

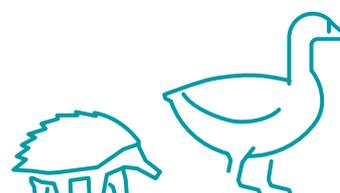
**A NEW ANIMAL
WELFARE ACT
FOR VICTORIA**

DIRECTIONS PAPER APRIL 2021

Engagement summary report

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Executive summary

In October 2020, the Department of Jobs, Precincts and Regions (DJPR) released a Directions Paper for a new animal welfare Act. The new Act will replace the *Prevention of Cruelty to Animals (POCTA) Act 1986*.

The Directions Paper set out 12 high-level policy proposals under three key themes representing the objectives of the new Act:

1. Safeguarding animal welfare.
2. A simplified and flexible legislative framework.
3. A better compliance and enforcement model.

Most of the proposals aim to improve existing provisions under the POCTA Act. Some would introduce new features into Victoria's main animal welfare legislation.

A total of 900 surveys on the policy proposals were completed on the Engage Victoria website during an 8-week consultation period. A total 308 submissions were received, including 65 submissions from organisations and groups involved with animals or with an interest in animals.

Key findings

The consultation found that while there are differing views about the scope and approach of some proposals for the new Act, many of the proposals are generally supported by individuals and organisations involved with animals in different ways or with different aspirations for animal protection laws.

A selection of key findings from the consultation are summarised below. These are not all the findings but highlight broad findings from the consultation. The findings below relate mainly to those proposals that would introduce new features or requirements into Victoria's animal care and protection legislation.

- Survey respondents and submissions broadly supported explicitly recognising animal sentience in Victorian legislation for the first time, although some expressed concerns about the potential to impact currently lawful activities.
- There was general support for setting minimum standards of care for animals in Victorian legislation for the first time.
- Stakeholders/groups largely supported providing for co-regulation in the new Act (with adequate safeguards and transparency in place) although individuals were more wary.
- There was strong support for formalising a role for scientific knowledge and expert opinion to inform decisions under the new Act, although there were mixed views about how to best achieve this. The importance of rigorous science and not imposing unnecessary regulatory burden or hardship was highlighted.
- General support for proactive monitoring powers was expressed although there were different opinions on the scope of the powers.
- There was broad agreement for proposals to improve the management of seized animals although the importance of transparency was highlighted.

Next steps

Feedback received from the consultation is informing work to develop draft legislation for a new Act to be considered by the Victorian Parliament. An Exposure Draft of the legislation is planned for release for public feedback in 2022. Consultation will also occur as Regulations and other subordinate instruments of the new Act are developed.

Background

While the *Prevention of Cruelty to Animals Act 1986* (the POCTA Act) has supported Victoria's reputation for a high standard of animal welfare for more than 30 years, a review of the legislation identified that it is outdated and has become complex over time. Some parts do not work in practice as well as they could.

In 2020, the Department of Jobs, Precincts and Regions undertook an engagement program to seek feedback on policy proposals for a new Act to replace the POCTA Act. This report summarises key findings of the engagement.

The department has reviewed all feedback provided during the engagement to support the development of the new Act. Not all views and opinions provided in the survey responses and submissions are detailed in this Engagement Report. This report presents common views expressed by individuals and organisations who participated in the engagement, with a selection of representative statements included.

How we engaged

Consultations were held with stakeholders from March to May 2020 to provide an opportunity for them to share their priorities for the new Act. More than 45 stakeholders were consulted, including industry, professional and community-based groups and organisations, animal science and other experts, regulators and others involved with animals or with an interest in animals.

A Directions Paper setting out 12 high-level proposals for a new animal welfare Act was released on the Engage Victoria website for stakeholder and public feedback in October 2020. A communications campaign promoted the consultation across the Victorian community.

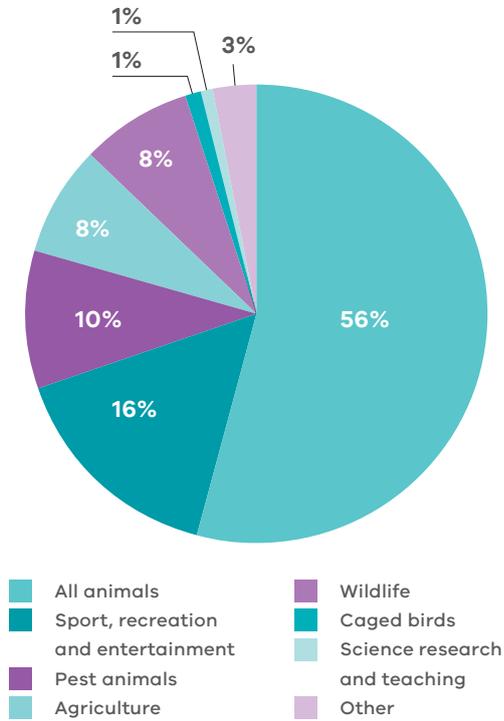
The Engage Victoria consultation was open for eight weeks, from 20 October to 14 December 2020. Stakeholders and the public could complete an online survey or upload a submission on the

Engage Victoria website. Stakeholders were also invited to Question & Answer sessions in November 2020 to discuss the proposals and 28 stakeholder representatives attended these.

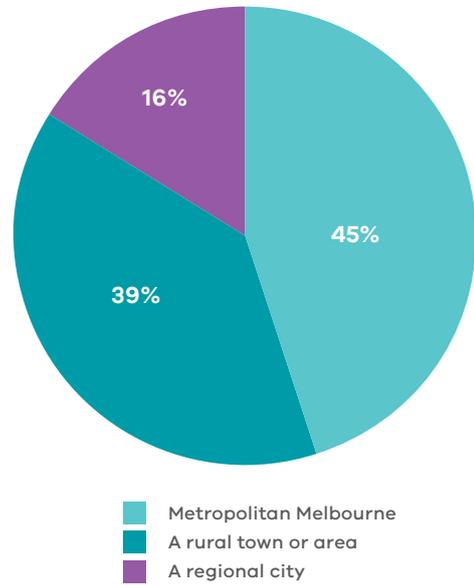
- 900 Engage Victoria surveys on the proposals for the new Act were completed by people representing a broad cross section of interest and involvement in animals as well as geographical locations and age groups.
- 308 submissions on the Directions Paper were received. This included 65 submissions from groups and organisations involved with animals or with an interest in animals. They have been categorised into the groups listed below according to their interest or involvement with animals (with the number of submissions received from each group provided in brackets).
 - Agricultural (11)
 - Animal welfare and advocacy (19)
 - Community-based (10)
 - Compliance and enforcement (3)
 - Education and research (4)
 - Other animal-related industries (4)
 - Professional (6)
 - Sports, recreation and entertainment (8).



