



VICTORIA'S NEW
ANIMAL CARE AND
PROTECTION LAWS

Plan

VICTORIA'S NEW ANIMAL CARE AND PROTECTION LAWS PLAN

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Traditional Owner and First Peoples' acknowledgement

We acknowledge the Traditional Owners of Country throughout Victoria and their intrinsic connection to this land, and pay our respects to their Elders past, present and emerging.

We recognise the unique cultural knowledge, rights and interests of Traditional Owners and Aboriginal people in Victoria.

We seek mutual partnership that will inform policies and programs that respects and considers Aboriginal self-determination and further aligns with the aspirations for treaty.



Foreword

Animals are part of the lives of most Victorians. Millions of us care for a pet, work with animals, or we interact with animals for recreation and other activities.

While most people treat animals humanely, it's important that our laws deter cruelty and are clear about how animals should be treated. We need the right powers and tools for when people don't treat animals as they should.

Developing new animal welfare legislation is a priority action of Victoria's Animal Welfare Action Plan. The action was set following stakeholder and community consultation which identified that while the current legislation has served Victoria well for over 30 years, it's time for new and improved laws.

Modern animal welfare laws will help maintain community trust in our animal-based industries and sectors. Modern laws are increasingly important for demonstrating to our trading partners that Victoria's industries are committed to good animal welfare practices.

Considerable work to develop new legislation has been undertaken

In 2020, high-level policy proposals for a new Act to replace the current *Prevention of Cruelty to Animals Act 1986* were released for public feedback. The policy proposals were developed following consultations with representatives of more than 50 animal-based industry and community organisations, along with animal scientists, animal welfare regulators and others with expertise or an interest in animal welfare.

More than 1200 responses on the proposals were received. They showed overwhelming support for laws that recognise the latest animal science and provide clarity about how animals should be treated.

Other tasks to inform the new legislation have included research to better understand the perspectives and expectations of Victorians for animal welfare. Animal protection laws in other jurisdictions have been reviewed, along with potential economic impacts and market opportunities of reforming the laws.

This plan provides another opportunity for feedback

Developing a new Act takes time. We need to make sure we get the laws right.

This plan provides another opportunity to give feedback. The plan explains the main policy positions that will underpin Victoria's new animal care and protection laws.

The main aim of the new laws is to help protect animals from cruelty while enabling Victorians to continue to interact responsibly with animals. Lawful activities such as hunting, fishing, farming, racing and pest control would be able to continue.

We're seeking feedback on any concerns about the policy positions in the plan. This includes where greater clarity may be needed, or where unintended consequences are identified.

Your feedback will inform draft legislation

Feedback received will inform the development of an Exposure Draft of the legislation. It is planned to release the Exposure Draft in 2023 for another round of public feedback. This will provide Victorians with a final say before a Bill is introduced into the Victorian Parliament for consideration.

If that Bill is passed, consultation with stakeholders and the community will continue as regulations and other legislative tools to support the new Act are developed.

The Hon Gayle Tierney, MP
Minister for Agriculture

Introductory

Purpose of consultation

The plan sets out policy positions for new animal care and protection laws for Victoria.

The policy positions were developed following substantial engagement and consultation with stakeholders and the Victorian community.

This included a Directions Paper released for public comment in 2020, and community research to better understand the perspectives and expectations of Victorians for animal welfare. Animal protection laws in other jurisdictions were reviewed, along with potential economic impacts and market opportunities of the reform.

The policy positions set out in this plan are grouped into five categories as set out below.

The positions set out in the plan have been developed within the general constraints on the making of laws in Victoria. This included consideration of the Victorian Charter of Human Rights and Responsibilities, the consistency of laws across the statute book, and making sure any new laws can be effectively and efficiently enforced.

The plan explains what each policy would look like in new laws, how things would change from the current *Prevention of Cruelty to Animals Act 1986* (POCTA Act), and how the policy compares to other jurisdictions. Practical examples of the expected impacts of policies on stakeholders are provided.



Providing feedback

Feedback is invited on this plan for Victoria's new animal care and protection laws.

Feedback is sought on:

- Priorities and concerns
- Impacts
- Unintended consequences
- Gaps.

