



A NEW ANIMAL  
WELFARE ACT  
FOR VICTORIA

# Directions Paper

**VICTORIA**  
State  
Government



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## Foreword



Animals are part of the lives of most Victorians.

We rely on animals for food and fibre, and our animal-based industries provide jobs for Victorians and contribute significantly to our state and local economies. Millions of us enjoy the companionship

of animals and some of our most popular recreational activities involve animals.

Victorians live with about 6.7 million domestic animals and there are more than 150 million animals on our farms. There are 600,000 horses in Victoria, more than 5,000 animals live in Victorian zoos and approximately 940 species of native animals live in our natural environment.

Modern and effective animal welfare laws will underpin the many animal industries that contribute to Victoria's economy, our employment and our wellbeing.

New laws will assure our community that everyone is working towards the best possible animal welfare outcomes.

### **Maintaining Victoria's reputation for high animal welfare standards**

While our individual actions toward animals is what counts, our animal laws also play a significant role in safeguarding their welfare. The laws set the minimum standards for how we must treat animals and allow for government to act when people do not treat animals as they should.

Victoria's Prevention of Cruelty to Animals Act 1986 (the POCTA Act) has served Victoria well in this regard, but it no longer meets the needs of animal industries, the community or government.

We want our laws to better safeguard animal welfare and to reflect today's scientific understanding of animals as well as changing community expectations for animal welfare. Just as importantly, the laws must maintain the ability for people to conduct lawful activities involving animals and not create unnecessary regulatory burden for our animal-based industries.

A new animal welfare Act also responds to the recent Parliamentary Inquiry into the Impacts of Animal Rights Activism on Victorian Farms. I recently tabled the government's response to that Inquiry, supporting recommendations relating to improving Victoria's animal welfare legislative framework to help maintain public and consumer confidence in our animal-based industries, and to better support co-regulation to reduce industry regulatory burden.



### **Towards modern animal welfare laws**

This Directions Paper marks an important step in modernising Victoria's animal welfare laws.

A new animal welfare Act will underpin our continuing work to improve animal welfare in Victoria, with a modern legislative framework for now and future.

The proposals in this paper aim to better safeguard animal welfare, deliver simplified and flexible legislation, and provide more effective options when people don't comply with the law. Our objective is to maintain Victoria's reputation for a high standard of animal welfare, which is increasingly important to accessing domestic and international markets.

### **Help shape Victoria's new animal welfare Act**

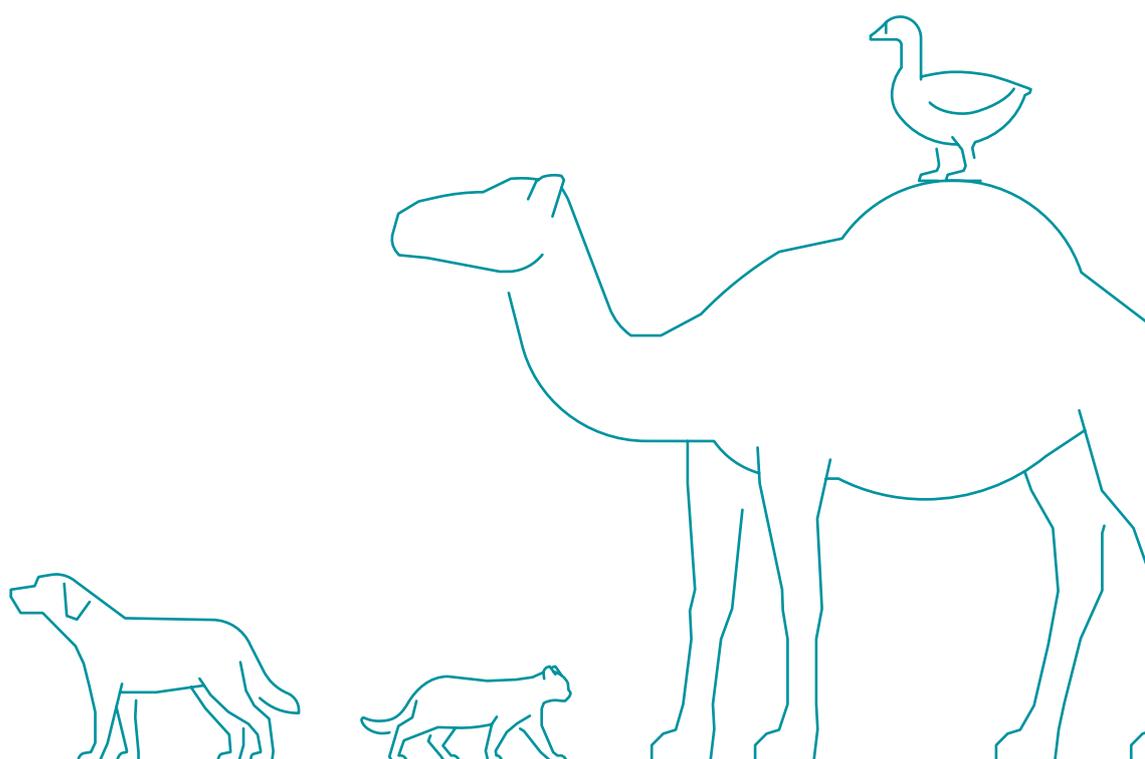
The new animal welfare Act needs to serve animals and Victorians for decades to come.

It's important that we get it right.

Whether you're involved with animals in our industries, our communities, our homes or with animals in the wild, I encourage you to contribute your feedback to this Directions Paper.

Your perspectives and your expertise will be vital to inform our work as we develop a new animal welfare Act for Victoria.

**The Hon Jaclyn Symes MP**  
**Minister for Agriculture**



## Introduction

This Directions Paper sets out key policy proposals for a new animal welfare Act for Victoria.

The policy proposals are mapped against the existing *Prevention of Cruelty to Animals Act 1986* (POCTA Act) in the Figure on the next page. Many of the proposals aim to improve existing provisions under the current POCTA Act, while some would introduce new provisions into Victoria's new animal welfare Act. The new provisions are identified in the Figure on the next page.

This Directions Paper does not seek to cover everything needed for new legislation. Other reforms more technical in nature are required. While some of these technical reforms are already being considered and are summarised at the end of this paper, specific directions of technical reforms are not set out in this paper.

The paper does not discuss the supporting Regulations and other instruments that would detail how the provisions of the new Act would be applied in practice. In some cases, a broad indication of how Regulations and other instruments could work is provided, but most would be developed once the key aspects of the new animal welfare Act were settled. Stakeholders and the public would have opportunities in future to get involved in developing Regulations and other instruments.



## PREVENTION OF CRUELTY TO ANIMALS ACT 1986

### APPLICATION

#### Animals:

Applies to all vertebrate species other than humans (mammals, birds, fish, amphibians, reptiles), certain crustaceans (lobster, crabs, crayfish), and in some circumstances cephalopods (octopi, squid, cuttlefish, nautilus).

#### Exemptions:

Does not apply to activities conducted in accordance with:

- *Meat Industry Act 1993*
- *Catchment and Land Protection Act 1994*
- *Fisheries Act 1995*
- *Traditional Owner Settlement Act 2010 (with some conditions)*
- *Wildlife Act 1975 (excluding Part 3)*
- *Vet instructions*
- *On farm slaughter (with conditions)*
- *Codes of Practice for some animal activities*

### PROVISIONS TO PREVENT CRUELTY

#### Prohibited conduct:

- Unreasonable pain or suffering
- Carrying out a prohibited procedure
- Specified acts or omissions, such as beating, torture, abandonment
- Activities including: baiting and luring; dogs on moving vehicles; breeding of heritable defects; trap shooting; selling/using traps not of a kind prescribed by Regulations

#### Restricted activities:

- Rodeos and rodeo schools (licence & permit)
- Animals in research & teaching (licensed)

### REGULATORY TOOLS AND ENFORCEMENT

#### Authorisations:

For public sector employees and officers of the RSPCA Victoria, Victoria Police and local councils to be appointed to enforce animal welfare laws.

#### Enforcement powers:

- Entry
- Search, test or sample
- Take or require specific actions (feed, veterinary treatment, other)
- Issue control orders
- Issue notice to comply
- Seize, destroy, dispose of animals

Separate enforcement framework for animals in scientific procedures

#### Regulatory tools:

- Licensing and permits
- Power to make Regulations
- Power to make Codes of Practice

### SUBORDINATE INSTRUMENTS

*Prevention of Cruelty to Animals Regulations 2019*

*Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2016*

28 MOSTLY NON-MANDATORY CODES OF PRACTICE

## PROPOSALS FOR NEW ANIMAL WELFARE ACT IN THIS DIRECTIONS PAPER

**1.1 NEW** Adopt an approach to recognising animal sentience.

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

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

**1.2 NEW** Introduce a requirement for people to provide a minimum standard of care for animals.

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

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

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

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

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

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

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

**2.3 NEW** Introduce a mechanism to incorporate nationally-agreed Standards as mandatory requirements.

## Victoria's animal welfare system

The *Prevention of Cruelty to Animals Act 1986* (POCTA Act) is currently Victoria's key animal welfare legislation.

The POCTA Act sets out offences for animal cruelty and the powers for agencies to monitor and enforce those offences. The Act also sets out the regulation of rodeos, animal-related scientific procedures, and a licensing framework for breeding animals for scientific procedures.

The POCTA Act applies to all vertebrate species other than humans: mammals, birds, fish, amphibians, reptiles, certain crustaceans (lobster, crabs, crayfish), as well as cephalopods (octopi, squid, cuttlefish, nautilus) in some circumstances.

There are other Acts in Victoria that relate to animal welfare, such as the *Domestic Animals Act 1994* and the *Livestock Management Act 2010*. Various other Acts also have animal welfare provisions, including but not limited to the *Wildlife Act 1975*, *Meat Industry Act 1994*, *Racing Act 1975* and *Fisheries Act 1995*. Changes to these Acts and their supporting Regulations or Codes of Practice would only be considered to ensure they aligned with the new animal welfare Act.

## Why reform is needed

The POCTA Act no longer meets the needs of animal industries, the community or government.

Some parts of the Act are out of date or lack clarity, while other parts do not work in practice as well as they could. Since the POCTA Act was introduced in 1986, scientific evidence and understanding of animals has developed. Industry practices and technologies have also changed. Animal welfare requirements required to access domestic and international markets have expanded. Community and consumer expectations for animal welfare have increased – for example, people generally want higher standards of animal welfare today compared with 30 years ago, and many want laws to safeguard animal welfare (not just laws that respond to cruelty once it has occurred).

The POCTA Act has been amended almost 40 times to help adapt to these changes and developments. Over time, almost 30 Codes of Practice have been attached to the Act to cover different species and activities involving animals. Many of the Codes of Practice attached to the POCTA Act are voluntary and do not have offences attached, so they are not enforceable.

The many amendments to the POCTA Act and various Codes of Practice have made the legislation complex. This can make it difficult for people to navigate and interpret the legislation and understand how they must treat animals. The complexity and detail of the legislation also makes it inflexible. This limits the ability to easily adapt the law in response to developments in animal science, or to new industry practices and technologies or changing community expectations.

The POCTA Act also provides a limited set of regulatory tools (known as a 'regulatory toolbox') for encouraging people to comply with the law and treat animals as they should. The complexity of the legislation and the limited regulatory toolbox can also make prosecuting for cruelty difficult.

The POCTA Act also reflects outdated drafting practices for legislation, with detailed and complex language. Modern legislation has a simplified structure and is written in plain English to support clarity and to enable the general community to understand the law.



## What a new Act would achieve

A new animal welfare Act would better safeguard the welfare of animals in Victoria.