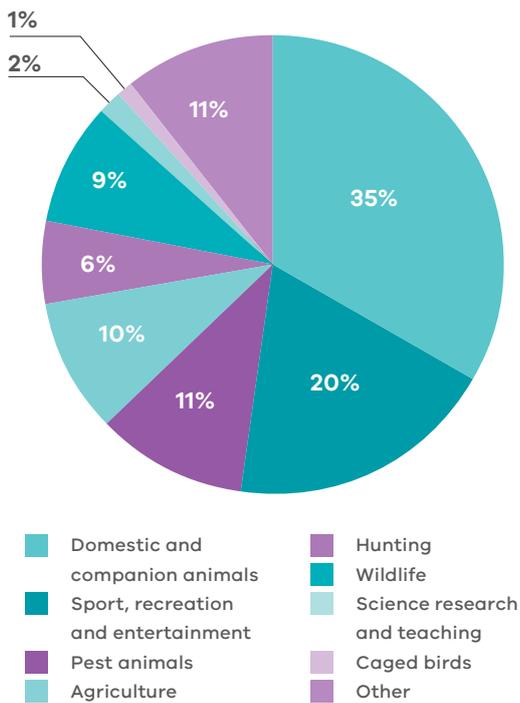
PRIMARY INTEREST IN ANIMALS



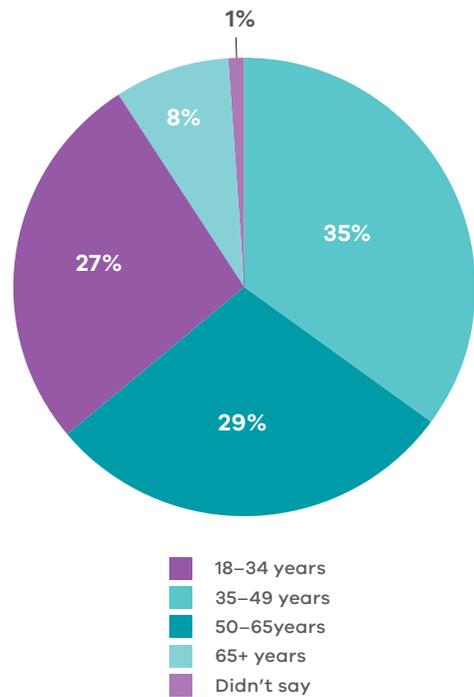
DESCRIBE WHERE YOU LIVE



PRIMARY INVOLVEMENT WITH ANIMALS

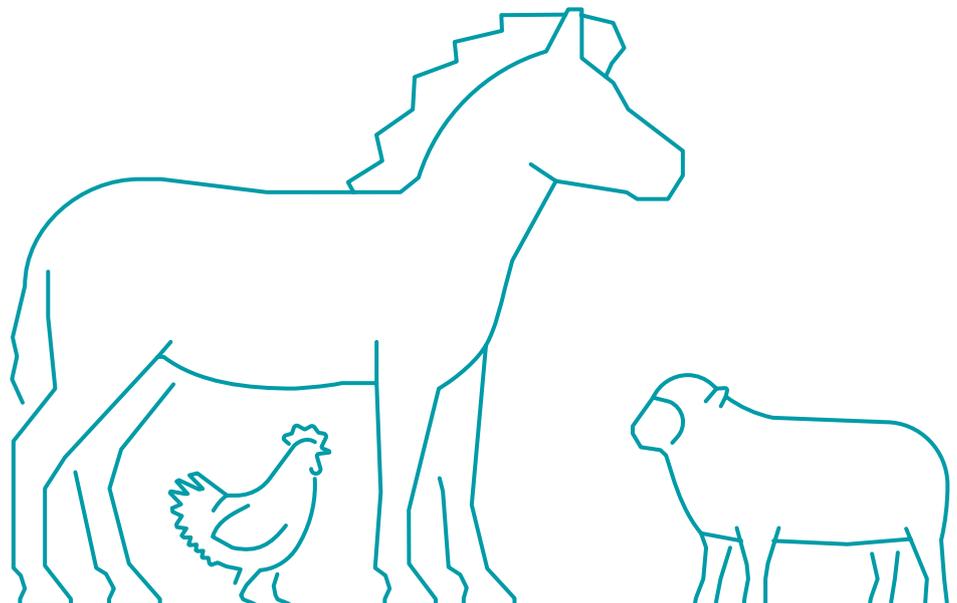
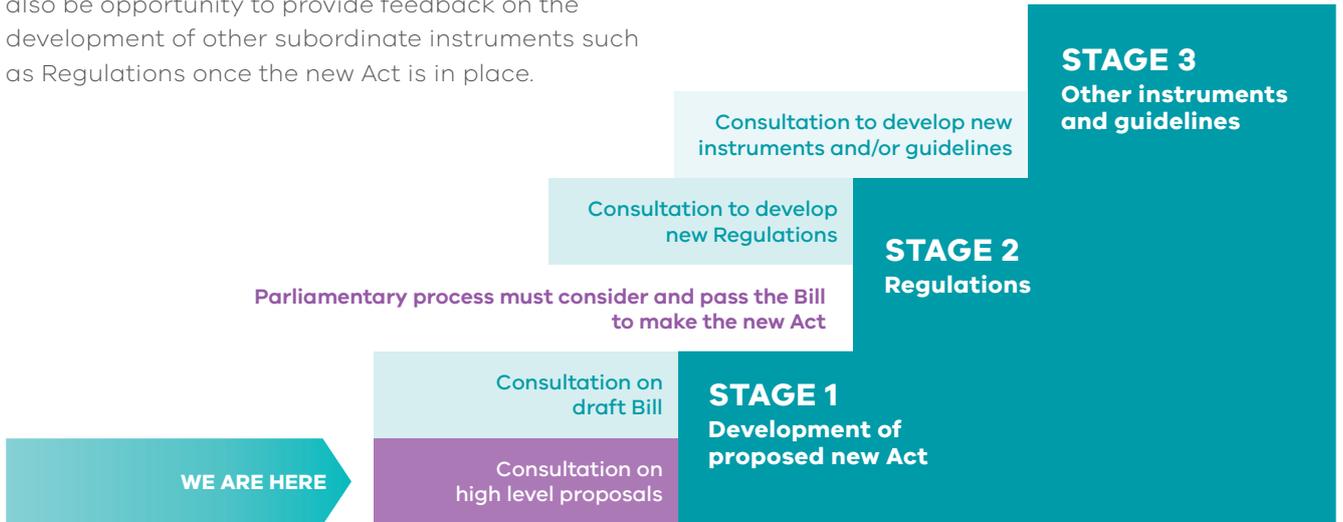


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Next steps

Feedback received from the consultation will inform the work to develop draft legislation for a new Act to be considered by the Victorian Parliament. A draft Bill (the draft text of an Act before it is debated and passed in Parliament) for the new Act will be released for public feedback. There will also be opportunity to provide feedback on the development of other subordinate instruments such as Regulations once the new Act is in place.



Theme 1 Safeguarding animal welfare

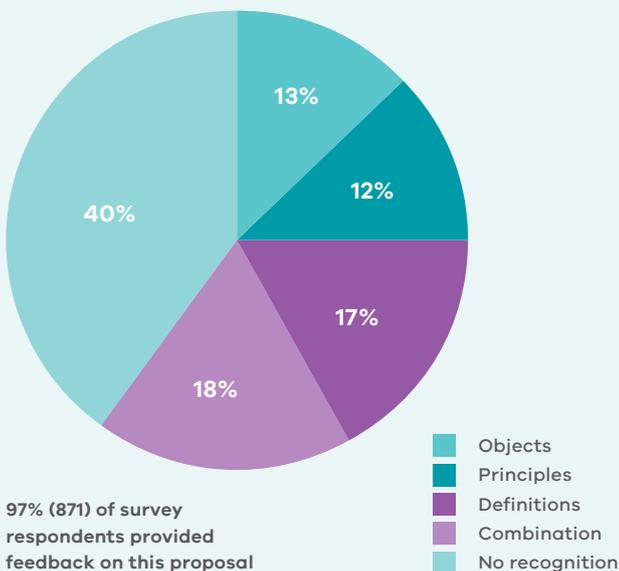
There was broad support for shifting the current focus of the POCTA Act from responding to cruelty after it has occurred to providing an equal focus on safeguarding animals in the new Act.

Recognising animal sentience in the new Act

The engagement found support for recognising animal sentience in the new Act, although some distinct segments opposed the idea.

The majority (60%) of survey respondents supported recognising animal sentience in the new Act. The largest proportion (18%) preferred that animal sentience is recognised in a combination of the Objects, Principles and Definitions of the Act, with most preferring all three. A similar proportion preferred the Definitions (17%), followed by the Objects (13%) and Principles (12%).

60% OF SURVEY RESPONDENTS SUPPORTED RECOGNISING ANIMAL SENTIENCE IN THE NEW ACT



While most submissions supported the recognition of sentience in the new Act, nearly all agricultural organisations that provided feedback on this proposal (seven of the nine) did not support explicitly recognising animal sentience in the new Act. These organisations —and the 40 per cent of survey respondents who also opposed recognising animal sentience in the new Act— believe the existence of animal care and protection legislation is sufficient acknowledgement of animal sentience, that explicit recognition will not achieve any practical benefits for animals, and that it has potential to be used to impact currently lawful activities involving animals.



I believe we need to enshrine animal sentience into legislation. We need to ensure that our laws clearly recognise without a shadow of a doubt that all animals are sentient.... With this recognition, all other decisions about animal welfare can and will flow on. In other words, if our legislation states that animals are sentient then there can be no avenue for disregarding this fact without directly contravening the Act.

Survey respondent

Since there is no agreed definition of 'sentience' or quantitative assessment of 'sentience', then it cannot be used as a basis of law. If the concept of sentience is to be used as the basis of legislation, then there must be a very clear definition of what sentience means and how different actions could impact sentience.

Individual submission

Being a hunter and fisherman, the idea of sentience goes too far and gives certain groups the ability to attempt to shut down hobbies such as fishing, horse racing and hunting.

Survey respondent

[We do] not support the specific inclusion of sentience in the new Act. Animal welfare law is about addressing human behaviour towards animals, not addressing animals. [We do] not believe legislative recognition will improve standards that farmers currently meet for their animals.