Please submit your feedback in writing, clearly identifying which policy or policies you are responding to.

Upload your submission on the Engage Victoria website at engage.vic.gov.au/new-animal-welfare-act-victoria.

If you need help with uploading your submission, please contact Engage Victoria at engage.vic.gov.au/contact

More information

If you have further questions about this plan for new animal care and protection laws, call the Customer Call Centre on 136 186 or email legislationreform@agriculture.vic.gov.au.

Note that submissions on the plan cannot be accepted via this email.

Sign up to receive updates

To stay updated on progress to develop the new laws as well as future engagement opportunities as regulations are developed, visit engage.vic.gov.au/new-animal-welfare-act-victoria, and click on 'Follow'.

Background

While the current POCTA Act has supported Victoria's reputation for fostering a high standard of animal welfare for more than 30 years, some parts of the legislation are outdated or lack clarity, and some parts do not work as well as they could.

A review of the POCTA Act in consultation with stakeholders and the community identified that a contemporary legislative framework with improved laws would better protect the welfare of animals, while meeting the needs and expectations of industry, community and government now and in future. The review identified that a new Act is the most effective way to improve our animal welfare laws.

Directions Paper

A Directions Paper setting out policy proposals for a new Act was released on the Engage Victoria website for public feedback in 2020.

More than 1200 responses to the proposals were received during the eight-week consultation.

An Engagement Report summarising feedback received on the proposals for the new Act was released in April 2021.

The Directions Paper and the Engagement Report are available on the Engage Victoria website at engage.vic.gov.au/new-animal-welfare-act-victoria (search for Animal Welfare Act).

Jurisdictional comparison

Animal protection laws in other Australian states and territories were reviewed to understand their legislative approaches. Animal protection laws of international jurisdictions were also reviewed, including New Zealand, the European Union, and the United Kingdom.

Community research

Research to better understand the perspectives and expectations that Victorians have for animal welfare was also conducted in 2020.

The research involved 3501 Victorians who participated in online and computer assisted telephone interview surveys. Group workshops and one-on-one interviews were also held with community members and representatives of animal sectors as well as other experts (such as people involved with animals for work, recreational activities or in a volunteer capacity, as well as academics whose work focuses on animal welfare).

Next steps

Feedback received on the policies set out in this plan will inform the development of a draft Bill for a new Act.

Developing a draft Bill

It is intended that a draft Bill is released for public feedback in 2023. This will give Victorians an opportunity to provide their opinion on the Bill before its introduction to the Victorian Parliament.

A Bill becomes a law (an Act) once a majority of the Legislative Council and the Legislative Assembly vote in favour of the Bill, and the Governor of Victoria provides Royal Assent.

A new Act is the first step in modernising Victoria's animal welfare laws. The new Act would set general expectations for how we must treat animals. The Act would also provide for the making of regulations.

The Victorian Parliament website has more information about how a new law is made at parliament.vic.gov.au/about/how-a-law-is-made.

Developing regulations

Regulations would be developed and made to support the operation of the new Act. Regulations can set out matters of detail that might change frequently.

Developing regulations to support a new Act would include a review of the current POCTA Regulations and Codes of Practice, other relevant standards and guidelines, as well as current scientific literature.

Potential costs and benefits of the proposed regulations would also be assessed. Stakeholder and community consultation would be undertaken, including a formal public consultation process on draft regulations.

Delayed commencement

A new Act would not come into force immediately. A new Act usually contains a commencement provision, which sets out when the new laws come into effect. It is proposed that this Act would not come into effect immediately after it is passed by Parliament. This allows time for people to adjust their activities to comply with new or revised laws. Delayed commencement also allows time to develop supporting regulations. The time is also used to implement education activities to inform the community about any changes to the laws, and to implement training for enforcement agencies and their staff.