Simplified legislation with clear requirements would make it easier for people to understand how they must treat animals. Among other things, this would help cut red tape for people in animal-based industries and help Victorian agricultural producers maintain access to important domestic and international markets.

A new animal welfare Act would improve the options available to respond when people do not treat animals as they should. This would help change how people behave so there are better outcomes for animals.

A new Act would also help maintain Victoria’s reputation for a high standard of animal welfare and increase community trust in our animal-based industries and in activities involving animals.

A new Act would not ban current lawful activities involving animals, but the proposed requirements of the new Act would influence how some of these activities were undertaken.



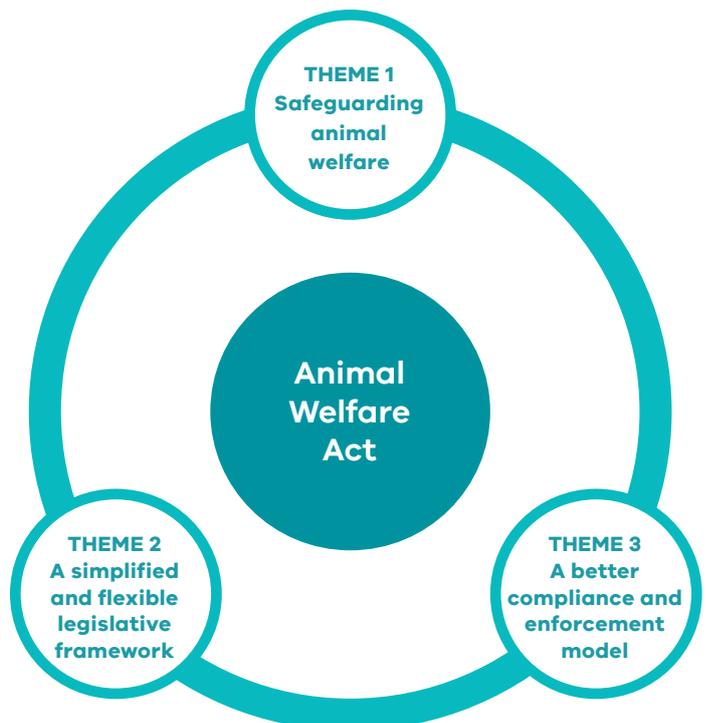
## Proposals

The policy proposals in this Directions Paper were developed following a review of the current POCTA Act. Animal science and other experts were consulted as well as stakeholders involved in animal-based industries, animal welfare regulators, community animal organisations and others with an interest in animal welfare.

The policy proposals are grouped under three themes that represent the key objectives for the new Act:

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

Note these are themes for reform. They do not reflect how the new animal welfare Act might be structured.



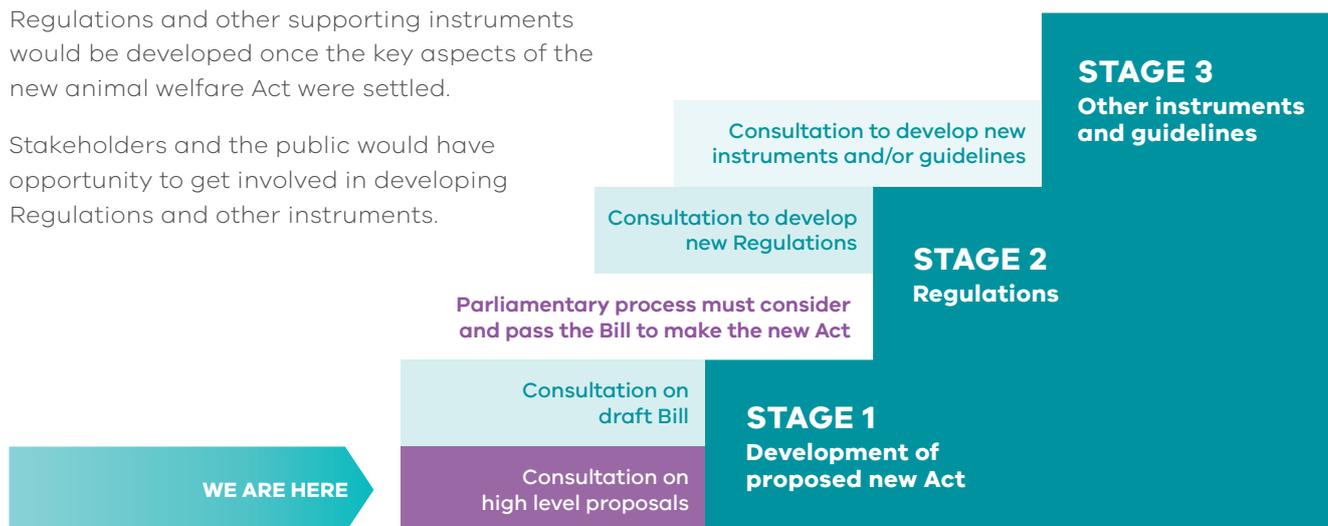
## Next steps

A new animal welfare Act is the first step in modernising Victoria's core animal welfare legislative framework.

The new animal welfare Act would set out the broad legal principles and expectations for the treatment of animals.

Regulations and other supporting instruments would be developed once the key aspects of the new animal welfare Act were settled.

Stakeholders and the public would have opportunity to get involved in developing Regulations and other instruments.



## Have your say

Victorians have diverse knowledge, experience and views relating to the care of animals. There are many different views on how a new Act could best support animal welfare while enabling animal-based industries and lawful activities involving animals to continue.

Feedback received on the proposals in this Directions Paper will inform the work to develop a draft Bill for a new animal welfare Act, as well as the work to develop supporting Regulations and other instruments.

You can provide feedback on one, some, or all the proposals in this Directions Paper.

**Complete the survey or make a submission at [engage.vic.gov.au](https://engage.vic.gov.au)**

The survey and submissions close at 11.59 pm Monday 14 December 2020.

## Privacy

The Department of Jobs, Precinct and Regions (the department) is committed to protecting your privacy, according to Victorian privacy laws.

The department may share your responses with the community and external parties.

Comments you make in the survey or your submission may be included in a publicly-released Engagement Report. Organisations will be identified unless you request otherwise.

For more information please see the department's Privacy Statement at [djrp.vic.gov.au/privacy](https://djrp.vic.gov.au/privacy)

## Summary of policy proposals

### THEME 1: SAFEGUARDING ANIMAL WELFARE

Policy topic	Why does a new Act need this?	What are the option/s proposed?	Read this proposal if you are interested in:
1.1 Animal sentience	Science tells us that animals are sentient. Many other jurisdictions recognise animal sentience in their legislation. Recognising animal sentience in Victoria's animal welfare Act would provide clarity that policy development and regulatory decisions should be based on preserving animal welfare (rather than just responding to animal cruelty).	<p><b>Adopt an approach to recognising animal sentience.</b></p> <p>Possible options include one or a combination of:</p> <ul style="list-style-type: none"> <li>• <b>Option 1</b> Refer to sentience in the Objects of the Act.</li> <li>• <b>Option 2</b> Refer to sentience in the Principles of the Act.</li> <li>• <b>Option 3</b> Refer to sentience in the Definition of animals covered by the Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Animal sentience</li> </ul>
1.2 Minimum standards of care	The focus of the current POCTA Act on responding to cruelty once it has occurred limits the options for early intervention and response. Animal welfare legislation in other Australian as well as international jurisdictions now place equal weight on safeguarding animal welfare.	<p><b>Introduce a requirement for people to provide a minimum standard of care for animals.</b></p>	<ul style="list-style-type: none"> <li>• Duty of care</li> <li>• Basic animal needs</li> <li>• Early intervention</li> <li>• Safeguarding animal welfare</li> <li>• Preventing cruelty to animals</li> </ul>
1.3 Prohibited acts	The current POCTA Act provides a specific list of actions or behaviours that constitute cruelty. Listing specific actions or behaviours can be limiting, as not every specific example is clearly covered.	<p><b>Introduce a set of general escalating offence categories covering things a person must not do to animals.</b></p> <p>These offence categories would be based on the nature of a person's treatment of animals rather than the extent of the harm inflicted. The harm inflicted would be an aggravating factor.</p>	<ul style="list-style-type: none"> <li>• Offences for cruelty conduct</li> <li>• Penalties for cruelty</li> </ul>
1.4 Controlled procedures	Painful or unpleasant animal husbandry procedures are sometimes required to benefit the animal and/or for animal management considerations. The current framework for regulating animal husbandry procedures in Victoria is fragmented across numerous Acts and instruments.	<p><b>Provide a single regulatory framework for performing controlled procedures on animals.</b></p> <p>The framework would provide consistency and clarity about the specific qualifications, skills, approach or equipment required to perform these procedures. Three categories for controlled procedures are proposed: Restricted procedures; Prohibited procedures; and Scientific procedures. Specific details for each procedure would be set out in Regulations.</p>	<ul style="list-style-type: none"> <li>• Scientific and restricted procedures performed on animals</li> <li>• Animal husbandry</li> <li>• Restricted acts of veterinary science</li> </ul>

**THEME 2: A SIMPLIFIED AND FLEXIBLE LEGISLATIVE FRAMEWORK**

Policy topic	Why does a new Act need this?	What are the option/s proposed?	Read this proposal if you are interested in:
2.1 Consistency of the framework	While the POCTA Act is currently the primary legislation for managing animal welfare in Victoria, the Act does not apply in all situations where an animal is being used, handled or managed. This is one of the more confusing aspects for the community and can create challenges for regulators and those who are trying to comply with the rules.	<p><b>Consider the need for broad exemptions.</b></p> <ul style="list-style-type: none"> <li>• <b>Option 1</b> Continue to allow for some broad exemptions where they meet the objectives of the new Act.</li> <li>• <b>Option 2</b> Apply the requirements of the new animal welfare Act to all animals and activities, with appropriate exceptions for lawful activities.</li> </ul>	<ul style="list-style-type: none"> <li>• Animals and activities specifically covered by other legislation, such as wildlife, pest animal management, hunting, recreation and fishing.</li> </ul>
2.2 Clarity of the framework	Under Victoria’s current animal welfare legislative framework, a series of Regulations and Codes of Practice support the POCTA Act to set animal welfare standards. The Regulations and Codes of Practice have become complex, inconsistent and confusing. The requirements of different Codes of Practice can be inconsistent across species and industries, and in many cases the requirements are not mandatory, so are not enforceable.	<p><b>Reform the current framework of the Act and its supporting Regulations and Codes of Practice to improve clarity.</b></p> <p>Possible options are:</p> <ul style="list-style-type: none"> <li>• <b>Option 1</b> A limited set of Regulations supported by mandatory Codes of Practice that would demonstrate compliance with the Act, complemented by best practice Guidelines.</li> <li>• <b>Option 2</b> A comprehensive set of Regulations supported by best practice Guidelines (no Codes of Practice).</li> </ul>	<ul style="list-style-type: none"> <li>• POCTA Codes of Practice</li> <li>• POCTA Regulations</li> </ul>
2.3 National Codes of Practice, Standards and Guidelines	To provide consistent animal welfare legislation and enforcement across Australian states and territories, a number of national Codes of Practice as well as Standards and Guidelines have been developed. There is no clear mechanism in the current POCTA Act to adopt these agreed Codes, Standards or Guidelines.	<p><b>Introduce a mechanism to incorporate nationally-agreed Standards as mandatory requirements.</b></p> <ul style="list-style-type: none"> <li>• <b>Option 1</b> Adopt all agreed national Standards automatically by referencing them in the new animal welfare Act.</li> <li>• <b>Option 2</b> Adopt relevant content from the national Standards into Regulations.</li> </ul>	<ul style="list-style-type: none"> <li>• Adoption of Australian Animal Standards and Guidelines and national Codes of Practice</li> <li>• Consistency between jurisdictions</li> <li>• Consistency between Victorian legislative instruments</li> </ul>
2.4 The role of co-regulation in the framework	Many animal-based industries, activities and not-for-profit organisations that involve animals are regulated by professional non-government bodies. In response to market trends and demands, non-government standards are sometimes higher than the minimum legislated standards. The schemes for these non-government arrangements are not recognised under the current POCTA Act, even if they clearly demonstrate practice above minimum standards.	<p><b>Allow for the recognition of appropriate co-regulatory schemes in the new Act.</b></p> <p>This would enable the recognition and adoption of industry best-practice standards for animal welfare in place of direct government regulation.</p>	<ul style="list-style-type: none"> <li>• Reducing regulatory burden</li> <li>• Recognition of non-government requirements</li> <li>• Role of industry and other groups in animal welfare standard setting</li> </ul>