Agricultural organisation

Animal sentience has multiple definitions but can broadly be defined as being capable of experiencing positive and negative affective states. Despite this clear and scientific definition, animal sentience as a concept has been used as a weapon against livestock producers to attempt to de-legitimise or shut down the practice of raising livestock.... [We support] the Five Domains Model which looks to balance positive and negative affects to ensure livestock lead a good life within the bounds and practicalities of production. [However,] it is not appropriate for sentience to be inserted into regulation in a way that compromises the realities of livestock production. Recognising all animals as sentient does not and should not mean that livestock are synonymous with companion animals.

Agricultural organisation

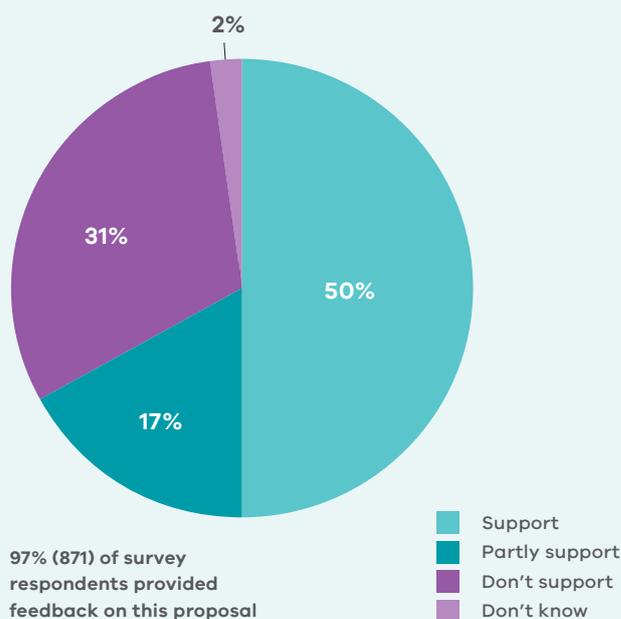
Setting minimum standards of care for animals in the new Act

There was general support for setting minimum standards of care for animals in the new Act. No clear preference for describing the requirements to meet the standards as a 'Duty of Care' or 'an Obligation' in the Act was expressed.

The majority of survey respondents supported or partly supported setting minimum standards of care (67%), citing the clarity it would provide for how people must treat animals, the earlier intervention it would enable for the protection of animals, and the support it would provide compliance, enforcement and prosecution activities.

Those who partly supported minimum standards mainly supported them in principle but wanted clarity on what they would mean for activities such as agriculture, hunting and pest control. Others thought that minimum standards would work better if they were detailed in Codes of Practice, where more detail on the requirements for different species and activities could be provided.

67% OF SURVEY RESPONDENTS SUPPORTED OR PARTLY SUPPORTED SETTING MINIMUM STANDARDS OF CARE IN THE NEW ACT



Submissions also supported setting minimum standards of care for animals in the new Act. Of the 46 organisations that provided feedback on this proposal, 41 supported setting minimum standards of care in the new Act. The other five supported minimum standards in principle, but preferred they were set in enforceable Codes of Practice or another Act (such as the *Domestic Animals Act 1994*).

Some agricultural organisations said it was important the new Act provide for extreme weather events and disasters (such as bushfires and floods), when people may be unable to meet minimum standards of care for animals. In contrast, one animal welfare and advocacy organisation recommended the new Act does not provide exemptions for extreme weather events and other natural disasters, recommending the new Act legislates the requirement of the Victorian Emergency Animal Welfare Plan to have effective management arrangements in place for emergency situations.

Some survey respondents and submissions highlighted the difference between meeting 'minimum standards' and achieving 'best practice'. For example, some submissions from animal welfare and advocacy organisations said the new Act should encourage the highest standards as well as set minimum standards.

Survey respondents and submissions supporting setting minimum standards largely agreed with the proposed elements to be included in the new Act—food and water; health care; and appropriate shelter or accommodation.

Additional elements were also recommended, such as providing for animals to display normal behaviour patterns and to meet their social requirements.

Many survey respondents and submissions recommended that minimum standards of care be based on the Five Freedoms of Animal Welfare or the Five Domains of Animal Welfare.

Several submissions from agricultural organisations noted that national Animal Welfare Standards and some industry market access accreditations already set minimum standards of care based on the Five Freedoms or Five Domains models. These

agricultural organisations recommended that Victoria's new animal welfare Act should reflect the terminology of these standards to support national consistency.

Professional and animal welfare and advocacy organisations said it was important the new Act is clear that minimum standards apply to people who own, use, breed or participate in recreational activities involving animals, as well as to animals in a person's care.

Five Freedoms of Animal Welfare

The Five Freedoms of Animal Welfare were developed by Britain's Farm Animal Welfare Council in 1965. They are:

- 1. Freedom from hunger and thirst**
- 2. Freedom from discomfort**
- 3. Freedom from pain, injury or disease**
- 4. Freedom to express normal behaviour**
- 5. Freedom from fear and distress.**

Five Domains of Animal Welfare

In 1994, Professor David Mellor and Dr Cam Reid updated these to the Five Domains of Animal Welfare:

- 1. Nutrition**
- 2. Environment**
- 3. Health and fitness**
- 4. Behaviour**

which combined contribute to the fifth domain:

- 5. Mental state.**

The Five Domains have commonly been adopted as a tool for assessing the welfare impacts of research procedures, pest animal control methods and other interventions on animals.

In 2020, Professor Mellor and his colleagues revised the Five Domains, updating the fourth domain of 'Behaviour' to 'Behavioural Interactions', relating to evidence of animals consciously seeking specific goals when interacting behaviourally with the environment, other animals and humans.

Survey respondents who opposed setting minimum standards of care in the new Act (31%) commonly stated that current laws sufficiently protect animals (no change is required). Some expressed concerns that legislating minimum standards of care had potential to lead to the banning of currently lawful activities (such as livestock farming or hunting).

Others said the standards would be open to interpretation because the Act would need to contain broad language to cover all animals. Many of these people said that minimum standards would be better set in enforceable Codes of Practice, where details specific to different species and activities could be better provided.

Some survey respondents and submissions questioned how compliance with minimum standards of care would be assessed. They suggested assessment instruments (such as a Body Condition Score) would need to be stated in the Act or more likely, Regulations or Codes of Practice specific to different species and activities.



By implementing minimum requirements into a new Act, the public will have a clear concept of what is/is not considered neglect. By eradicating any broad and grey areas, the public will understand what the basic needs are for the animals they have responsibility for and individuals who are dangerous to animals will receive a justified punishment.

Individual submission

For minimum requirements of care to be provided for all animals and in all scenarios, the legislation would have to be extremely detailed and specific to prevent abuse through interpretations of the legislation. Education and assistance for animal owners would be more effective in improving welfare than an encyclopaedia of legislation that most people would not even know about.

Survey respondent

[We] support introducing a requirement for people to provide a minimum standard of care for animals in the new Act...The basic elements that constitute a standard of care should work off the Five Domains Model of animal welfare... Similar to the Queensland model, [we expect] the minimum standard of care to be described as a duty of care subject to breach when an individual does not undertake reasonable steps to provide for an animal's primary needs. Farmers deal with a range of irregular conditions from extreme cold events to bushfires and their animal management depends on the situation. Therefore, [we] recommend the Act take situational context into account.

Agricultural organisation

I partly support minimum standards. Minimum standards are required for enforcement. That said, a minimum standard is just that and does not create a requirement to work towards higher standards. So I feel that while a minimum standard cannot be excluded, a minimum standard, in my view, is insufficient to acknowledge the more complex needs of animals.

Survey respondent

...members also expressed concerns that legislation mandating minimum standards of care should take into account multi-care and complex scenarios, to ensure where multiple people are responsible for the welfare of an animal, that all liable parties are prosecuted or held responsible. Under a 'co-contribution regime,' there may be a number of persons (individuals, body corporate or other) all involved (possibly to varying degrees) in not meeting the minimum standard of care, that all would be liable to the extent of their co-contribution (or lack thereof) to the failure.

Professional organisation

A general duty of care provision should include the duty to provide appropriate food and water, appropriate shelter and living conditions, prevention and mitigation of harm, treatment of disease and injury, expression of normal behaviours and appropriate handling. Specific duty of care requirements would mean it would become an offence within the Act not to provide the prescribed level of care to an animal. The prescribed level of care should be defined in accompanying regulations or mandatory codes of practice so it can be tailored to each individual species welfare needs and care requirements. Additionally, this would allow for future amendments to the level of care required as relevant scientific research becomes available, as it will be simpler to amend regulations or codes rather than the Act itself. Additionally, in order to ensure animal owners are providing a duty of care, it is vital that regulations, codes of practice and/or standards are mandatory, not just advisory. This will compel those in charge of animals to provide prescribed levels of care to animals, rather than using advisory codes as a defence against a charge under the Act.