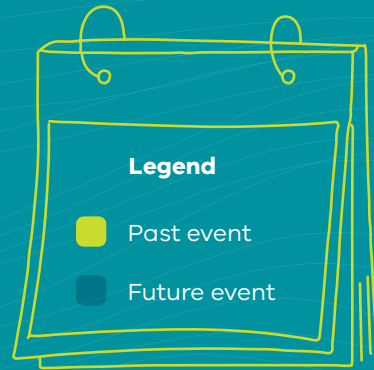
A delayed commencement for the new Act of two years is proposed. This is consistent with the introduction of other recent reforms in Victoria of a similar scale and complexity, such as the reforms to the *Environment Protection Act 1970*.

Until the new Act commenced, the POCTA Act and its regulations would continue to apply.

Timelines and process

Act

- ✓ Internal reviews, jurisdictional comparisons, community research
- ✓ Release of the *Directions Paper: A new animal welfare Act for Victoria and Engagement Summary*
- ✓ Policy development, testing and impact assessment
- ✓ Release of Plan
- Review feedback and use to inform the development of draft legislation
- Consultation on final draft Bill text
- Introduction to Parliament
- Debate in Parliament
- If passed by Parliament, the Bill will receive Royal Assent
- **Two years delayed commencement** between Royal Assent (if the Bill is passed) and the Act coming into force (allows development of regulations).
- **Training** will take place with enforcement agencies.
- **Education** campaigns will be undertaken with impacted animal sectors and the public.
- **The Bill, now Act, comes into force**
- The Act can be amended as required



Regulations

- Scoping of regulations and review of current standards and guidelines
- Each of the regulations will be developed in consultation with stakeholders and developed in accordance with the *Subordinate Legislation Act 1994*.
A Regulatory Impact Statement must be assessed for adequacy by the independent Commissioner for Better Regulation.
- **The regulations come into force**
- Regulations can be amended as required and must be reviewed at least every 10 years



Purpose and application

1. Recognising sentience

Animal sentience

will be **recognised explicitly** for the first time in Victorian law.

Previously, it was only implied.



What is animal sentience?

Animals have the capacity to:

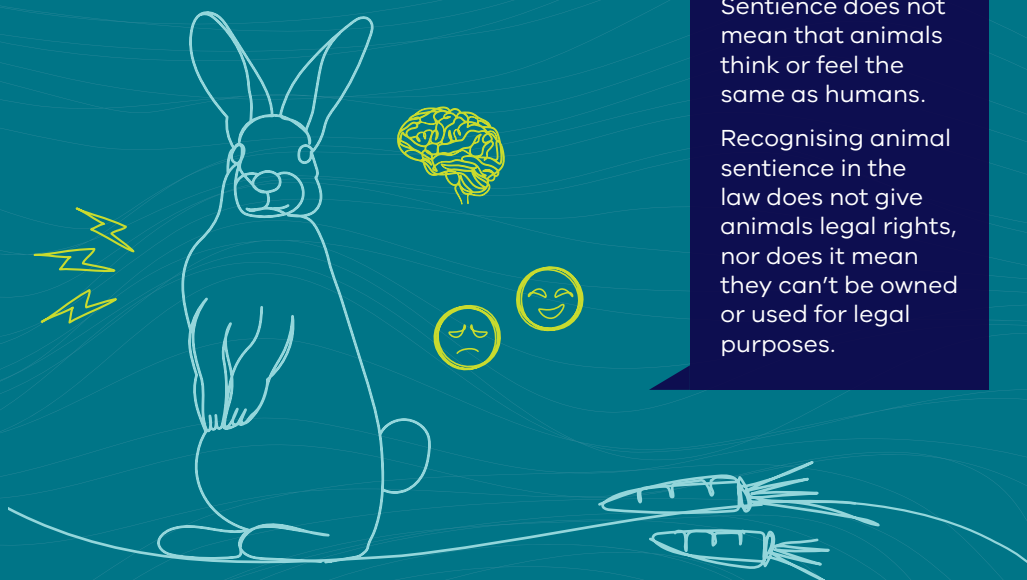
feel

perceive

their environment

experience

positive and negative sensations



SENTIENCE

Sentience does not mean that animals think or feel the same as humans.

Recognising animal sentience in the law does not give animals legal rights, nor does it mean they can't be owned or used for legal purposes.

Why?

Scientific studies have concluded animals **are sentient.**

Research shows the vast majority of Victorians agree.