## THEME 2: A SIMPLIFIED AND FLEXIBLE LEGISLATIVE FRAMEWORK (CONTINUED)

Policy topic	Why does a new Act need this?	What are the option/s proposed?	Read this proposal if you are interested in:
2.5 The role of science in the new framework	Animal welfare science and understanding has significantly developed since the POCTA Act came into force in 1986. We can expect scientific understanding of animals, industry practices and technologies to continue to develop. Ongoing expert consideration of these developments and any legislative responses required is needed.	<p><b>Formalise a role for scientific knowledge and expert opinion to inform decisions under the new Act.</b></p> <p>Possible options could include one or a combination of:</p> <ul style="list-style-type: none"> <li>• <b>Option 1</b> Formalise a role for an expert advisory committee by reference in the new Act.</li> <li>• <b>Option 2</b> Include guidance in the new Act on how science and expert opinion should be used to inform decisions under the Act.</li> <li>• <b>Option 3</b> Include guidance in the new Act on how science and expert opinion should be considered in the development of Regulations and Codes of Practice under the Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Animal welfare science</li> <li>• Expert advice</li> <li>• Advice on decisions under the Act</li> </ul>

## THEME 3: A BETTER COMPLIANCE AND ENFORCEMENT MODEL



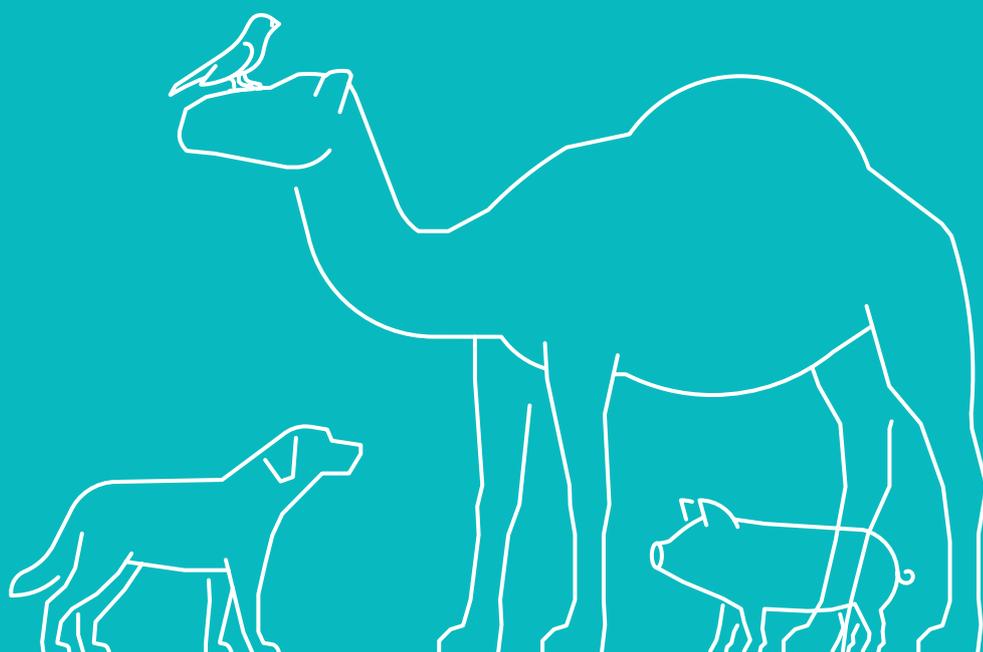
Policy topic	Why does a new Act need this?	What are the option/s proposed?	Read this proposal if you are interested in:
3.1 Monitoring compliance	Animal welfare enforcement under the current POCTA Act is typically undertaken as a response to a 'reasonable' suspicion about a breach of the cruelty provisions. The POCTA Act is limited and inconsistent in the powers that enable proactive action to intervene early to assess compliance.	<p><b>Enhance powers to proactively monitor compliance.</b></p> <p>A shift to requiring people to meet a minimum standard of care for animals may require enhanced proactive monitoring tools. These would be carefully considered against regulatory burden and privacy impacts. Proactive monitoring powers would be limited to specific circumstances.</p>	<ul style="list-style-type: none"> <li>• Monitoring compliance</li> <li>• Early intervention</li> <li>• Powers of enforcement agencies</li> </ul>
3.2 Permissions and restrictions	Some specific activities involving animals require licences, permits and approval arrangements under the current POCTA Act (such as rodeos and scientific establishments). Each scheme for these arrangements is drafted with a different approach which adds to the complexity of the Act and there are inconsistencies in the requirements and processes.	<p><b>Introduce a risk-based framework for permitting restricted activities.</b></p> <p>This framework would classify activities based on potential risk to animal welfare, and apply a consistent approach to restricting the activities, and to the permissions required to undertake a restricted activity.</p>	<ul style="list-style-type: none"> <li>• Licences</li> <li>• Permits</li> <li>• Approvals for activities</li> </ul>
3.3 Managing seized animals	Animals seized under the current POCTA Act may be sold, rehomed or euthanised, although the ability to do this is often linked to legal proceedings. This means the department or the enforcement agency which has seized the animals may need to keep them for long periods until legal proceedings are complete. This can have significant animal welfare and financial implications.	<p><b>Set out clear alternatives for managing seized animals.</b></p> <p>If animals could not be returned to the owner or person in charge, possible alternatives include: selling the animals, transferring ownership, euthanasia, or managing animals as required by other legislation.</p>	<ul style="list-style-type: none"> <li>• Holding of animals pending court proceedings</li> </ul>

## Definitions

Act	An Act, also called primary legislation, is a law made by the Parliament. The Act sets out the requirements of the law and the penalties that apply when the law is not complied with. The Act states who regulates the law and sets out their regulatory powers. The Act also states which authority has the power to make a Regulation.
Authorised officer	An authorised officer is a person appointed under the Prevention of Cruelty to Animals (POCTA) Act 1986 who has compliance and enforcement powers.
Civil penalty	Civil penalties are imposed by courts applying civil rather than criminal court processes. Civil penalties are typically a financial penalty, although they may also take the form of injunctions, banning orders, licence revocations and orders for reparation and compensation.
Code of Practice	A Code of Practice provides more detailed practical information on how to meet the requirements of an Act or Regulation. The requirements of a Code of Practice can be mandatory or non-mandatory.
Criminal penalty	A criminal penalty is a fine, imprisonment or a community service order imposed by a court when the evidence demonstrates beyond reasonable doubt that a crime according to the law has occurred.
Enforcement agencies	An Act establishes the agencies that can enforce the law and sets their powers. Key Victorian agencies with regulatory powers under the POCTA Act are: Department of Jobs, Precincts and Regions; RSPCA Victoria; Greyhound Racing Victoria; and Victoria Police.
Inspector	An inspector is a person appointed under the <i>Prevention of Cruelty to Animals (POCTA) Act 1986</i> who has compliance and enforcement powers.
Legislation	Legislation includes Acts, Regulations and Codes of Practice. The Act is the primary legislation. Regulations and Codes of Practice are called subordinate legislation, or supporting instruments.
National standard	A national standard is a standard agreed to by the states and territories to provide consistency across jurisdictions.
Enforcement agencies	An Act establishes the agencies that can enforce the law and sets their powers. Key Victorian agencies with regulatory powers under the POCTA Act are: Department of Jobs, Precincts and Regions; RSPCA Victoria; Greyhound Racing Victoria; and Victoria Police.

THEME ONE

# Safeguarding animal welfare



## Theme 1: Safeguarding animal welfare

The proposals in this theme aim to better safeguard animal welfare in Victoria.

Animal welfare legislation has historically focused on cruelty and particularly on responding to proven acts of cruelty with a punishment, which also acts as a deterrent for similar acts.

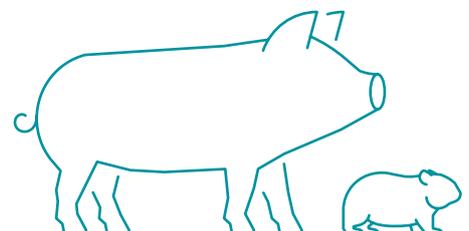
Under the current POCTA Act, authorities generally have the power to respond effectively where cruelty has occurred. However, the POCTA Act is less effective when cruelty is likely but has not yet actually occurred, such as when animals lack food but are not yet starving. The POCTA Act does not contain clear provisions to enable early intervention in these circumstances.

Many international jurisdictions now include provisions in their animal welfare legislation to

provide an equal focus on safeguarding animal welfare and responding to animal cruelty. A common approach is to set minimum standards of care for animals, as well as describe what constitutes cruelty.

The proposals below represent a shift away from the focus on cruelty in Victoria's current POCTA Act. The proposals involve setting basic requirements in the new Act for how an animal must be treated (minimum standards of care), along with describing the things that people must not do to animals (prohibited acts).

An explicit recognition in the legislation that animals are sentient would underpin this shift.



## 1.1 Animal sentience

Scientific studies over many decades have demonstrated that animals are sentient. This means they have the ability to feel, perceive and experience what happens to them in a negative or positive way. We know that animals feel physical pain and also have emotions such as happiness, fear and distress. While the very existence of animal welfare legislation implicitly acknowledges animal sentience, Victoria's POCTA Act does not explicitly recognise it.

Recognising animal sentience in legislation reflects that caring for an animal is different to caring for your vehicle, house or other inanimate property. It provides clarity that policy development and regulatory decisions should be based on preserving animal welfare (rather than just responding to animal cruelty).

Other Australian and international jurisdictions now recognise animal sentience in their legislation. Some Australian animal-based industry organisations also recognise animal sentience in their animal welfare policies and statements.

The Victorian Government has committed to recognising sentience in Victoria's new animal welfare Act. Recognising animal sentience would not change that sentient animals can be owned and managed for lawful purposes such as farming or as household pets. Recognising animal sentience would provide clarity about the purpose of the legislation and support greater consistency in the interpretation and application of animal welfare law.

### RECOGNISING ANIMAL SENTIENCE IN LEGISLATION

Australian and international jurisdictions take different approaches to recognising animal sentience in their legislation.

- The Australian Capital Territory amended the Purpose of its Animal Welfare Act in 2019 to include the addition: *'recognise that animals are sentient beings that are able to subjectively feel and perceive the world around them'*.
- New Zealand amended the title of its Animal Welfare Act in 2015 to recognise that animals are sentient.
- The European Union amended its constitution in 2007 to recognise 'that animals are sentient beings' (amendment to the Treaty of Lisbon, Article 13 of Title II).