Compliance organisation

Combined with minimum standards is the need to promote understanding of the difference between minimum standards and best practice. Organisations will construct facilities to house animals that either meet or exceed minimum standards and believe that the resulting facilities support positive animal welfare states. Examples of these include aviaries [which] have limited options for flight, or housing of a snake in a vivarium that prevents the snake from stretching to full length. Those caring for animals, and those making decisions for animal housing must understand the difference between minimum standards and best practice and the implications of these for animal welfare.

Professional organisation

[We] support the proposed introduction of minimum standards for the care of animals (covering food, water, health care and appropriate shelter or accommodation), reflecting our producers' commitment to ensuring good animal welfare outcomes for the animal within their care. However, [we] firmly believe that this proposed action must be implemented by ensuring the Act directs the adoption of the national Animal Welfare Standards and Guidelines across all jurisdictions.

Agricultural organisation

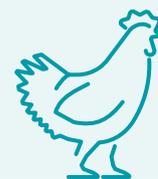
Providing a set of escalating general offence categories and penalties

There was support for replacing the POCTA Act's detailed descriptions of what constitutes cruelty with a set of general escalating offence categories and penalties.

Sixty per cent of survey respondents supported or partly supported a set of general escalating offence categories and penalties. Of the 46 organisations that submitted feedback on this proposal, most also supported (40) or partly supported (2) a set of escalating offence categories and penalties. The feedback was that general offence categories would address the issue of some activities 'falling between the cracks' under the current POCTA Act's prescribed detail of what constitutes cruelty.

While there was support for the concept of general offence categories and penalties, many said they would like more information on the process for deciding which offences would be included in each category. Concerns were expressed about the broad terminology proposed for the offences, such as 'failure to provide appropriate' and 'likely to cause unreasonable harm'. Some agricultural organisations and survey respondents involved with agriculture highlighted that it was important the new Act be clear which animal husbandry procedures were excluded from offence categories.

The 31 per cent of survey respondents who opposed general offence categories shared the concerns of these stakeholders about the broad terminology proposed for offences, and that currently lawful



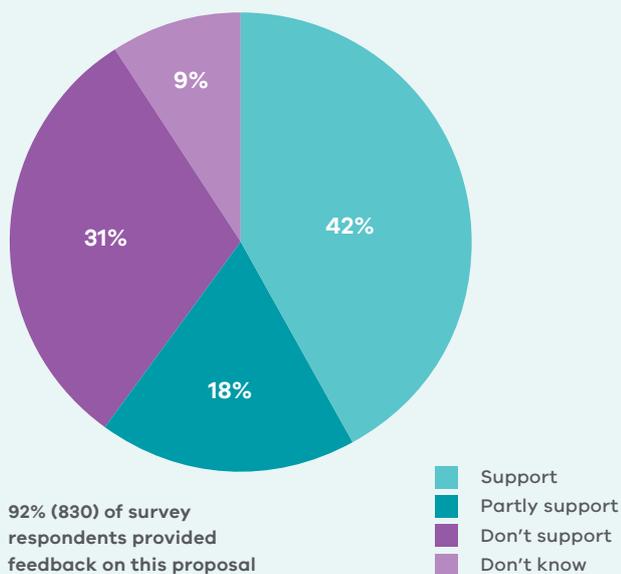
activities involving animals might somehow be captured within the offence categories.

Mixed views were expressed about whether current penalties for cruelty to animals should be changed.

While the largest proportion of survey respondents (50%) said they would like to see penalties increased, almost a quarter (24%) said they thought current penalties were sufficient to deter cruelty. Some said the issue was more that courts do not impose maximum penalties available to them now.

Some submissions on the Directions Paper suggested that other approaches in addition to penalties be considered, such as education (for lower level penalties).

60% OF SURVEY RESPONDENTS SUPPORTED OR PARTLY SUPPORTED A SET OF GENERAL CRUELTY OFFENCES



If we are to recognise sentience then we most likely need to increase maximum penalties as we become more aware of the impact our actions have on animals.

Survey respondent

Giving a magistrate the power to give higher penalties doesn't mean it will happen. Although, by increasing the penalty a magistrate will be more unlikely to give just a good behaviour bond for an offence that carries a maximum penalty of 100 penalty units.

Survey respondent

Where an animal enterprise breaches animal cruelty legislation there should be a significant financial penalty to ensure there is no profiting from animal cruelty. Penalties must be higher, otherwise fines may operate purely as a cost of doing business and fail to function as an effective deterrent to cruel and unlawful practices.

Community-based organisation

Financial penalties are absolutely necessary for those who are intentionally cruel to animals. Financial penalties, however, do not necessarily drive future compliance if there is insufficient basic understanding of animal welfare. [We believe] that an approach of providing education and extension that equips individuals with tools and knowledge to provide good animal welfare would be a more effective method than increasing penalties that only seek to deter.

Agricultural organisation

We fully support the prosecution of people who harm animals, however we would like further clarity on how animal husbandry practices would be impacted from an economic and practical perspective as many of the common animal husbandry practices are performed to eliminate undesirable animal welfare outcomes.

Agricultural organisation

Moving to general offence categories is a step backwards. It will lead to uncertainty and misinterpretation. Such a grey area will be open to abuse and manipulation.

Survey respondent



It is important to have a community awareness of penalties as a deterrent, and that the penalties be severe enough to be in line with community intolerance for all kinds of cruelty.

Survey respondent

We recognise there are acknowledged benefits to the use of 'general offence categories' rather than 'prohibiting specified actions'. However, expert legal consideration of any potential negative impacts is required before we could fully support this option. Some areas that require clarification are the arguable loss of legal precedents (some very historic) that are based on 'prohibiting specified actions', and lack of harmony with other animal welfare acts in Australian jurisdictions, which all refer to 'prohibiting specified actions'. Regarding the latter point, the possible disadvantages would need to be weighed against the benefits from a change to the current legislation, and the potential for Victoria to be a leader in the reform of animal welfare legislation in Australia.

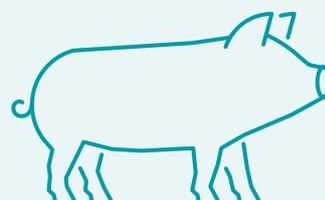
Animal welfare and advocacy organisation

Punishable crimes should never be 'generalised'. All crimes as deemed by law should be exact and clearly defined. Allowing for personal interpretation would create a difficult and inconsistent system of which to police and enforce.

Survey respondent

Intervention programs and actions should be incorporated into the penalties and response to offences, such as those offered by the Animals & Society Institute in the USA.

Compliance organisation



A single regulatory framework for controlled procedures on animals

There was support for consolidating the requirements for controlled procedures that are currently fragmented across various Acts and instruments into a single regulatory framework.

Survey respondents and submissions referred to the clarity and consistency benefits of a single regulatory framework. However, the need for the detail to be worked through carefully was highlighted, particularly in relation to which actions would be included in the proposed Restricted and Prohibited categories of the framework.

Agricultural and other organisations highlighted the importance of ensuring that consolidating the requirements for controlled procedures did not impact the ability to perform animal husbandary procedures or impose regulatory burden and costs to primary producers.

Submissions from animal welfare advocacy organisations and some survey respondents raised concerns about the framework permitting animal husbandry and other procedures that cause pain without using pain relief. Some suggested that all controlled procedures should only be performed by veterinarians or people with formal qualifications or training. However, agricultural organisations and survey respondents submitted that people experienced in working in livestock and other sectors that use animals have the expertise to perform certain procedures.

There is some merit to this approach but it needs to be realistic and carefully consider the ramifications the framework would have on the agriculture industry particularly. E.g. farmers unable to act, increased cost and reliance on vets etc.

Survey respondent

[We are] concerned that certain essential animal husbandry procedures, such as mulesing, tail docking and castration may be added to the list of prohibited acts in the future. [We endorse] adherence to best practice, such as that outlined in the national Animal Welfare Standards and Guidelines, where such procedures are required to achieve the best lifetime outcomes for livestock. Until such time as universally acceptable alternatives are available which achieve the same lifetime health and welfare outcomes for animals the Bill (and associated subordinate legislation) must not prohibit, or unduly restrict the performance of such procedures.

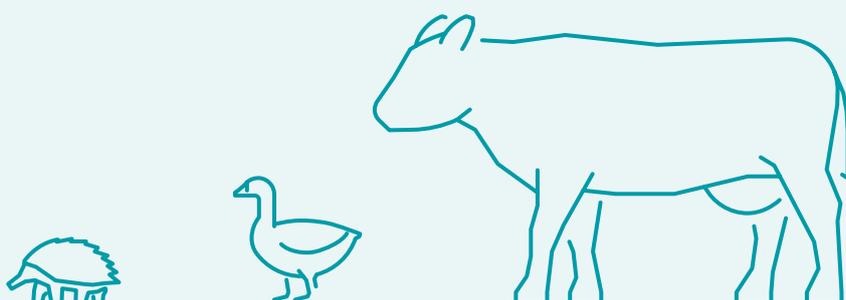
Agricultural organisation

[We] note the importance of consultation with industry and farmers when concerning the practical application of procedures as to not place undue regulatory burden on farmers.