RECOGNISING ANIMAL SENTIENCE

means policy is based on the care and protection of animals, safeguarding welfare before cruelty occurs.



1. Recognising sentience

Proposed approach

The Purposes of the new laws would recognise that animals have the capacity to feel, perceive their environment, and to have positive and negative experiences like pleasure and pain – that is, that animals are sentient.

The Purposes would also recognise that animals in Victoria can be owned and used for lawful purposes. This includes for activities such as farming, recreational activities and hunting.

The Purposes are intended to help the community understand the purpose of an Act and to assist the courts with interpreting an Act.

Why this approach?

The Victorian Government has committed to recognising animal sentience in a new Act. This commitment is set in the *Animal Welfare Action Plan* (2018) and in the government's response to the *Parliamentary Inquiry into the Impact of Animal Activism on Victorian Agriculture* (2020). The *Agriculture Strategy* (2020) also recognises the commitment.

Scientific studies over many decades have concluded that animals are sentient – that is, they have the capacity to feel, perceive their environment, and to have positive and negative experiences like pleasure and pain. Community research undertaken to inform the development of the new laws identified that most Victorians agree that animals have these experiences.

Recognising animal sentience in legislation reflects that caring for an animal is different to caring for your vehicle, house or other inanimate property. It would confirm the intention that the new laws should be based on the care and protection of animals (safeguarding their welfare before cruelty occurs), rather than just reacting to animal cruelty once it has occurred.

Recognising animal sentience in the Purposes of the Act would not on its own change how animals must be treated. How animals must be treated would be set out in other provisions, such as those relating to care requirements and cruelty offences.

What would change?

- Animal sentience would be explicitly recognised for the first time in Victoria.
- This recognition underpins the approach to the new laws. This includes setting basic care requirements for animals and the regulation of legal activities with a risk of causing animals harm, pain and distress. Recognition of animal sentience also underpins the decision-making principles for the new Act, and the provisions for managing seized animals.

What would not change?

- Recognising animal sentience in the legislation does not mean that it states that animals think or feel the same as humans.
- Recognising animal sentience would not give animals legal rights, nor would it prevent them from being owned or used for legal purposes. Other laws and frameworks would continue to apply.
- The current POCTA Act, with its focus on preventing cruelty, was created because animal sentience is implicitly acknowledged.
- Recognising sentience would not change that animals must be treated humanely and protected from cruelty – this is already covered by specific offences set in the POCTA Act and its supporting legislation.

Jurisdictional comparison

Animal sentience is recognised in the animal care and protection legislation of other leading jurisdictions.

The Australian Capital Territory explicitly recognises sentience in the Objects clause of its *Animal Welfare Act 1992*, stating that a main object is to recognise that 'animals are sentient beings that are able to subjectively feel and perceive the world around them'.

The [Australian Animal Welfare Strategy](#), first endorsed in May 2004 by the then Primary Industries Ministerial Council, recognised that animals are sentient and that sentience is the reason that animal welfare matters.

New Zealand recognises sentience in its *Animal Welfare Act 1999*.

The United Kingdom's *Animal Welfare (Sentience) Act 2022* provides for the formation of an Animal Sentience Committee, which will report on how government policies affect animal welfare. The Act also recognises a wider range of species as sentient, including cephalopods (including octopus, squid and cuttlefish) and decapod crustaceans (including shrimp, lobsters and crabs).

A free trade agreement signed by Australia and the United Kingdom in December 2021 states that both parties recognise that animals are sentient. A free trade agreement between Australia and the European Union is under negotiation, and mutual recognition of animal sentience will be considered.

Many other international jurisdictions recognise animal sentience, including Spain, the Netherlands, New Zealand, Denmark, Portugal, Tanzania, Belgium, Chile, Greece, Finland, Lithuania, Luxemburg, Slovenia, France and Sweden as well as the European Union. The states of Oregon and Washington D.C. in the USA also recognise animal sentience in their animal protection legislation, along with the Quebec province in Canada.

How could regulations support this approach?