Other international jurisdictions do not explicitly refer to the word 'sentient' in their legislation but acknowledge it by describing sentience in various ways. For example, some jurisdictions describe sentient traits in their definition of animal, with references to animals having the ability to feel pain and pleasure, fear and distress. Other jurisdictions simply refer to sentience when defining animals but do not describe or define sentience.



### Proposal 1.1 – Adopt an approach to recognising animal sentience

This proposal sets out three options for recognising animal sentience. A single option could be adopted or a combination of two or all three options could be implemented.

#### **Option 1: Refer to sentience in the Objects of the Act.**

The Objects section of an Act sets out the purposes and aims of the legislation – the underlying objectives. The Objects section can help to resolve uncertainty and ambiguity about the intent of an Act. This can assist the courts and others to interpret what the law is trying to achieve.

#### **Option 2: Refer to sentience in the Principles of the Act.**

Modern legislation often includes a set of Principles. These provide guidance to decision-makers about the things they should consider in interpreting and implementing an Act (such as how to exercise the powers provided under the Act).

#### **Option 3: Refer to sentience in the definition of animals.**

Legislation generally includes a Definitions section to help people understand what the legislation means. Sentience could be included as one of the definitions of animals that are covered by the Act.

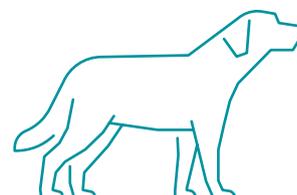
### QUESTIONS

a) Which option do you prefer?

*Option 1, Option 2, Option 3, none of the options, a combination of the options (please specify).*

Please tell us why.

b) If you can suggest another option for recognising animal sentience in the new Act, please tell us about it.



## 1.2 Minimum standards of care

There is broad agreement among animal-based industries and the community that minimum standards or duties of care should apply to animals that go beyond simply not being cruel to them.

Many state and national animal-based industry organisations have already adopted standards of care for animals that exceed the current POCTA Act requirements.

While the focus of the POCTA Act is on responding to cruelty once it has occurred, animal welfare legislation of other Australian as well as international jurisdictions has shifted away from a strong focus on cruelty to a more equal focus on safeguarding animal welfare. They achieve this by setting 'duty of care' or obligation-style requirements for animals in their legislation. Obligation-style requirements set minimum acceptable standards of care for animals, which are enforceable by law.

These elements are referred to by different terms in different jurisdictions. For example, the Queensland *Animal Care and Protection Act 2001* refers to a 'duty of care'. The New Zealand *Animal Welfare Act 1999* refers to the 'obligations' of owners and those in charge of animals.

While each jurisdiction frames their 'duty of care' requirements in different ways, they generally require people to provide the basic needs of an animal as defined by animal welfare science.

A key challenge in setting 'duty of care' requirements is considering how information and evidence can be collected and presented to demonstrate that people have met (or not met) their obligations.

### MINIMUM STANDARDS OF CARE IN LEGISLATION

- The Queensland *Animal Care and Protection Act 2001* [section 17(3)] states that a person breaches a duty of care if they do not take reasonable steps to appropriately provide an animal's needs for the following:
  - food and water
  - accommodation or living conditions for the animal
  - to display normal patterns of behaviour
  - the treatment of disease or injury
  - ensure any handling of the animal, including any confinement or transportation of the animal, by the person, or caused by the person, is appropriate
 ...with regard to the species, environment and circumstances of the animal; and the steps a reasonable person in the circumstances of the person would reasonably be expected to have taken.
- The Australian Capital Territory *Animal Welfare Act 1992* [section 6(b)] states that a person in charge of an animal commits an offence if they fail to give the animal:
  - appropriate food
  - appropriate water
  - appropriate treatment for illness, disease or injury
  - appropriate shelter or accommodation
  - a clean and hygienic living environment
  - appropriate grooming and maintenance, or appropriate exercise
  - appropriate opportunities to display behaviour that is normal for the animal
  - care that is appropriate for the animal's wellbeing.



### Proposal 1.2 – Introduce a requirement for people to provide a minimum standard of care for animals.

This would be the first time that minimum standards of care for animals were set in Victoria's primary animal welfare legislation.

Those in charge of an animal would be required to take reasonable steps to provide an acceptable level of care for that animal (which may cover, for example, providing food, water, and an appropriate environment). A requirement for acceptable handling may also extend to any person interacting with an animal (such as an animal classified as wildlife or a pest animal).

Whether or not an obligation is achieved depends on the behaviour of a person. To make an obligation enforceable, the Act would need to focus on the *conduct of the person* — the steps that person has taken to meet the obligation.

This would allow consideration of reasonable measures that a person has taken to meet the minimum standard of care obligations, and allow for circumstances out of that person's control, such as emergency situations.

Other Australian and international jurisdictions that set out obligations in their animal welfare Act require that people in charge of an animal adequately provide basic elements such as food, water, health care, appropriate shelter or accommodation (based on animal science). Subordinate instruments such as Regulations provide more detail on the behaviours and actions

## 1.3 Offences for prohibited acts

Any animal welfare legislation must have the ability to respond to acts of cruelty, as well as to deter people from being cruel (by setting and applying a punishment).

These types of provisions focus on defining and prohibiting acts of cruelty relating to a specific animal or group of animals (such as failing to provide sufficient or appropriate food or overworking an animal or animals). These provisions are not a mechanism for banning or prohibiting a particular lawful animal activity.

### QUESTIONS

- a) Do you support introducing a requirement to provide a minimum standard of care for animals in a new Act?

Choose one of:

*Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.

- b) What basic elements should be included in the minimum standard of care?

- c) How should the Act describe the requirement to provide a minimum standard of care – for example as an obligation, a duty of care, or something else?

that people must do or must not do in their treatment of specific animal species and for certain activities involving animals. Other instruments such as Codes of Practice provide more detailed practical information on how to meet the requirements of their animal welfare Act and Regulations.

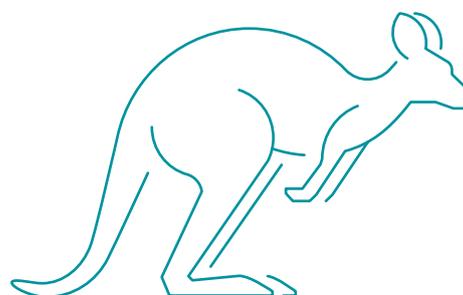
Some jurisdictions have a general cruelty offence with a list of offences in separate subsections. Other jurisdictions, including in Victoria's POCTA Act, do not specifically define animal cruelty in the legislation, but instead provide a list of actions and behaviours that constitute cruelty.

The cruelty provisions in the current POCTA Act generally work well but they can be limiting as they list specific actions or behaviours (but not everything that could be cruel). The way the current offences are drafted can also make it difficult to establish the pain or suffering that an animal has experienced.

While the POCTA Act does contain some provisions that enable intervention where there is a risk of cruelty, these are less effective than the provisions for responding to cruelty once it has occurred.

The POCTA Act also provides limited tools for encouraging and enforcing compliance with the law. Prosecution is a key tool of the POCTA Act, but legal proceedings do not always drive behavioural change to safeguard and improve animal welfare outcomes. Other jurisdictions have adopted additional approaches to prosecution to encourage compliance and drive behavioural change. More detail about other approaches is provided in Theme 3 – A better compliance and enforcement model.

In addition, not all activities involving animals are covered in all circumstances by the current POCTA Act. More detail about how some animals and activities involving animals are exempt from the POCTA Act is provided in Section 2.1 (Coverage and consistency).



### CRUELTY OFFENCES UNDER THE POCTA ACT

The primary animal cruelty offences in Victoria are set out in sections 9(1) and 10(1) of the POCTA Act.

Section 9(1) describes a set of behaviours towards animals which constitute cruelty. The most common offences listed in section 9(1) are:

- deliberate cruelty – wounding, mutilating, torturing, overriding, overdriving, overworking, abusing, beating, worrying, tormenting or terrifying an animal
- improperly loading, crowding or confining an animal so that it causes, or is likely to cause, unreasonable pain or suffering
- doing or omitting to do something which causes, or is likely to cause, unreasonable pain or suffering to an animal
- failing to provide food, drink or shelter
- failing to provide or seek veterinary treatment to a sick or injured animal.

Section 10(1) defines the more severe offence of aggravated cruelty, when one of the behaviours in Section 9(1) causes the serious disablement or death of an animal.

Section 11A(1) also defines procedures that are prohibited (mainly on a dog, cat, horse, sheep or reptile) that are prohibited by anyone but a veterinary practitioner, and some only for therapeutic reasons.

Section 13 sets out offences related to animal fighting, baiting and luring.

Maximum penalties for cruelty-related offences under the POCTA Act range from 250 penalty units or 12 months' imprisonment to 500 penalty units and up to three years' imprisonment. Maximum penalties are multiplied for body corporates.

**Proposal 1.3 – Introduce a set of general escalating offence categories covering things a person must not do to animals**

This proposal would provide a set of general offence categories for the acts or omissions a person must not do to animals. It would cover the conduct currently prohibited in specific cruelty offences in the current POCTA Act.

These general offence categories would be based on the nature of a person’s treatment of animal rather than the extent of the harm inflicted.

The harm inflicted by the conduct would be an aggravating factor, meaning that the severity of the offence would increase with the severity of the pain or suffering of the animal. Other factors could also increase the severity of an offence, such as a person’s actions being driven by profit or being undertaken in the commission of another offence (such as the use of live baiting in training racing greyhounds).

The escalating categories of offences proposed are shown in the Table below.

- Category 1 offences would cover failure to meet a minimum standard of care.
- Category 2 offences would cover conduct causing or likely to cause unreasonable harm, pain or distress to an animal.
- Category 3 offences would cover aggravating factors to Category 1 and 2 offences.
- Category 4 offences would cover conduct where a person deliberately causes harm to an animal.

More detail on how non-criminal and criminal responses might be adopted for different offences is provided in Theme 3 – A better compliance and enforcement model.

PROPOSED ESCALATING OFFENCE CATEGORIES			
<p><b>Category 1</b></p> <p>Failures to provide a minimum standard of care.</p> <p><i>For example:</i></p> <ul style="list-style-type: none"> <li>- Failing to take reasonable steps to provide appropriate accommodation.</li> <li>- Failing to comply with a mandatory Regulation, Code of Practice or National Standard.</li> </ul>	<p><b>Category 2</b></p> <p>Conduct causing or likely to cause unreasonable harm, pain or distress to an animal.</p> <p><i>For example:</i></p> <p>Wounding or improperly handling an animal.</p>	<p><b>Category 3</b></p> <p>Aggravating factors to Category 1 and 2 offences.</p> <p><i>For example:</i></p> <p>Act or omission resulting in serious harm or death.</p>	<p><b>Category 4</b></p> <p>Conduct where a person deliberately causes harm to an animal.</p> <p><i>For example:</i></p> <p>Activities such as torture, animal fighting, luring and other blood sports.</p>



**QUESTIONS**

- a) Do you support the shift from prohibiting specified actions and behaviours that constitute cruelty to providing a set of general offence categories?

Choose one of:  
*Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.

- b) Do you support escalating the offence categories?

Choose one of:  
*Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.

- d) Should the proposed escalating cruelty offences apply to all animals and all circumstances?

Choose one of:  
*Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.

- e) Would you like to see maximum financial penalties or imprisonment for cruelty-related offences change from current levels?

Choose one of:  
*Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.



## 1.4 Controlled procedures

There are times that painful or unpleasant animal husbandry procedures to animals are required to benefit the animal or for animal management considerations. Examples include castration, dentistry, ear-tagging and branding.

The current framework for regulating animal husbandry procedures in Victoria is fragmented. The requirements and conditions are detailed in the current POCTA Act and various other Acts as well as Regulations, Codes of Practice and Standards. This can make it difficult for people to navigate the legislation and understand the requirements that apply to procedures on animals.