Professional organisation

I support the single regulatory framework. The animal care industry is huge. There are many different animal care providers offering service with no effective regulation. Current veterinary legislation does nothing to protect animal welfare in situations where veterinarians are not involved, and also, it is unnecessarily restrictive on appropriately qualified animal care providers who are not veterinarians. It is essential that such a regulatory framework covers all persons advertising animal care services, particularly in situations where payment for service is involved as this also impacts consumer protection.

Individual submission



Theme 2 A simplified and flexible legislative framework

Diverse opinions were expressed on the proposals aimed at providing a clear legislative framework that supports clarity and which can be more easily adapted in response to developments in animal science, new industry practices or technologies and changing community expectations.

Maintaining exemptions to the new Act or providing for exceptions

Individuals and organisations expressed mixed opinions about whether to maintain current exemptions to the POCTA Act under the new Act (if activities are conducted in accordance with the requirements of others Acts and Codes of Practice), or to instead provide for specific exceptions to allow particular activities.

Individuals and stakeholders involved with activities currently provided an exemption to the POCTA Act universally want those exemptions retained in the new Act. These include agricultural organisations and people who work in agriculture, who are wary of regulatory burden and unintentional impacts. Survey respondents involved with hunting and fishing also strongly argued that ‘things work well now’ and that change will create confusion.

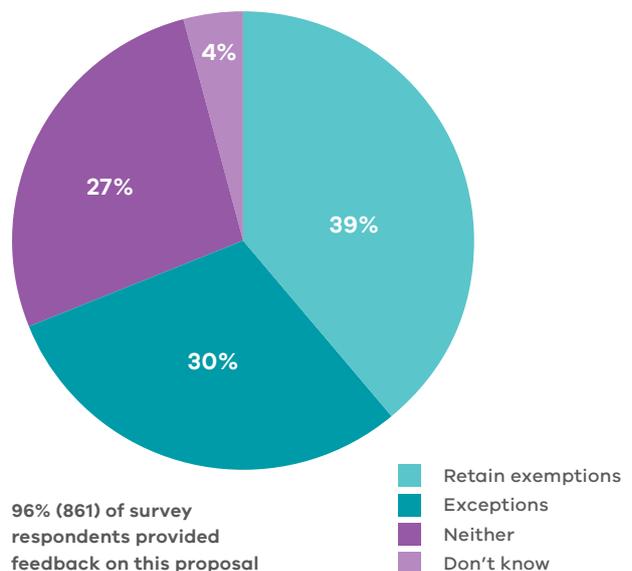
Most other submissions however, preferred removing the exemptions and providing instead for exceptions to the requirements of the new Act, and spoke to the need for clear and consistent legislation. Others supported exceptions over exemptions in principle but noted they would require careful application. Some submissions from animal welfare and advocacy organisations noted that exceptions should be limited only to activities where no alternatives to that activity was available

(such as some husbandry activities), pointing out that, like an exemption, an exception essentially removes many of the protections of the Act for animals.

Some animal welfare and advocacy organisations said that neither exemptions nor exceptions should be allowed under any circumstances because they ‘condone cruelty’.

Just over a third (39%) of survey respondents said they would prefer that exemptions were maintained under the new Act. They referred to the approach of exemptions providing for agriculture and activities such as hunting, fishing and pest control. Just under a third (30%) preferred that exceptions were provided for under the new Act, mainly because they could not support broad exemptions to the requirements of the new Act. About a quarter (27%) of survey respondents opposed exemptions as well as exceptions to the requirements of the new Act. This group believe that all animals should be protected under the Act, no matter whether they are used for agriculture or other lawful activities.

THERE WERE MIXED VIEWS ON RETAINING EXEMPTIONS UNDER THE NEW ACT



Given there is now a large body of evidence supporting animal sentience, it is well overdue to examine what acts and procedures should never be performed – no matter what the perceived benefits are to humans or to the animals themselves. The new Act should be the driver for humane change. This does not mean animals cannot be used in science or farming, but it does mean how animals are used may need to change.

Animal welfare and advocacy organisation

[We] support...appropriate exceptions for specific lawful activities, set out in Regulations. The current approach in the POCTA Act to exempt a range of situations where animals are managed in accordance with another Act is confusing, and entirely inappropriate...While the original intention of this approach was not unreasonable (providing protection against a charge of cruelty when doing something lawful under an Act such as a regulated pest animal trapping program or processing of livestock at an abattoir in accordance with regulated standards), the provisions are very confusing – even to those accustomed to administering legislation. This resulted in the potential for unintended negative consequences. Recreational activities like hunting and fishing should never exempt a person from meeting a minimum standard of care for the welfare of animals hunted and fished, simply because they have a licence.

Professional organisation

Some broad exemptions are required for farming, pest and feral eradication, conservation and hunting.

Survey respondent

Both exemptions and exception are unacceptable. If we are to provide meaningful protection for animals under the law, again, why would we value the welfare of one animal over another just because of where it has the fortune or misfortune to find itself in relation to human interactions?

Survey respondent

Given the highly emotive environment that surrounds animal welfare this proposal [providing for exceptions on a case-by-case basis rather than exemptions] could consume resources and create unnecessary conflict in an attempt to reach an outcome which exemptions already achieve.

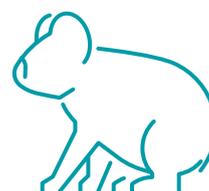
Agricultural organisation

Option 2 [providing for exceptions] looks like it requires more justification and conscious effort to exclude animals from protections. Having to explain why and how exceptions are made might get people in positions of power over animals to have that power better examined and questioned.

Survey respondent

Game hunting is undertaken in accordance with the Wildlife Act 1975 and that's how it should stay. This is no different to fishing under the Fisheries Act 1995. It has been managed successfully to date and no further changes are required and game hunting and fishing should remain as it is.

Individual submission.



Comprehensive Regulations or retaining Codes of Practice

There were mixed views on whether to retain the POCTA Act's current legislative framework of a limited set of Regulations and a comprehensive set of Codes of Practice, or whether to have no Codes of Practice and a comprehensive set of Regulations.

Many organisations supported maintaining the current framework, with a limited set of Regulations and a comprehensive set of Codes of Practice (but made enforceable). Many said they prefer this option because they believe that Codes of Practice will enable more detailed requirements specific to different species and activities to be provided.

Agricultural organisations submitted that a comprehensive set of Regulations would best enable the adoption of national Animal Welfare Standards in the new Act. Other organisations that supported a comprehensive set of Regulations referred to them being more enforceable than Codes of Practice.

Most survey respondents said they would support whichever option provides the most protection to animals and the best guidance for people on their responsibilities in caring for and protecting animals.

However, some survey respondents and animal welfare and advocacy organisations expressed a lack of trust in Codes of Practice being enforceable. They believe that Regulations will 'limit loopholes'.

A significant proportion of survey respondents suggested a combination of the two options: a set of comprehensive Regulations as well as detailed mandatory Codes of Practice. They believe this will provide maximum protection and guidance.

It makes sense to put minimum standards in the Regulations where they can be more easily enforced, and they will be taken more seriously there too.

Survey respondent

The Regulations would make it very clear and strong that this is a 'new era' in relation to animal welfare law, and that compliance with the new requirements is mandatory.

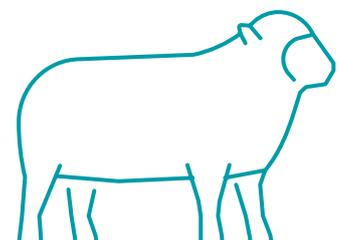
Survey respondent

[We] support Option 2 to provide a comprehensive set of regulations supported by best practice Guidelines. Currently animal industries develop Standards and Guidelines that seek to provide information on best practice to uphold animal welfare. In the interest of a clearer and more concise framework, [we] expect these Standards and Guidelines to be incorporated into best practice Guidelines. [We] would then expect that these best practice Guidelines inform the Regulations. This provides clarity around the regulations and ensures alignment with national standards and guidelines.

Agricultural organisation

Codes of Practice are an essential document for distilling the information into something a lay person is more likely to read, use and make sense of.