The recognition of animal sentience would inform the development of regulations.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- The understanding that animals are sentient has informed the proposed approach to dealing with animals that a regulator removes from a person's care (a 'seized' animal).
- Recognising sentience would not, by itself, change how a seized animal is dealt with. However, the proposed policy approach to managing seized animals is based on the recognition that animals are sentient. The impact on the animal must be taken into account when making decisions about whether it is reasonable to hold seized animals for long periods of time, if doing so would mean the animal's care requirements could not be met. See Section 13: **Seizure and disposal of animals**.
- Recognising sentience also confirms what many people understand (that animals feel and have positive and negative experiences) and acknowledges their expectations that our interactions with animals reflect this.

2. Animals covered by the new laws

Animals covered by the new laws

an 'animal' covered by the new laws is defined as:

REPTILE, BIRD or MAMMAL other than a human being that is above the normal midpoint of gestation or incubation for the particular class of reptile, bird or mammal

Any **live member** of a **vertebrate species** including any:

FISH or AMPHIBIAN that is capable of self-feeding

CRAB

Certain **live adult decapod crustaceans**

LOBSTER

CRAYFISH

OCTOPUS

Certain **live adult cephalopods**

SQUID

CUTTLEFISH

And any other species **prescribed** in **regulations**

2. Animals covered by the new laws

Proposed approach

An 'animal' covered by the new laws would be:

- Any live member of a vertebrate species including any:
 - Fish or amphibian that is capable of self-feeding
 - Reptile, bird or mammal other than a human being that is above the normal midpoint of gestation or incubation for the particular class of reptile, bird or mammal
- A live adult decapod crustacean that is a lobster, a crab or a crayfish
- A live adult cephalopod including an octopus, squid, cuttlefish or a nautilus
- Any other species prescribed in regulations.

Why this approach?

The new laws are intended to cover all animals where there is scientific agreement they are capable of positive and negative experiences (that is, they are sentient).

The new laws would set care requirements for how all sentient animals must be treated. Regulations would provide more detail about how the care requirements would be achieved for certain species or activities involving animals.

Scientific agreement may be reached in future about the sentience of additional species. The new laws would allow for additional species to be specified in the regulations (not the Act). This provides flexibility in the legislative framework. Revising a regulation can be a simpler process because it does not need to be debated and passed in Parliament, as required for amending an Act. Revising a regulation still requires processes such as stakeholder and community consultation, and in most cases, an impact assessment to understand the costs and opportunities of any changes.

While the new laws would cover all animals included in the definition of 'animal', the focus would be on how humans must treat animals. The laws would not cover outcomes for animals that don't involve interactions with humans. For example, animals in the wild may harm each other, but where this doesn't involve any interactions with humans, the laws would not apply.

While other Acts in Victoria include aspects relating to the care and protection of animals, such as the *Domestic Animals Act 1994*, the *Livestock Management Act 2010* and the *Fisheries Act 1995*, those Acts focus on the management of animals in specific contexts, or on industries or activities that involve animals. They cover matters other than the care and protection of the animals, such as biosecurity, traceability of animals across their lifetime, and the management of dangerous or nuisance animals. These Acts would continue to work side-by-side with new laws, as is the case with the POCTA Act.

What would change?

- The POCTA Act only covers cephalopods used in scientific procedures, while the new laws would cover cephalopods in all circumstances.
- Additional species could be defined as 'animals' covered by the legislation in the regulations (if there is scientific agreement on their sentience). Previously this would have required amending the Act.

What would not change?

- The species of animals covered by the new laws would include all animals covered by the POCTA Act.

Jurisdictional comparison

The new laws would continue to recognise the widest range of animals covered by animal welfare legislation across Australian states and territories, extending the existing definitions in the POCTA Act for scientific procedures to the whole Act.

The animal welfare legislation of other Australian states and territories include the 'traditional' vertebrates of mammals (non-human), birds, amphibians and reptiles.

Approaches vary for fish, crustaceans and cephalopods. South Australia and Western Australia specifically exclude fish from animal welfare legislation and in the Northern Territory only fish in captivity or which rely on humans for food are covered.

Queensland provides for additional species of animals to be covered by its *Animal Care and Protection Act 2001* through a regulation (if there is scientific agreement on their sentience).

How could regulations support this approach?