The POCTA Act does not explicitly prohibit some unnecessary animal husbandry procedures (such as for cosmetic reasons).

The POCTA Act also lacks a central framework for assessing the necessity of procedures, the required qualifications to perform them, or the need to provide pain relief to an animal when it undergoes a procedure. For example, people without veterinarian qualifications can currently perform dentistry on animals and without using pain relief.

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

A single regulatory framework would cover all procedures that involve the interference with or manipulation of an animal's body in a way that could cause harm, pain or distress. The framework would provide consistency and clarity about the qualifications, skills, approach or equipment required to perform these procedures.

The new Act would set the criteria for defining a 'controlled procedure' as well as the categories of procedures and the circumstances in which each category of procedure can be performed.

These criteria would consider:

- Short-term effect – the degree to which the procedure would likely cause unreasonable harm, pain or distress, as well as the invasiveness and nature of the procedure and availability of pain relief.
- Longer-term effects – the necessity of performing the procedure, the quality of life of the animal once the procedure has been performed, and the likely recovery period from the procedure.
- Skills and training required to undertake the procedure.

Regulations would list specific procedures by category and stipulate any restrictions or conditions that apply to the ability to perform them.

Setting out the details in Regulations would provide the flexibility to enable requirements to be updated more easily to respond to new scientific evidence or understanding or the introduction of new practices. Amending an Act typically takes a lot longer than amending a Regulation because a Parliamentary process is required.

It is proposed the single regulatory framework sets out three categories for controlled procedures: Restricted procedures; Prohibited procedures; and Scientific procedures. These are explained further in the Table on the next page.

The framework is not intended to cover activities like animal grooming (such as brushing, hair or nail trimming or washing), shearing or brushing teeth. Prohibitions against causing unreasonable harm, pain or distress while performing these unrestricted activities would still apply.

## PROPOSED CATEGORIES FOR CONTROLLED PROCEDURES

### Restricted procedures

These would include procedures that are painful or otherwise affect animal welfare. People would require a certain level of competency and/or need to comply with requirements detailed in Regulations to be able to perform these procedures.

Examples might include castration and tail docking.

Some procedures would be restricted to registered veterinarians only, as covered by restricted acts of veterinary science in other jurisdictions.

### Prohibited procedures

These would continue the 'prohibited procedures' approach of the current POCTA Act and would be prohibited for all persons.

Limited exceptions for registered veterinarians for therapeutic purposes would exist for some specific procedures. Examples may include ear cropping and de-clawing.

### Scientific procedures

The existing definition and framework for the use of animals in science and teaching provided under the POCTA Act would likely be maintained in principle under the new Act, but would be reviewed to ensure consistency with the overarching aims of the reform.

## QUESTIONS

- a) Do you support a single regulatory framework covering the performance of controlled procedures on animals?
- b) What types of long or short-term effects on an animal, and what skills or training could apply to restricting or prohibiting a procedure?

Choose one of:

*Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.





## THEME TWO

# A simplified and flexible legislative framework



## Theme 2: A simplified and flexible legislative framework

The proposals in this theme aim to achieve a simplified legislative framework that is more flexible in its approach to better safeguard animal welfare.

Victoria's current legislative framework for animal welfare consists of the primary Act — the POCTA Act — and a complexity of subordinate instruments such as Regulations and Codes of Practice. There are also national Australian Animal Welfare Standards and Guidelines relating to animals, some of which Victoria has adopted.

Simplifying the framework for animal welfare legislation in Victoria would improve the balance between achieving the desired animal welfare outcomes and reducing the rules-based prescriptive regulation of the current POCTA Act. A simplified legislative framework would provide greater clarity and support national consistency in animal welfare requirements to reduce red tape for food and fibre producers.

A simplified legislative framework would also provide greater flexibility to enable the law to be more easily adapted in response to developments in animal science, or to new industry practices and technologies or changing community expectations.

The requirements around activities would be clearer for people who are responsible for caring for animals or interacting with an animal (such as those interacting with an animal classified as wildlife or a pest animal).

Simplifying the legislative framework would also improve transparency and consistency. It is important the Act provides a consistent framework and process for assessing and deciding the regulatory approach to current and future animal welfare requirements. For example, when there is new scientific understanding or technologies or any other changed circumstances, a legislative response (an amendment to the Act) is sometimes required.

At other times, amending an existing Regulation or creating a new Regulation might be more appropriate in terms of achieving the outcome sought. It is important the legislative framework provides clarity and transparency to assess which approach is best.

### What is an Act?

An Act is a law made by the Parliament. The Act sets out the requirements of the law and the punishments that apply when the law is not complied with. The Act states who regulates the law and sets out their regulatory powers. The Act also states which authority has the power to make or amend a Regulation.

A new Act takes considerable time to develop. A stakeholder and public consultation process is undertaken and a Legislative Impact Assessment is prepared. A draft Act (called a Bill) is introduced into the Parliament. A Parliamentary Committee looks closely at the Bill, and it is debated and voted upon in both houses of Parliament. A majority of members must vote for the Act in each house for it to be passed and signed by the Governor of Victoria to become a law.

### What is a Regulation?

A Regulation sets out specific requirements to meet the Act. The requirements of a Regulation are mandatory. A Regulation is created or amended by a government authority under the powers given to them by the relevant Act. This makes a Regulation easier to make or amend than an Act. Before a Regulation is made or amended, a stakeholder consultation and public feedback process usually occurs, and a Regulatory Impact Assessment is usually prepared.

### What is a Code of Practice?

A Code of Practice provides more detailed practical information on how to meet the requirements of an Act or a Regulation. The requirements of a Code of Practice can be mandatory or non-mandatory.

## 2.1 Consistency of the framework

While the POCTA Act is currently the primary legislation for managing animal welfare in Victoria, the Act does not apply in all situations where an animal is being used, handled or managed. This is one of the more confusing aspects for the community and can create challenges for regulators and those who are trying to comply with the rules.

Some activities conducted in accordance with the requirements of other Acts are provided an exemption to the POCTA Act. Acts that provide an exemption to the POCTA Act include but are not limited to the *Meat Industry Act 1993*, *Catchment and Land Protection Act 1994*, *Fisheries Act 1995* and the *Wildlife Act 1975* (excluding Part 3). If a person complies with the requirements of these Acts, they can use this as a defence if prosecuted under the POCTA Act.

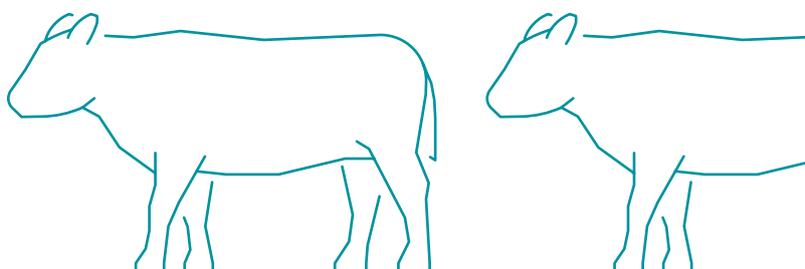
The various exemptions and the lack of a test under these other Acts to ensure the safeguarding of animal welfare creates the potential for unacceptable conduct not to be regulated, or for the community to perceive the conduct is not regulated.

Activities that are conducted in accordance with Codes of Practice attached to the POCTA Act can also provide a defence if people are prosecuted under the Act – but the requirements of the Codes of Practice are not always clear, and some have not been reviewed for some time.

This complexity can make it difficult for people to navigate the various pieces of legislation and understand which animal welfare requirements apply in different circumstances.

To avoid unintended consequences, a tailored approach will be required to ensure that currently lawful activities involving animals continue. This might be particularly relevant to, for example, the management of vertebrate pest species to protect primary production, Crown land, the environment and community health.

It is **not** proposed that the new Act change the current recognition of traditional and cultural Indigenous activities involving animals. Exceptions to the POCTA Act relating to the *Traditional Owner Settlement Act 2010* would remain.



### Proposal 2.1 – Consider the need for broad exemptions

Two options for addressing the current exemptions to the POCTA Act are proposed. The aim is to improve consistency in animal welfare requirements.

**Option 1: Continue to allow some broad exemptions to the application of the Act where they meet the objectives of the new Act.**

Option 1 proposes that some exemptions to the new animal welfare Act remain in place to allow lawful activities that may conflict with some requirements of the new Act. The exemptions would often require specific management to minimise negative animal welfare impacts.

For people undertaking activities covered by the exemptions, locating animal welfare requirements along with other duties and obligations in a single place would make it easier for them to understand and comply with the requirements.

Uncertainty among the community about varying animal welfare standards between different sectors may be addressed by a requirement that exemptions demonstrate they meet the objectives of the new animal welfare Act, and that any areas of conflict are managed in the relevant Act, Regulation or Code of Practice to minimise negative impacts on animal welfare.

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

Applying the requirements of the new Act to all animals and activities would provide clarity and consistency to animal welfare regulation in Victoria.

Option 2 proposes to provide for exceptions to specific requirements of the new animal welfare Act in certain circumstances, instead of a total exemption as is the case now. This means that Victoria's key animal welfare legislation would apply the same principle requirements to all animals.

Specific exceptions to the requirements of the new animal welfare Act would clearly state which of its requirements don't apply and in which specific circumstances.

This approach would enable lawful activities that might conflict with some requirements of the new Act, while ensuring the overarching principles of animal welfare still apply and that unintended gaps, loopholes and consequences for animal welfare would be caught by overarching animal welfare legislation. An exception may be conditional on meeting additional requirements or conditions for that activity to reduce risk to animal welfare.

For example, the trapping and killing of vertebrate pest species would be allowed, even though this results in the death of the animal. This may be conditional on taking reasonable steps to minimise pain and distress, such as meeting requirements outlined in Regulations (for example, only using approved traps and checking traps regularly). This would not prevent the Act applying to any other treatment of the same species. This (and other required specific exceptions) would replace the current broad exemption from the POCTA Act for anything done in accordance with the *Catchment and Land Protection Act 1994*.

The differences between Option 1 and Option 2 are set out in the Table on the next page.



## OPTIONS TO ADDRESS CURRENT EXEMPTIONS TO THE POCTA ACT

### Option 1

Continue some broad exemptions granted to other Acts, Regulations and Codes of Practice to allow lawful activities.

These must demonstrate they meet the objectives of the new animal welfare Act.

Any areas of conflict must be managed in the Act, Regulation or Code of Practice that is the subject of the exemption to minimise negative impacts on animal welfare.

*For example, the new Act may continue the current broad exemption for anything done in accordance with the Catchment and Land Protection Act 1994.*

### Option 2

No broad exemptions. Allowable exceptions to specific animal welfare requirements of the Act are detailed in new Regulations.

These exceptions need to be justified on a case-by-case basis.

Areas of conflict are managed by additional requirements for that activity to minimise negative impacts on animal welfare.

*For example, Regulations may specify when and how the trapping and killing of vertebrate pest species is allowed.*

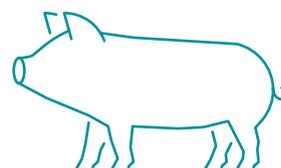
### QUESTIONS

a) Which option do you prefer?

*Option 1, Option 2, Don't know*

Can you tell us why?

b) If you know of any welfare requirements where exemptions or exceptions should not apply in any circumstances, can you tell us which ones?



## 2.2 Clarity of the framework

Under Victoria's current animal welfare legislative framework, a series of Regulations and Codes of Practice support the POCTA Act to set animal welfare standards. These have become complex, inconsistent and confusing. The requirements of different Codes of Practice can be inconsistent across species and industries and in many cases the requirements are not mandatory so are not enforceable.

