliance inspection program, there needs to be far **more consultation with peak bodies** prior to such programs commencing.

#### **Part 15 - Division 4—Animal Care and Protection Fund and Division 5—Animal Care and Protection Compliance Fund**

In keeping with not supporting the title of the proposed Act, Animal Care Australia does not support the titles of these two Funds.

## **Closing statement:**

We suspect Part 11, Divisions 3, 4 and 5 was provided by RSPCA Victoria!

They are clearly attempting to align with, and in a number of clauses have greater powers than, Victoria Police!

How can anyone support giving this level of power to a charitable organisation?



Animal Care Australia does not believe the Bill as it is drafted will improve animal welfare outcomes in Victoria without significant edits. The title of the Bill and lack of mention of animal welfare is an obvious indicator.

This Bill is not in the best interests of the animals it seeks to protect, rather it advances the cause of animal right ideologies and further entrench the continuance of the grasp for power of the RSPCA Victoria.

Animal Care Australia notes the absence of any inclusion of educative measures that would enhance the understanding and willingness to provide better animal welfare outcomes. Despite the determination by this government to include sentience, the entire Bill is drafted to respond only to the negative influences and impacts to animals and is totally remiss of any positive impacts or outcomes.

Animal Care Australia has MAJOR concerns for the well-being of our pets and other animals if this draft Bill is passed by Parliament in its current form.

While politicians may sit and debate the merits of the Bill, the real losers should this Bill be assented will be the animals, their owners and carers and the ability of our children to truly understand what it is like to own, love, care for and respect all of the wonderful creatures in the State of Victoria.

Animal Care Australia welcomes any questions you may have as you continue to finalise this review. We welcome the opportunity to meet with the department, the Minister and other members of parliament in order to ensure an appropriate animal welfare Act is produced.

This submission can be publicly listed.

On behalf of the Animal Care Australia Committee,



Michael Donnelly  
President  
Animal Care Australia

*This submission has been developed in consultation with a range of members of Animal Care Australia.*

*This submission provides a broad perspective across all species of pets and companion animals. Animal Care Australia supports the species specific submissions of our member organisations, including Dogs Victoria, Mornington Peninsula Avicultural Society and Professional Dog Trainers Australia.*