Regulations may prescribe more species as 'animals' covered by the legislation, based on scientific agreement. Revising a regulation requires stakeholder and community consultation, and in most cases, an impact assessment to understand the costs and opportunities of any changes.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

Victoria's current POCTA Act does not provide for cruelty offences for a cephalopod such as an octopus in all circumstances. At present, a person who is cruel to an octopus can only be prosecuted if the octopus is being used for a scientific purpose and the conditions of approval have not been met. The POCTA Act does not enable the prosecution of a person who is cruel to an octopus in other settings, such as when an octopus is kept in an aquarium or is caught by a fisher. The new laws would close this gap, enabling a person to be prosecuted for cruelty to an octopus in all settings.

3. Legislative framework

How **the Act and regulations** work together

The framework will be able to respond to changes in scientific understanding, technology and practices over time.



The **Act** and supporting **regulations** form the **legislative framework** for the care and protection of animals in Victoria.

The Act and regulations are **ENFORCEABLE**.

THE ACT relates to **all animals** in Victoria



What are regulations?

Detailed rules made under the authority of an Act, also known as secondary or subordinate legislation.



GENERAL REGULATIONS



LIVESTOCK/ PRODUCTION ANIMALS



ANIMALS IN ENTERTAINMENT



COMPANION ANIMALS

Regulations

support the Act with animal and sector-specific details and offences.

ANIMALS IN RESEARCH & TEACHING



ANIMALS IN THE WILD



Guidance is **NOT ENFORCEABLE**.

Good practice guidance can be developed to support the mandatory legislation.

3. Legislative framework

Proposed approach

The new Act would be high-level and principles-based, in contrast to the current POCTA Act, which is prescriptive and detailed.

The new Act would set out high-level offences for all species defined as animals by the Act.

The Act would provide for the making of supporting regulations which would set out more detail on how to achieve the requirements of the Act.

Regulations would be grouped by species or the general activity animals are used for:

- **General regulations** – administrative and technical requirements that apply to most or all species or activities.
- **Livestock/production animals** – covering the care and protection of species in primary production settings or which require 'paddock' housing such as horses (even when kept as companion animals), as well as related activities such as transport or slaughter of production animals.
- **Companion animals** – covering species whose main purpose for being kept is as pets or companions and related activities, as well as where these species are used in work, assistance or service roles.
- **Animals in research and teaching** – covering the use of animals in scientific procedures as well as in research, teaching and testing more broadly.
- **Animals in entertainment** – covering additional provisions that relate specifically to the use of animals in entertainment including sport, competition, events, exhibition and recreational activities.
- **Animals in the wild** – covering interactions with animals that are otherwise not in the care of people, such as pest animals, wildlife or game.

These regulations would replace the current POCTA Codes of Practice. Essential requirements would be provided in the regulations, making them enforceable. Guidance on how to meet the requirements of the regulations or how to achieve best practice (beyond the requirements) would be provided in guidelines.

Like the current POCTA Codes of Practice, the regulations would provide for exceptions to the offences in the Act, including the care and protection offences (that is, if you do something in line with the Act and the details in the regulations, you can't be prosecuted for cruelty). The regulations would also clearly set out what is mandatory: if you do an action where there is a regulation, you must do it in the way the regulation states.

Much of the detail on how to achieve the requirements of the Act for specific species and activities would be set out in the regulations. Administrative details would also be set out in the regulations.

Offences for specific species and activities would also be set out in the regulations. These offences may be infringeable.

WHAT IS AN INFRINGEABLE OFFENCE?

Infringeable offences and notices form part of the enforcement tools available to an Authorised Officer.

An infringement notice can be issued 'on the spot' at the time of the offence, or can be posted in the mail. The notice sets out the details of an alleged offence and a fixed penalty amount. A person has the options of: paying the penalty amount set out in the notice; having the matter dealt with by a court (contesting the notice); or applying for an internal review. If a person pays the infringement penalty, the matter is considered as dealt with, with no criminal conviction or finding of guilt recorded. If a person contests the notice in court and is found guilty, significant higher maximum penalties may apply and a criminal conviction may be recorded.

More serious offences are not infringeable and must be dealt with by a court.