A new Act means that we need to settle the design of the overarching animal welfare legislative framework and how Regulations and Codes may operate in the future. This includes considering how the new framework could address some of the current areas of confusion:

- Some POCTA Codes of Practice have mandatory status while others do not.
- Compliance with a non-mandatory Code of Practice can be used as a defence to an offence under the current POCTA Act.
- Some Codes of Practice attached to the POCTA Act are made mandatory in a variety of ways. This includes through specific reference in the Act or Regulations or as a condition of a licence under the POCTA Act or the *Wildlife Act 1975*.
- Other Codes of Practice attached to other legislation (such as the *Domestic Animals Act 1994*) also include some animal welfare elements.
- Codes of Practice attached to the POCTA Act, whether mandatory or non-mandatory, can include language such as 'must' and 'should', which can make their legal status confusing.
- It can also be difficult to enforce minimum mandatory standards set out in non-mandatory Codes of Practice as there are no offences or penalties attached to non-compliance.

The POCTA Act or Regulations attached to the Act also include very specific requirements for some activities involving animals. These requirements can take considerable time and be difficult to update in response to developments in animal science, new industry practices and technologies.

Keeping the numerous Regulations and Codes of Practice attached to the POCTA Act updated can also be challenging. Many have not been reviewed for a considerable time.

In some other jurisdictions, reforms have clarified the distinction between mandatory and non-mandatory Codes of Practice, or elements within Codes of Practice. These distinguish between:

- A Code of Practice that is non-mandatory – for example, the Australian Capital Territory refers to an 'approved Code of Practice'. No specific offence for non-compliance applies but non-compliance can be used to demonstrate the breach of general obligations and/or compliance with the Code of Practice can be made a licence condition for some purposes.
- A Code of Practice, or part of a Code of Practice, that is mandatory – for example, the Australian Capital Territory refers to a 'mandatory Code of Practice' and Queensland calls it a 'compulsory code requirement'. This is established through a Regulation, with non-compliance being a specific offence.



## Proposal 2.2 – Reform the current framework of the Act and its supporting Regulations and Codes of Practice to improve clarity

Two options for reforming the current legislative framework are proposed. Both options feature the primary legislation — the new animal welfare Act — setting minimum standards for how people must and must not treat animals.

Both options include Regulations covering administrative rules and requirements, as well as mandatory, legally enforceable requirements for specific animals and uses. The main difference between the options is the level of detail prescribed in Regulations.

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

The Regulations would set out a limited number of mandatory requirements for specific animals and uses including permissions, exceptions and requirements around controlled procedures. Most of the details about how to meet the regulatory requirements would be provided in mandatory and enforceable Codes of Practice. These may allow for alternative approaches to meeting the requirements of the Act, but the burden would be on the person wanting to use the alternative approach to demonstrate that the approach would result in equivalent or higher welfare. Guidelines with no legal enforceability would set out further advice on how to achieve best practice.

### **Option 2: A comprehensive set of Regulations supported by best practice Guidelines (no Codes of Practice).**

Regulations would be more comprehensive than under Option 1, detailing prescriptive requirements for specific animals and uses. These would be mandatory and legally enforceable, even if alternative practices have been developed. Guidelines with no legal enforceability would set out further advice on how to achieve best practice (above the minimum standards).

Option 1 and Option 2 are summarised on the next page.

#### QUESTIONS

a) Which option do you prefer?

*Option 1, Option 2, neither option, don't know*

If Option 1, Option 2 or neither option, please tell us why.

b) If you can suggest another option to reform the current framework of Act, Regulations and Codes of Practice to improve clarity, please tell us about it.



## PRIMARY LEGISLATION – ANIMAL WELFARE ACT

Sets out minimum standards (obligations and prohibitions) for how people must treat animals which apply to all animals and all sectors.

### OPTION 1

#### Regulations

Mandatory requirements detailing:

- **Permissions** and conditions required for some activities
- **Controlled procedures** relevant to specific industries
- **Exceptions** to specific elements of the Act for certain industries and uses
- Any other critical requirements that cannot be covered in Codes of Practice.

Regulations would also include administrative rules and requirements that apply across sectors (such as fees).

#### Mandatory Codes of Practice

Detailed direction on industry-specific measures to meet the high-level requirements of the Act. Failure to comply with the requirements of a Code would be an offence.

#### Guidelines

Additional best practice guidance with no legislative standing.

### OPTION 2

#### Regulations

Apply in conjunction with the basic welfare requirements to prescribe more detailed mandatory requirements for specific animals, industries and uses to demonstrate that people have met their obligations to animals in their care. These would be structured by industry or use and would include:

- Prescriptive industry-specific requirements to meet the outcomes of the Act
- Detail of any **permissions, procedures** and **exceptions** that apply to that industry.

Regulations would also include administrative rules and requirements that apply across sectors (such as fees).

#### No Codes of Practice

#### Guidelines

Additional best practice guidance with no legislative standing.

## 2.3 Incorporating National Codes of Practice, Standards and Guidelines into the framework

To provide more consistent animal welfare requirements across Australian states and territories, a number of national Codes of Practice as well as Standards and Guidelines have been developed.

In particular, Australian Animal Welfare Standards and Guidelines are progressively being developed to replace the existing national Model Codes of Practice.

The various Australian Animal Welfare Standards and Guidelines are separated into 'standards' (essential requirements that are transferable into legislation), and 'guidelines' (guidance to be considered by industry but not enforced in legislation).

To date, states and territories have agreed on four Australian Animal Welfare Standards and Guidelines covering livestock-specific species and activities or facilities. These Standards and Guidelines cover: cattle; sheep; land transport of livestock; sale yards and depots.

In Victoria, one of these Standards and Guidelines (land transport of livestock) has been adopted in Regulations under the *Livestock Management Act 2010*. There is no clear mechanism in the POCTA Act to adopt agreed Codes, Standards and Guidelines.

The Australian Animal Welfare Standards and Guidelines for Exhibited Animals has also been agreed. Compliance with the Standards is a condition of permits that authorise the keeping of declared pest (exotic) species in privately owned zoos and wildlife parks in Victoria.

While the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes does not fall under the Australian Animal Welfare Standards and Guidelines process, the Code sets important national standards. Compliance with the Code is currently mandatory under the POCTA Regulations 2019.

Representatives of animal-based industries in Victoria have indicated strong support for the adoption of Australian Animal Welfare Standards and Guidelines within the state's animal welfare framework to reduce the regulatory burden of inconsistent standards across jurisdictions.

A concern with adopting Australian Animal Welfare Standards has been the potential to introduce confusion through the duplication or lowering of existing animal welfare requirements.



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

This proposal would enable the ‘Standards’ portion of any national Standards and Guidelines to be incorporated into Victoria’s animal welfare Act. The ‘Guidelines’ would only apply as guidance for industry with no mandatory requirement. Two possible options for adopting agreed national Standards are proposed.

**Option 1: Adopt all agreed national Standards automatically by referencing them in the new animal welfare Act.**

Option 1 would see the new animal welfare Act provide for Australian Animal Welfare Standards to be prescribed as enforceable requirements (with the same status as Regulations) within a set transition period of their national endorsement (such as within six months). A mechanism would be included to enable varying of the national Standards by exception (with variations settled within the transition period). This would ensure that no Standard that was lower than Victoria’s current standard would be adopted, and that requirements adopted were clear enough to allow them to be enforced. The Act would outline enforcement arrangements and penalties for non-compliance with the national Standards.

**Option 2: Adopt relevant content from the national Standards into Regulations.**

Option 2 would use the Australian Animal Welfare Standards as the basis for developing relevant Regulations under Victoria’s new animal welfare Act. These Regulations would mirror the national Standards but would allow for all components of the Standard to be reconsidered through a Victorian regulatory process. This would allow adjustments to be made to the national Standards as they apply in Victoria.

**QUESTIONS**

a) Which option do you prefer:

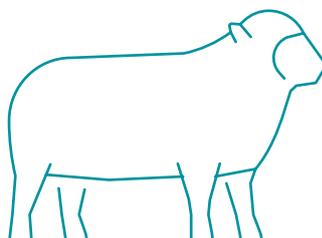
Option 1, Option 2, neither option, don’t know

If Option 1, Option 2 or neither option, please tell us why.

b) If you can suggest another option to deal with any inconsistencies between Victoria’s legislative requirements and the national animal welfare Standards, please tell us about it.

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

Why/why not?



## 2.4 The role of co-regulation in the new framework

Many animal-based industries, activities and not-for-profit organisations that involve animals are regulated in various ways by professional non-government bodies. People and organisations may choose or be required to demonstrate they are meeting certain animal welfare standards through professional memberships, accreditations, certifications, regulated Codes of Practice, or quality assurance or audit arrangements.

In response to market trends and demands, non-government standards are sometimes higher than the minimum standards required by legislation. The certification, approval or quality assurance schemes for these non-government regulatory arrangements are not recognised under the current POCTA Act, even if they demonstrate best practice in animal welfare.

These non-government regulatory arrangements could be adopted into the legislative framework where they meet or exceed the minimum legislated standards. This is known as 'co-regulation'. Co-regulation involves industry and enforcement agencies working together to set and enforce standards.

While a co-regulation approach has not been widely used for animal welfare, the rise of market-driven animal welfare requirements means that co-regulatory arrangements can help maintain the flexibility and efficiency of the regulatory framework. Co-regulation can also help reduce regulatory burden or 'cut red tape' by allowing someone to demonstrate they are meeting their legislative requirements by complying with an existing scheme.

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

Allowing for co-regulation means the new animal welfare Act would enable the recognition and adoption of best-practice standards for animal welfare in place of direct government regulation. For example, people and organisations could seek to demonstrate they meet standards in animal welfare by adopting an appropriate quality assurance scheme.

Where legislation allows for co-regulation, government would request information from the co-regulatory body on its accreditation program to determine if it ensures that equal or higher animal welfare standards are being met by its members. If the program is robust, the government could elect to reduce other assurance requirements on members (such as audits or licences) as these have already been demonstrated through their membership of the scheme.

Under the co-regulatory model, the effort of government is redirected to the setting of requirements to apply, evaluate and approve a scheme, so that it would meet an equivalent or higher standard than in the new animal welfare Act.

For example, an industry body may be able to assure that members are competent to undertake a restricted procedure (see Section 1.4 – Controlled procedures). Recognising this process in Regulations under the new Act as a requirement for allowing people to perform the restricted procedure would constitute a co-regulatory arrangement.

A co-regulatory arrangement would not alter or replace the enforcement powers of regulatory agencies. Co-regulation would aid in defining and demonstrating that the broad requirements articulated in legislation are being met in specific industries and circumstances, through arrangements approved by government. Enforcement agencies would remain responsible for compliance action in response to breaches.



### QUESTIONS

- a) Do you support allowing for co-regulation in the new animal welfare Act?

Choose one of:

*Support, partly support, don't support, don't know*

If your response is support, partly support or don't support, please tell us why.

- b) If you know of any existing certification, approval or quality assurance schemes that operate successfully in an industry, what makes them successful?

- c) If you can suggest where the best opportunities are for some elements of the new animal welfare Act to be co-regulatory, please tell us about them.

- d) What challenges or areas of risk must be well-considered when assessing co-regulation?



## 2.5 The role of science in the new framework

Animal welfare science and understanding has significantly developed since the POCTA Act came into force in 1986. For example, scientific studies have demonstrated that animals are sentient.

We expect scientific understanding of animals, industry practices and technologies to continue to develop.