Survey respondent



Many industries already have 'Codes of Practice' – these are well accepted and in many cases very mature. I believe that most industries would support the conversion of voluntary codes of practice into mandatory requirements for the individual industry. Frameworks could be provided to fast track mandatory Codes of Practice in industries captured by the new legislation where they do not currently exist.

Survey respondent

We strongly recommend a bias towards education over regulation. This is best achieved via industry-led and developed Codes of Practice or Standards and Guidelines, rather than generalised regulations written for the sole purpose of enforcement. To improve animal welfare, support from those who represent animal keepers and breeders is essential.

Community-based organisation

While there is nothing wrong per se with the term Code of Practice and, indeed, in a reworded format could be made mandatory, our concern is that the term will be forever synonymous with the antiquated and messy system that currently plagues each Australian jurisdiction.

Animal welfare and advocacy organisation

Recognising national Animal Welfare Standards

Mixed views were expressed about whether to provide a mechanism to recognise national Animal Welfare Standards (which cover livestock) in the new Act, or in the Regulations.

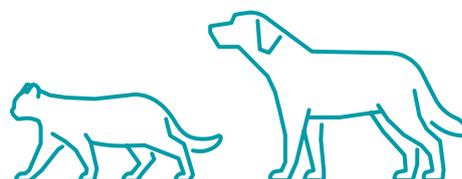
Agricultural organisations cited the benefits of reduced regulatory burden if national standards were recognised in the new Act.

However, others preferred adopting national standards into Regulations because they felt there is more room to adjust them to suit Victorian requirements. Of most importance was that any national Standards adopted into Victorian legislation are not lower than Victorian standards.

In relation to whether the Code for the Care and Use of Animals for Scientific Purposes should be treated the same as national standards, there was largely support for the proposal. However, some survey respondents and stakeholders said they did not support the Code being included within the Act because they believed the Code sets out 'guidelines' and not 'standards'.

We believe that regulations provide greater transparency and are more streamlined than individual, industry-specific Codes of Practice. Many of the current Codes of Practice have not been regularly reviewed – some are now decades old, whereas regulations sunset and therefore need to be updated every ten years. We believe that as regulations contain lower level offences, offences should be retained in the Act to ensure appropriate penalties are maintained.

Compliance organisation



Other jurisdictions have taken, or are taking, the approach of prescribing the Standards as stand-alone content within their respective Acts, but this offers so little flexibility should industry and governments jointly agree to amendments in the future as determined by new science. Option 1 [recognising national Animal Welfare Standards in the Act] offers such flexibility.

Agricultural organisation

We support Option 1 [recognising the national Animal Welfare Standards in the new Act] in the new legislative framework. National standards are developed under an appropriate process with government and stakeholder inputs. Although States and Territories have principal legislative responsibility for the regulation of animals and animal welfare, animal regulation is intended to reflect Commonwealth policy initiatives. The Commonwealth also conduct Regulatory Impact Statements to facilitate adoption of mandatory national welfare standards into law across the country. It is frustrating for many people and businesses working nationally, including veterinarians, that despite national standards having been agreed in the past, they are often revised and edited as part of state legislative development processes and there can be no certainty that national standards (as written), apply consistently in every part of the Federation. In addition, by adopting standards (as written) by referencing, they can be more rapidly put into place.

Professional organisation

[We support] Option 2 – adopt relevant contents from national standards into regulations. Circumstances vary between states, rendering the one glove fits all approach less than optimal. Further, COAG [Council of Australian Government] processes generally operate on a consensus basis, the effect of which is that decisions have to be made without dissent. The distinction between ‘agreed’ and ‘without dissent’ often is lost. If the alternative approach were adopted [adopting national standards under the Act], Victoria could find itself adopting standards with which it did not agree but which it had not opposed at a national meeting to enable other states.

Recreational organisation

[We are] concerned that the current national animal welfare standards development process has resulted in the production of inadequate animal welfare standards that are not sufficiently supported by science. The Standards and Guidelines produced to date fail to raise the bar on animal welfare standards and simply reflect current industry practice... Therefore, [we] support Option 2: Adopt relevant content from the national Standards into Regulations. Option 2 will allow Victoria to implement stronger standards that would result in substantive improvements to animal welfare rather than the inadequate standards that are currently developed at a national level. While we believe that having national consistency of standards would be beneficial, we do not believe this should be at the expense of animal welfare.

Professional organisation

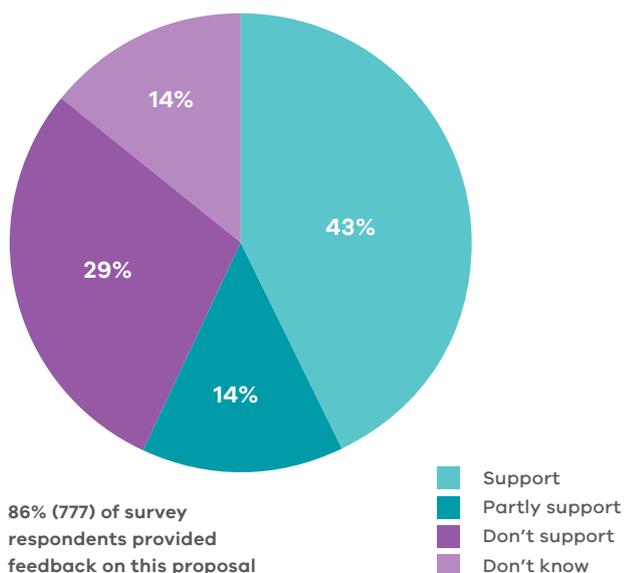


Allowing for co-regulation

Organisations in the main supported providing for co-regulation in the new Act, provided that adequate safeguards and transparency were in place and that any co-regulatory arrangement would not allow requirements lower than Victorian standards.

While the majority of survey respondents supported or partly supported co-regulation (57%), with many referring to 'cutting red tape' and costs for producers, others had some concerns about conflict of interest.

57% OF SURVEY RESPONDENTS SUPPORTED OR PARTLY SUPPORTED PROVIDING FOR CO-REGULATION IN THE NEW ACT



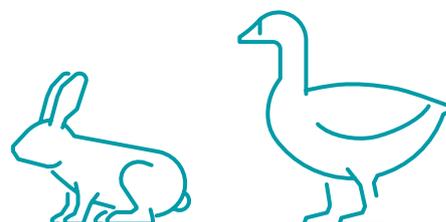
Co-regulation in principle sounds appealing, however such processes can increase risk of industry influence and corruption that increases animal abuse. If suitable mechanisms and an independent party oversees these co-regulation processes and interactions, then I would consider supporting this. In absence of this, I do not support co-regulation. Industry profits from animal abuse and allowing it to influence policy is dangerous.

Survey respondent

[We] support this mechanism that allows non-government animal industries that are proactive in adopting good animal welfare practices to more easily incorporate their practices into Victorian animal welfare laws:

- Make the best animal welfare practices consistent among all animal industries.
- Ensure the highest standards of animal welfare become the minimum legislated standards.
- Establish a process of continuous review ensuring the highest possible welfare standards are practised; honest and ongoing commitment to aspire to best practice through continual improvement; the improvements should be published as a set of aspirational standards that are regularly incorporated into the minimum standards.

Community-based organisation



Partially support. There may be instances where co-regulation is effective, but in [our] view, co-regulation in animal research is failing. Approval of animal research is subject to institutional animal ethics committee approval. Due to lack of transparency, it is not clear what research has been conducted, and whether it should have been approved. However, the case studies that [we] have identified suggest a clear failing in this system of co-regulation, which borders on self-regulation.

Animal welfare and advocacy organisation

[We do] not support allowing for co-regulation.... this proposal has several problems. Firstly, it proposes giving legal effect to documents that are not legislative in nature, that have been drafted by private individuals and industries rather than by experienced legislative drafters, and that are not scrutinised by Parliament. Secondly, the accreditation programs would be drafted by industry bodies that are inherently conflicted in that they seek to obtain as much financial gain as possible from using animals. This means the accreditation programs could not be trusted to have animals' interests at their core. Thirdly, concepts such as 'best practice' are inherently subjective. Industry's concept of 'best practice' will be different from, and no doubt based on a lesser standard of welfare than, an animal protection organisation's concept of 'best practice'. Therefore, claims that an industry's accreditation program is based on 'best practice' animal welfare cannot be relied on as objective. Industry programs are also arguably not reflective of community, or in some cases even scientific, standards. Examples would include industry 'codes of practice' which endorse husbandry practices that would otherwise constitute cruelty under animal welfare laws.

Animal welfare and advocacy organisation

Formalising a role for science and expert opinion under the new Act

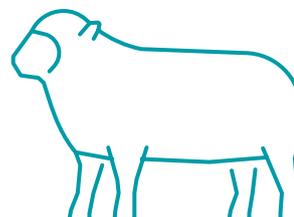
There was strong support for formalising a role for scientific knowledge and expert opinion to inform decisions under the new Act.