In other jurisdictions, formal guidance is incorporated into legislation on how science and expert opinion should be used to inform animal welfare decisions. For example, the Purpose of the New Zealand *Animal Welfare Act 1999* explicitly requires:

*owners of animals, and persons in charge of animals, to take all reasonable steps to ensure that the physical, health, and behavioural needs of the animals are met in accordance with both —*

- (i) good practice; and*
- (ii) scientific knowledge.*

The consideration of current scientific knowledge is most relevant to the making of industry and animal-specific Regulations and Codes of Practice, which need to be informed by understandings in animal science and industry practices.

New Zealand legislates the role of a formal expert-driven Advisory Committee in developing Codes of Practice. The legislation includes explicit reference to factors that must be considered when developing Codes of Practice including good practice and scientific knowledge, available technology and if relevant, practicality and economic impacts. This helps to provide transparency in the roles and expertise of advisory committees and the process and factors considered when developing Codes of Practice.

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

Three options are proposed for considering and incorporating new scientific understanding of animals, industry practices and technologies into the new Act or its supporting instruments. Just one option could be adopted or a combination of two or all three options could be implemented.

#### **Option 1: Formalise a role for an expert advisory committee by reference in the new Act.**

While an advisory committee does not need to be recognised in legislation to operate effectively, formally establishing its role, membership and purpose in legislation would improve transparency and governance and ensure a source of independent expert advice is available to inform policy development and decision-makers.

#### **Option 2: Include guidance in the new Act on how science and expert opinion should be used to inform decisions under the Act.**

The guidance may be included in the Principles of the new Act, which provide guidance to decision-makers about the things they should consider in carrying out the Objects of the Act (that is, how they exercise the powers provided under the Act). The guidance may include a requirement for decision-makers to have regard to best available scientific knowledge in relation to the management of animals.

**Option 3: Include guidance in the new Act on how science and expert opinion considered in the development of Regulations and Codes of Practice under the Act.**

This may list the considerations that decision-makers must have regard to when making new Regulations or Codes or Practice, including scientific knowledge relevant to the management of the animals that a particular Regulation or Code of Practice relates to.

**QUESTIONS**

**a) Which option do you prefer:**

*Option 1, Option 2, Option 3, none of the options, a combination of the options (please specify).*

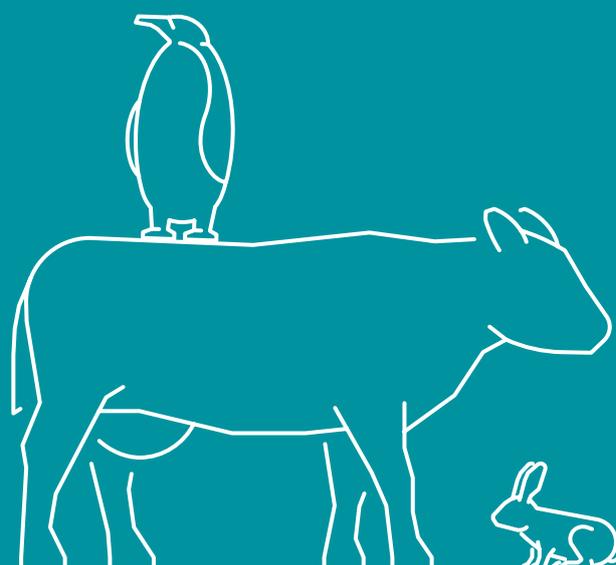
Please tell us why.

**b) If you can suggest another option to formalise a role for scientific knowledge and expert opinion to inform decisions under the new Act, please tell us about it.**



**THEME THREE**

# A better compliance and enforcement model



### Theme 3: A better compliance and enforcement model

The proposals in this theme aim to encourage compliance with animal welfare requirements and improve the enforcement model.

The current POCTA Act provides a limited compliance and enforcement ‘toolbox’ for authorised officers. This restricts the response options of enforcement agencies.

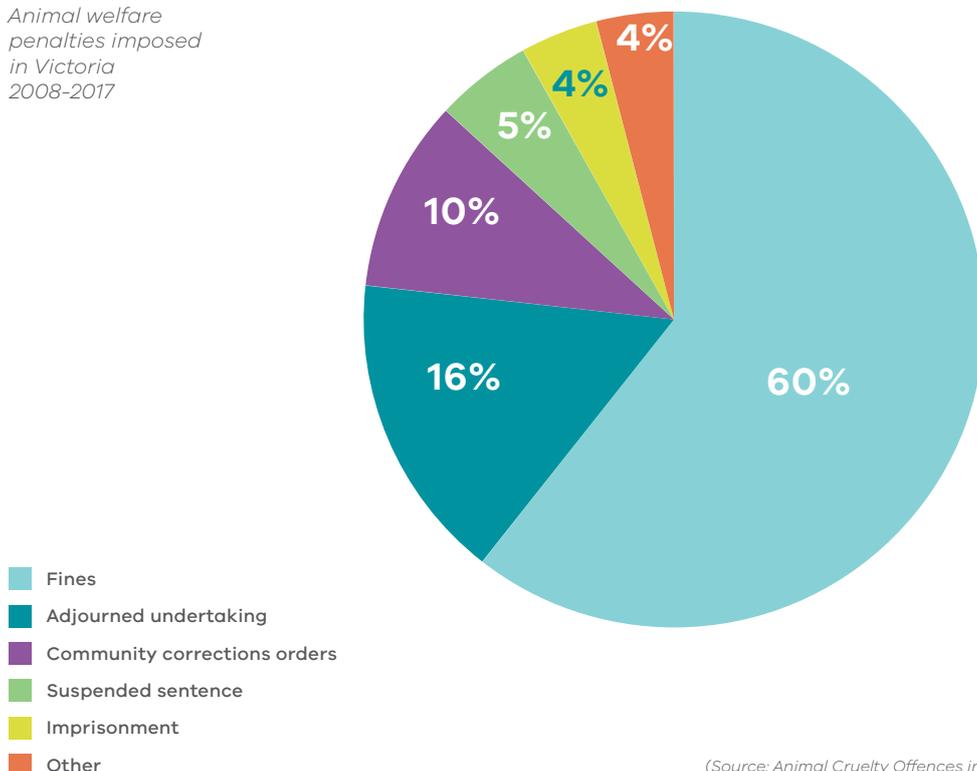
At present, prosecution in a court may be the only available way to respond to a minor offence but may not be justifiable relative to taking a more serious offence to court (given cost and time constraints on prosecutors). The addition of compliance tools to the POCTA Act (such as Notices to Comply) have sought to address this, but criminal prosecution tools remain the core enforcement to ‘punish’ acts of cruelty once they have occurred.

The *Animal Cruelty Offences in Victoria* report (Sentence Advisory Committee, 2019) identified that neglect-based offending — offenders failing to

adequately provide and care for animals — is far more prevalent than more deliberate and malicious acts of cruelty. There are many reasons that people fail to properly care for animals, such as lack of knowledge or understanding, mental or physical illness or financial difficulty. The limited toolbox for responding to circumstances such as these means that many people are prosecuted for neglect-based offending. Prosecution may not be the most effective outcome for an animal in these circumstances.

The pie chart shows that the most frequent penalty when people fail to comply with requirements of the current POCTA Act is to impose a criminal sanction that is financial (a fine). More options to enable earlier intervention with non-criminal responses may achieve a better outcome for animals and the person involved.

*Animal welfare penalties imposed in Victoria 2008-2017*



(Source: *Animal Cruelty Offences in Victoria*, Sentencing Advisory Committee, 2019)

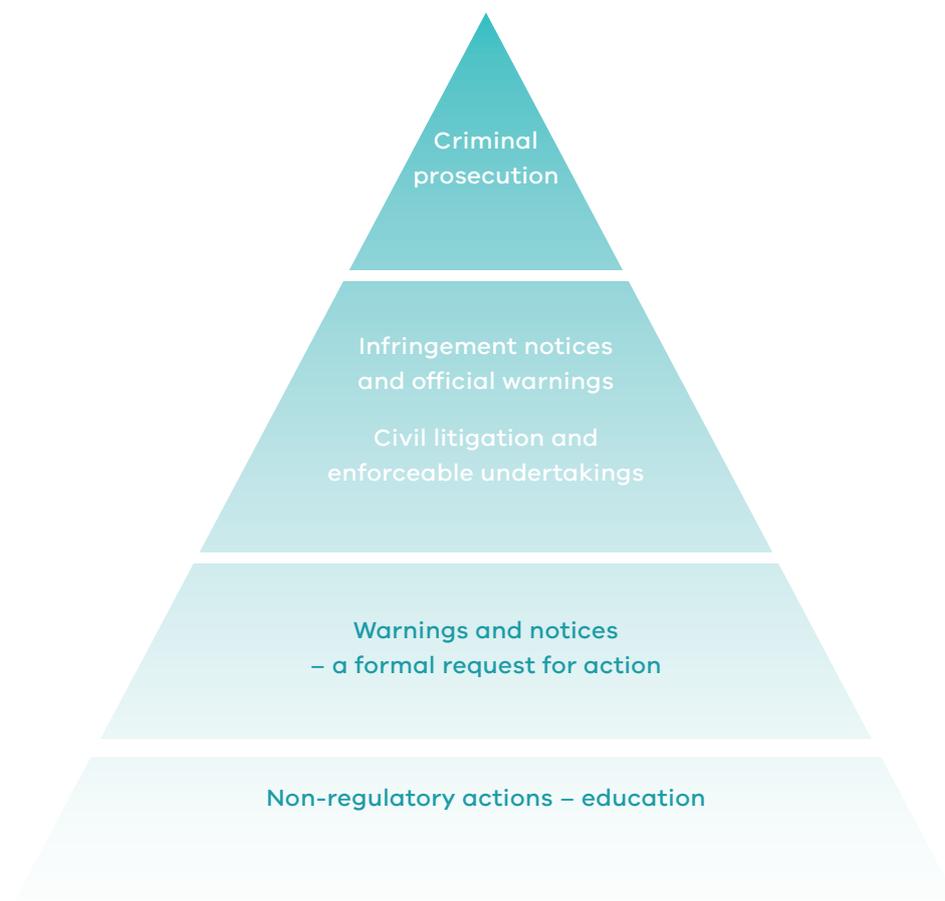
The available criminal sanctions (fines or imprisonment) available under the current POCTA Act and the evidentiary burden required (where the prosecutor must prove the defendant's guilt beyond a reasonable doubt) may also not be proportional or appropriate to some administrative breaches of the law (such as deficiencies in meeting reporting or auditing requirements for a licence required for some animal-related activities such as rodeos).

A robust toolkit that provides a set of graduated non-regulatory, non-criminal and criminal enforcement options would better address different non-compliance behaviours and situations.

The proposed graduated response is set out in the Figure below. This approach would provide the flexibility to address lower levels of non-compliance with non-regulatory or non-criminal responses that

may achieve a better outcome for the animals and the person involved than if criminal prosecution was pursued. The graduated response would align with Proposal 1.3 – *Introduce a set of general escalating offence categories covering things a person must not do to animals*. Transparency about why a particular compliance and enforcement option has been applied would be important for this approach.

Many of the tools for a graduated approach to non-compliance will be developed as part of the consideration of technical topics - see the final of section of this paper (Topics for further development).



### 3.1 Monitoring compliance

The current POCTA Act is typically enforced by an animal welfare inspector or officer authorised under the Act to respond to 'reasonable' suspicion that cruelty has occurred. A shift to requiring people to meet a minimum standard of care for animals may require enhanced proactive monitoring tools, such as routine or unscheduled audits and inspections.