Opinion was fairly evenly divided between those who prefer the new Act formalise a role for an expert advisory committee to consider science and expert opinion (Option 1), those who prefer the Act include guidance on how science and expert opinion should inform decisions under the Act (Option 2), and those who prefer the Act include guidance on how science and expert opinion should be considered when developing Regulations and Codes of Practice (Option 3).

The option that provides for an expert committee (Option 1) was the most preferred by individuals and stakeholders. Many highlighted the importance of the Act stating that experts with different knowledge and expertise should be included on the committee (including in animal science, agriculture, hunting and community representatives). Some respondents recommended that all three options for incorporating science should be adopted.

Agricultural organisations preferred Option 3 (include guidance in the new Act on how science and expert opinion should be considered when developing Regulations and Codes of Practice). They see this as best aligning with adopting national Animal Welfare Standards into the legislation.

Some submissions and survey respondents expressed concern that science would be used to justify decisions (in support of livestock industries or in support of animal activists). Some called for an independent body to assess science and to make decisions about how science is incorporated into the new Act.



The Act should encourage the adoption of scientifically-based reform, but must make clear that for science to be considered relevant, it must be published in reputable journals or proceedings that only accept refereed and objective submissions. However, even validly published science might also be misused if it is not sufficiently relevant to the Victorian situation. For example, a study conducted using non-commercial poultry strains in a northern hemisphere country with feed ingredients not available in Australia may be misused to support welfare changes in Victoria. Care must be taken to ensure the applicability of any science used for welfare reform in Victoria.

Agricultural organisation

We strongly recommend that the role of scientific knowledge and expert opinion is formalised on a species and activity-specific basis. Bird species are significantly different, and as such, there is a need for expert panel members to cater to the needs of each species and activity.

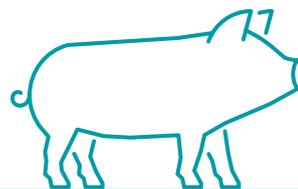
Community-based organisation

A formal committee would need terms of reference, detailed roles and outcomes. By formalising the structure and purpose of the committee it will allow better scrutiny of their performance and accountability.

Survey respondent

I welcome the idea of both a scientific committee and guidance on how their advice is to be used.

Survey respondent



Care must be taken as to the nature of the 'scientific advice' sourced. Ensuring it is not motivated in an emotive agenda driven environment.

Survey respondent

The interpretation of scientific research can be easily distorted as it requires a certain level of expertise to critically appraise original research reports and apply the findings appropriately. Poor research literacy, confirmation bias and vested interests can lead to misinterpretation of scientific reports and 'cherry picking' of materials that support a certain position. It is also the case that often the evidence is equivocal, and decisions must be made despite that uncertainty.

Community-based organisation

I am very conscious of advisory committees being hijacked by 'experts' from interest groups.

Survey respondent



Theme 3 A better compliance and enforcement model

There was general support for the proposals to improve the compliance and enforcement model under the new Act.

Proactive monitoring powers

Many submissions and survey respondents made a link between setting minimum standards and enhancing proactive monitoring powers.

Some, particularly those involved with agriculture, raised concerns about privacy, business interruption, regulatory burden and duplication of enhancing monitoring powers.

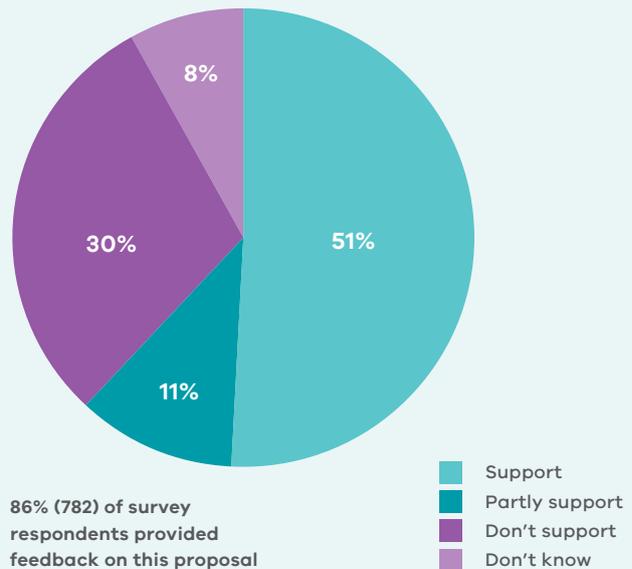
Some survey respondents and submissions called for proactive monitoring beyond the scope of those proposed. They called for the new Act to also provide for unannounced visits and CCTV for activities they perceive as high-risk, including agriculture, racing and scientific research.

In addition to the proactive powers, some survey respondents and submissions called for an independent body to oversee compliance monitoring.

Some were concerned about regulators 'overstepping the mark' if proactive powers are provided for. Standardised training for authorised officers under the new Act was one suggestion to build a shared understanding of monitoring powers that authorised officers could exercise.

Some submissions also recommended that in addition to proactive monitoring powers, the new Act include whistleblowing provisions that allows for anonymity and protection from adverse action if the name of a person who has reported animal cruelty is identified or made public.

66% OF SURVEY RESPONDENTS SUPPORTED OR PARTLY SUPPORTED PROACTIVE MONITORING



The government needs to take seriously the role of enforcement of legislation. Enhancing powers to proactively monitor compliance would be welcomed by industry.

Agricultural organisation

Represented officers should be granted the necessary powers to access a property for proactive reasons and reactive inspections should also be supported based on appropriately assessed intelligence rather than requiring evidence of a breach.

Recreational organisation



[We do] not support enhancing powers to enable proactive assessment for the compliance in the new Act. Specifically, [the industry] is already subjected to multiple routine audits, plus unannounced inspection yearly. Care needs to be taken in new legislation to ensure that auditing does not become excessive, and that it is warranted. [We] would support a risk-based auditing system, based on performance at audits, and would also suggest that co-regulation...could result in the reduction of audits required.

Agricultural organisation

While [we support] more proactive risk-based models to monitor compliance, we hold some concerns. The use of broader powers, particularly in relation to the conduct of routine audits and inspections, with and without prior notice will require further consultation. Such activities may unnecessarily inhibit the ability of producers to undertake their business activities without unreasonable inconvenience. Further such activities would need to consider the likely improvement of animal welfare outcomes compared to alternative use of resources (e.g. extension and training activities).

Agricultural organisation

[We] recommend two significant inclusions in a new Animal Welfare Act for Victoria; an independent regulator and a dedicated animal police force. The highest level of integrity for any system comes with independence; this can be realised by establishing an independent regulator with appropriate power and authority to assess law, compliance and enforcement.

Community-based organisation

While it is accepted that a shift to requiring people to meet minimum standards in the care of animals will require a more pro-active approach to monitoring compliance, it is important that this is considered in the context of regulatory burden, compliance costs and the need to weigh impacts on privacy.

Professional organisation

We are concerned that [prescribing specific circumstances for proactive powers] may limit the efficacy of such a tool because of the risk of 'ejusdem generis' interpretation ['of the same kind'; which is used to interpret where a law lists specific classes of persons or things and then refers to them in general – the general statements only apply to the same kind of persons or things specifically listed]. However, if there is prescription, we agree with the observations in the Directions Paper as to what might be covered, namely 'a broader range of situations (including farms, sale yards, feedlots, intensive animal production sites and abattoirs)' to support trust and confidence that the industry is adhering to the required standards.

Animal welfare and advocacy organisation

Due process needs to be followed and proactive monitoring must not be unreasonably applied. The response needs to be proportionate to the risk in terms of obtrusiveness and cost.

Survey respondent

Partially support, however we need to be mindful of the authorities overstepping their mark in proactive monitoring. As an example, will holding a wildlife licence automatically target you for proactive monitoring? Whilst it seems like a good idea, some questions must be asked: What will trigger a need for proactive monitoring? How will proactive monitoring be applied by the various enforcement agencies? Will due process be followed before proactive monitoring commences? There is a risk of enforcement agencies over-stepping their bounds and unreasonably applying proactive monitoring to ensure compliance.

Community-based organisation

A risk-based framework for permissions and restrictions

There was strong support for introducing a risk-based framework for licences and permits.

Those who supported a single regulatory framework for restrictions and permissions spoke to the logic and the clarity it offered. Tying permissions to risk was seen as a common-sense approach that will provide transparency and improve animal welfare outcomes. The ability to monitor for compliance where needed was raised as beneficial.