The POCTA Act is limited and inconsistent in the powers that enable proactive action to intervene early to assess compliance with the Act.

Apart from a few specific activities there is little scope for proactive monitoring without a complaint or reasonable suspicion of cruelty.

The animal welfare legislation in Queensland and South Australia provides for monitoring where there is not necessarily a suspicion of a cruelty offence.

The Queensland *Animal Care and Protection Act 2001* [chapter 5] provides a formal process for special monitoring programs for inspectors to monitor compliance with compulsory requirements of Codes of Practice and the scientific use code, as higher risk matters.

The South Australian *Animal Welfare Act 1985* [Section 31], includes a general power for routine inspections not specific to the monitoring of compliance with Codes of Practice.

A more robust compliance framework based around the risk posed by different activities will help achieve better outcomes for animals. Enhancing the compliance framework will also help our animal-based industries to maintain their social licence to operate as well as maintain and grow their market opportunities.

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

Enhancing powers to allow for broader assessments of compliance, rather than tying compliance responses to a complaint or suspected act of cruelty would be limited to specific circumstances:

- Where a licence, permit or registration applies – for example, this would continue the current power for an inspector to enter any premises licensed to conduct scientific procedures to monitor compliance with the requirements for those procedures. It may also extend these powers to other medium to high risk areas as outlined in the next Section 3.2 (Permissions and restrictions)
- Where regulators are already involved – for example where a Notice to Comply or order has been made, or where a person who is (or has recently been) the subject of an animal welfare regulatory action or criminal prosecution for non-compliance has animals under their care in a different location.

- Where a decision-maker specifically authorises the use of monitoring powers based on an event or issue, retaining current powers under the POCTA Act – for example, this may be in response to identification of systematic issues in a particular industry or business.

Broader powers relating to routine audits and inspections, with or without prior notice, could also be considered for 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.

Any enhancement to powers available to inspectors or officers would be accompanied by additional training and requirements to support proper implementation.

**QUESTIONS**

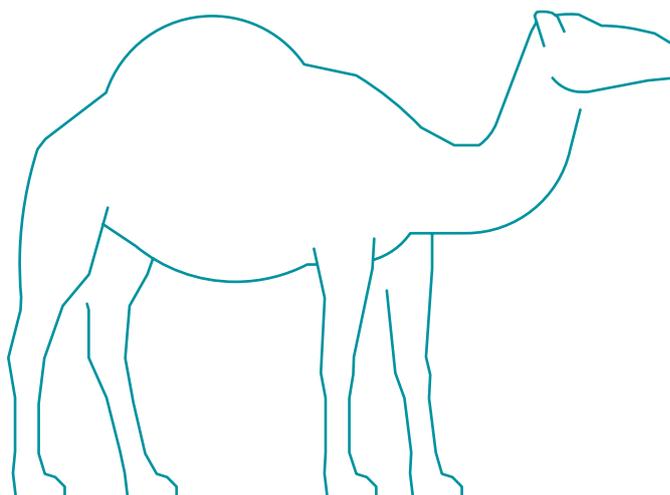
- a) Do you support enhancing powers to enable proactive assessments for compliance with the new animal welfare Act?

Choose one of:

*Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.

- b) Under what circumstances would proactive monitoring be appropriate? Why?



### 3.2 Permissions and restrictions

Some activities involving animals are restricted under the current POCTA Act, in that they require a licence, permit or approval arrangement. Examples of restricted activities include rodeos and scientific research involving animals. Each scheme

for permitting restricted activities is drafted with a different approach, which adds to the complexity of the POCTA Act. The requirements and processes of the schemes are also inconsistent.

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

This proposal would provide a framework to classify activities based on potential risk to animal welfare and apply a consistent approach to restricting these activities and to the permissions required to undertake a restricted activity.

The framework may not require any additional permissions for low-risk activities but may impose monitoring requirements on activities categorised as medium risk.

Some activities in the medium to high-risk category may only be allowed to be undertaken by those with appropriate qualifications. Only the highest-risk activities would require a licence, such as currently applies to scientific establishments under the POCTA Act.

The Table below sets out how the risk-based framework would work.

Risk level	Permission required	Description	Possible assurance methods
Low	None	No special permissions required. <i>For example: Owning a cat or dog.</i>	Monitoring in response to complaints or suspicions.
Medium	Registration	Those undertaking the activity might be required register the details of the activity. <i>For example: Using animals in film and television production.</i>	Risk assessment and management plans, with monitoring of the activity if appropriate.
Medium-high	Restricted access approval	Only people with the required qualifications can undertake the activity. <i>For example, only veterinarians can perform surgery on animals.</i>	Assurances undertaken at industry or profession level, not individuals or businesses. Potential area for co-regulation.
High risk	Licence	Those undertaking the activity must apply for a licence. Demonstration of the required skills, experience, risk-management or infrastructure would be required for a licence to be granted. <i>For example: Scientific establishments conducting research involving animals currently require a licence under the POCTA Act.</i>	Regular monitoring through audits and/or use of technologies. <i>For example: Drones, fixed cameras, temperature gauges.</i>

## QUESTIONS

- a) Do you support introducing a risk-based framework for permitting restricted activities under the new Act?

Choose one of:

*Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.

- b) Where should existing licences, permits and other approvals sit in the risk-based framework?

- c) What criteria should be used to classify activities based on risk? For example, the potential for unreasonable harm, pain or distress, the experience and qualification required, the type of equipment needed, the purpose of the activity or any other criteria.



### 3.3 Managing seized animals

Animals may need to be seized for many reasons. The management of seized animals is important to ensure good animal welfare outcomes for those animals.

Animals seized under the POCTA Act may be sold, re-homed or euthanised, although the ability to do this is often linked to legal proceedings. This means the department or the enforcement agency which has seized the animals may need to keep them for long periods until legal proceedings are complete. For example, RSPCA Victoria's inspectorate data indicates that seized animals are housed in their shelters for an average of 114 days.

Long-term management requirements for seized animals can also incur significant expenses for the department or other enforcement agencies. Provisions were introduced into the POCTA Act to help reduce these costs but these have proved difficult to implement in their current form. Where costs are recouped, it generally occurs once legal proceedings are completed, which means the department or enforcement agency carries a significant financial burden caring for the animals in the meantime. When costs are awarded, an offender often does not possess financial capacity to pay and so the department or enforcement agency bears the cost.

#### CASE STUDY: ANNIE THE HORSE

A member of the public makes a complaint to the RSPCA Victoria about a horse called Annie. An RSPCA Victoria inspector assesses Annie and finds her to be significantly overweight with severely overgrown hooves and painful foot abscesses on her front hooves. The RSPCA Victoria seizes Annie and prosecutes Annie's owner for cruelty under the POCTA Act.

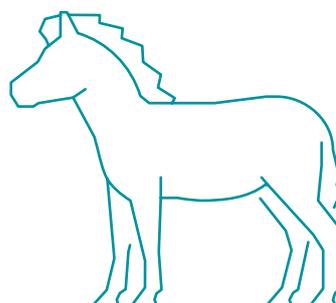
The RSPCA Victoria takes responsibility for Annie. Her specialised care means paying for her treatment at an equine hospital. Because of poor treatment she has previously experienced, Annie is difficult to handle and her behaviour can be dangerous for animal care staff. While the prosecution is underway and her treatment continues, Annie mostly stays in a stable all day.

Annie's veterinarians must weigh up how she can be handled and medically treated while considering how her medical conditions will affect and impact her quality of life and welfare.

Annie provides an example of the difficulty of these decisions. The medical treatment has enabled Annie's medical, food and water needs to be met in her stable, but she rarely socialises with humans and other horses and the only exercise she receives is walks on the lead.

The cost of Annie's care during the prosecution of her owner exceeds \$21,000 within a year. While a successful prosecution may mean the RSPCA Victoria can pursue the recovery of some of this amount, the request for recovery must be 'reasonable' for each party. This means it is unlikely the RSPCA Victoria will recover all costs for Annie's case, particularly if the neglect of Annie was caused by financial limitations of the owner.

Decisions about Annie's future cannot be made until the end of court proceedings. This means that Annie is left in pain with minimal social interaction, which in turn makes finding a suitable home for her difficult.



### Proposal 3.3 – Set out clear alternatives for managing seized animals.

If animals seized were no longer at risk or where there is reasonable belief the welfare of the animal would not be at risk if returned, the animal would be returned to the most appropriate person, usually the owner (as is the case now). This would not prevent any enforcement action being undertaken for the previous breaches if appropriate in the circumstances.

If the person in charge was uncontactable or was unable to rectify the situation that led to the seizure, four possible alternatives are proposed in the Table below.

PROPOSED ALTERNATIVES FOR MANAGING SEIZED ANIMALS			
<p><b>Alternative A</b></p> <p>Sell the animals, with proceeds of their sale first applied to recovering costs incurred in any maintenance, care, removal, transport and sale of the animal, and any remaining balance paid to the owner of the animal.</p>	<p><b>Alternative B</b></p> <p>Arrange for permanent ownership of the animal to be transferred to another person.</p>	<p><b>Alternative C</b></p> <p>Destroy (euthanise) the animals on animal welfare grounds or for other humane reasons, such as when they are unsuitable for re-homing due to issues including aggression or behavioural problems.</p>	<p><b>Alternative D</b></p> <p>Manage the animals as required by other legislation (for example the <i>Wildlife Act 1975</i>).</p>

#### QUESTIONS

- a) Do you support the proposed set of alternatives for managing seized animals?

Choose one of: *Support, partly support, don't support, don't know.*

If your response is support, partly support or don't support, please tell us why.

- b) Who should make the decision on managing seized animals?

*Minister for Agriculture, Departmental Head, Chief Veterinary Officer, the enforcement agency which seized the animals, or other.*

Please tell us why.

- c) Should enforcement agencies be required to keep seized animals until legal proceedings are complete?

Why/Why not?



# Topics for further development



## Topics for further development

In addition to the proposals presented in this paper, technical work relating to the new animal welfare Act will be considered.

Any major proposals relating to technical topics will be released with the draft Bill, which is intended to be released for public consultation before its introduction into Parliament.

Technical topics for further examination are summarised below.

- **Definitions and key terms** – Are any new definitions needed? What terms need to be clarified? Are the terms consistent with other legislation? What are the implications of changing any definitions?
- **Emergency response powers** – When and how should enforcement agencies respond in an emergency? What constitutes an emergency? When and how should inspectors be able to seize animals and what framework should govern the options for managing seized animals?
- **Act administration** – How should permits and licences be administered? What fees and charges are appropriate? How should information be shared across enforcement agencies? When and how should costs be recovered? When and how is it appropriate for responsibilities to be delegated under the Act?
- **Powers for authorised officers** – What actions should an animal inspector be able to take under the legislation? How should inspectors be appointed? What training is needed? Are there any other qualified people who should be able to undertake specified functions? What additional powers might some specially trained inspectors need? Would some of these (for example access to surveillance devices) require additional training and appointment requirements?
- **Compliance and enforcement tools** – What warnings, notices or directions should be available to support compliance? What should be the consequences of not complying with one of these tools? When should infringement notices be available? What evidence gathering powers are needed to support prosecutions if a breach of the legislation has occurred?
- **Civil penalty options** – What non-criminal sanctions and other tools should be available under the legislation? Should the legislation allow for enforceable undertakings (where a person agrees to satisfactorily rectify a situation with penalties imposed if they do not)? Should civil as well as criminal penalties apply to some breaches of animal welfare laws?

### QUESTIONS

- a) Please provide comments on these technical topics if you believe they will assist us with our policy development.
- b) If there are other technical issues you believe should be addressed in the reform, please tell us about them.