Agricultural organisations highlighted the importance of ensuring that activities in their sectors were not captured within the framework. In contrast, some submissions from animal welfare and advocacy organisations and survey respondents recommended that some agricultural practices should be considered for inclusion in the risk-based framework.

Those who partly supported a single regulatory framework often referred to 'the devil being in the detail'. They acknowledged the benefits of a single framework but wondered how it could encompass the diversity of animal interactions and activities. Others highlighted that the criteria adopted to classify risk would need to be carefully

developed, with some raising concerns about the broad terminology suggested, such as 'potential for reasonable harm'.

Ensuring an independent decision-maker was important for some. Others raised concerns about the risk of regulatory over-burden and increased costs for primary producers.

Those who opposed a single framework believe that current arrangements are satisfactory, and that additional regulation represents government overreach that has potential to impose regulatory burden and cost.

In contrast, some organisations and individuals didn't support a single regulatory framework because they see allowing any activity that has potential to cause an animal pain as 'licensing cruelty'. This group want any activity which is for human entertainment or profit that causes pain to an animal to be banned, and alternative practices found.

[We] provide in-principle support to the introduction of a risk-based framework for permitting restricted activities. However we request further consultation once the draft bill is available...[We] are concerned about certain on-farm practices being restricted to only being performed by registered veterinarians, where these procedures may currently be undertaken by farmers.

Agricultural organisation

Current activity based legislation is appropriate. Trying to generalise an activity into a category is at risk of misinterpretation or missing detail.

Survey respondent

We are supportive of the introduction of a risk-based framework for permitting restricted activities. However, we believe that the scientific establishment conducting research involving animals should fall within the medium to high-risk category. Under the Code (Australian code for the care and use of animals for scientific purposes (8th Edition 2013)), research procedures involving animals must have undertaken training and met a mandatory competency assessment. In our view, this suggests that the risk level should be the same as for veterinarians and other qualified personnel. Further, the compliance requirements and oversight by Animal Welfare Victoria ensure that animal welfare is maintained at the highest standards and poses no greater risk than work conducted by veterinarians.

Education and research organisation

Any commercial business which uses animals including circuses, riding schools, pony and equestrian clubs, groomers, saleyards, abattoirs etc. should be required to be registered or licensed under the Act depending on the level of risk involved. We agree with the examples provided [in the Directions Paper] on this question, that risk should be classified based on the potential for unreasonable harm, pain or distress, the experience and qualification required, the type of equipment needed and the purpose of the activity. Additionally, as outlined above, we believe that any business that is run for profit has inherent risk posed to the animals involved because of the potential for commercial gain at the expense of animal welfare, and therefore at a minimum should be classified as a 'medium' risk and be required to be registered under the Act.

Compliance organisation

The premise of a risk-based framework attempts to rationalise that it's ok to harm some animals in some circumstances and not in others. This is not logical, rational or ethical given the understanding that animals are sentient beings.

Survey respondent

I worry that pest control or hunting could be, not banned, but made too difficult for the average person to be involved in simply because the licensing changes and becomes too involved or difficult.

Survey respondent

[We] would need to be provided additional information before we can provide a response to this proposal. It is not clear in the Directions Paper if this would only include those activities that are currently restricted, or if the Act may change the current level of risk placed on different activities. [We] would recommend that the systems already in place to obtain licenses and permits are retained in the new Act. [We] would be concerned against using 'unreasonable' harm, pain or distress in legislation. This is very subjective depending on the decision maker. [We] would be more supportive of a classification that is objective, measurable and comparable.

Agricultural organisation



Managing seized animals

There was broad agreement for the proposed set of alternatives to better manage seized animals.

Significant trust in the independence and expertise of the Chief Veterinary Officer as the decision-maker for managing seized animals was expressed. Transparency in decision making was seen as vital and some individuals and organisations recommended a review process or an independent body to make decisions about managing seized animals.

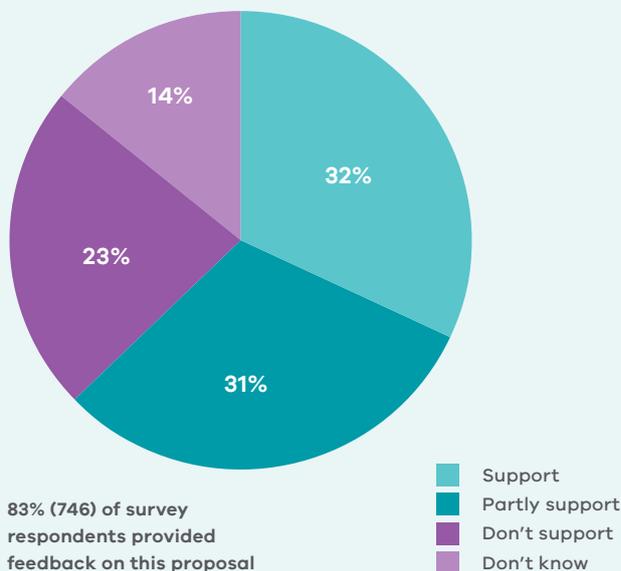
Those who did not support the four alternatives proposed for managing seized animals said that current provisions are adequate, or they supported some but not all the four alternatives.

While many survey respondents and submissions agreed that it is not always practical or best for an animal to be kept by the seizing agency until legal proceedings are complete due to the length of time this may take, some raised the issue that if a prosecution did not ultimately succeed, then people should be able to get their animal/s back. This was the main reason that 42 per cent of survey respondents said that seized animals should be kept until court proceedings are complete. A proportion of this group oppose euthanasia of seized animals under any circumstances.

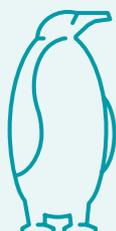
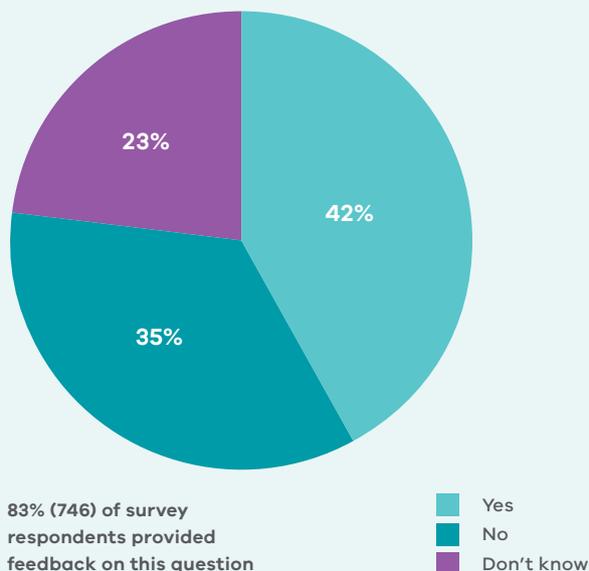
Individuals and organisations involved in wildlife management and care highlighted that the best management options for wild animals are often different to agricultural or companion and domestic animals. They recommended that any management options for seized animals in the new Act consider the different requirements of wildlife.

Foster care was suggested by many as another option for managing seized animals until legal proceedings are complete.

63% OF SURVEY RESPONDENTS SUPPORTED OR PARTLY SUPPORTED THE ALTERNATIVES FOR MANAGING SEIZED ANIMALS



SHOULD SEIZED ANIMALS NEED TO BE KEPT UNTIL COURT PROCEEDINGS ARE COMPLETE?



[We] would favour introducing a category which would be to assist the owner unable to rectify the situation to identify and re-home the animal. Only if the owner is unable or unwilling to identify a suitable home for the animal should the other alternatives proceed. [We] believe that the person or agency responsible for making the decision on managing the seized animal should be an independent government official and certainly not the agency who seized the animal and/ or prosecutes the owner. [We] believe that if the owner will not relinquish ownership of the seized animal, the enforcement agency should investigate placing the animal in a foster home.

Community-based organisation

...neither the Wildlife Act 1975, nor the Wildlife Regulations 2013 set out in any detail the requirements of managing seized animals. Where there are cases involving cruelty to wildlife, there should be a clear pathway for seized animals to be placed with an authorised wildlife shelter for rehabilitation and release, if that is in the best interests of the animal.

Community-based organisation

Support all except Alternative C (euthanasia). We should never euthanise an animal for behavioural issues. These can always be remedied no matter what.

Survey respondent

Animals seized need to be treated and rehomed as fast as possible. Keeping animals in shelters is detrimental to their health. Foster care should be afforded for these animals for their enrichment and lives.

Survey respondent

This could work as long as the organisation or the people making these decision are well qualified with the animals welfare as the highest priority.

Survey respondent

I support the intent though oversight and professional evaluation would be required for any euthanasia options.

Survey respondent