For more information about infringeable offences and notices, visit the Victorian Government fines website at online.fines.vic.gov.au.

Together, the new Act and the regulations would form the legislative framework for the care and protection of animals in Victoria.

Good-practice guidance can also be developed to support the Act and the mandatory regulations. This guidance could come from government or from reputable industry, veterinary or scientific bodies. The guidance may be able to be used to show that standards of care of animals have been met. Prosecutions may use guidance on care requirements to determine what constitutes good practice.

Matters in the regulations

Matters more suited to being detailed in the regulations, rather than the Act, are those that are:

- Specific to a certain species or activity (including more detail about the care requirements and what constitutes cruelty for that species or activity)

- Technical in nature and so should be reviewed at least every 10 years (as Victorian regulations usually require) because the details may be subject to new scientific understanding, changes in industry practices or technology
- Very detailed or administrative in nature.

Much of the detail in the regulations made to support the new Act would be based on the existing POCTA Regulations and 28 Codes of Practice, as well as the Australian Code for the Care and Use of Animals for Scientific Purposes, and the Australian Animal Welfare Standards and Guidelines.

Developing the regulations would include a review of the current POCTA Regulations and Codes of Practice, other relevant standards and guidelines, and current scientific literature. Potential costs and benefits of the proposed regulations would also be assessed. Stakeholder and community consultation would be undertaken, including a formal public consultation process.

The regulations would cover the matters set out in the table below.

Options to meet minimum standards of care	<p>These options would set out ways to provide minimum standards of care for specific animal species or activities, covering matters such as nutrition, physical environment and behavioural interactions. There would be no penalty for non-compliance with these, but an offence in the legislation may apply, unless it can be shown that standards of care have been met in another way. This type of requirement is important to provide assurance for people interacting with animals, but also allow for different methods of care, including those that achieve standards of care higher than required by the law.</p>
Low-level specified offences	<p>Specific care and cruelty requirements would be included in the regulations. These would be mandatory and must be met to avoid penalties of up to 20 penalty units (\$3,634 at 30 June 2022) as specified in the regulations, or infringements of up to 5 penalty units (\$908 at 30 June 2022), where specified in the regulations. Examples might include requirements around fruit netting on trees, or the use of prong collars on dogs.</p>
Requirements for activities controlled under specified classes of conduct in the Act	<p>The new laws would create offences relating to specified classes of conduct, covering activities such as the transport of animals, or exhibiting an animal. For these categories, regulations may prohibit or prescribe additional activities and mandatory requirements. These requirements must be met to avoid a penalty up to 60 penalty units for a person (around \$10,904 at 30 June 2022) and 300 penalty units for a body corporate (\$54,522 at 30 June 2022). If there were no prescribed requirements for a particular activity, then it may be carried out in any lawful manner that does not cause a care or cruelty offence. See Section 9: Framework for specified classes of conduct for more detail on the activities this may apply to.</p>

<p>Detail to support Act offences</p>	<p>The new laws would create offences relating to controlled conduct. Some categories of procedures or devices would be prohibited unless regulations specifically permit certain activities within these categories. Regulations would detail the traps permitted (or circumstances where traps can be used), electronic devices that are permitted (or circumstances where electronic devices can be used), and procedures that would otherwise be veterinarian-only procedures (or the circumstances in which a non-veterinarian can perform the procedures). See Section 8: Controlled conduct for more detail on the activities this may apply to.</p>
<p>Detail relating to licences</p>	<p>The new laws would create a framework to allow for the licensing of high-risk activities involving animals. Where policy dictates that a particular activity should be licensed (for example, rodeos), the operating details of the licensing scheme would be provided in the regulations. See Section 9: Framework for specified classes of conduct for more information about licences.</p>
<p>Administrative detail and fee-setting</p>	<p>A great deal of administrative detail is provided in the current POCTA Act. This administrative detail and the ability to set fees (such as for licences) would be provided, where appropriate, in the regulations of the new legislation.</p>

Why this approach?

A high-level principles-based Act combined with a detailed set of regulations aims to provide the required mix of clarity, certainty and flexibility in the new legislation.

Regulations in Victoria must be reviewed every 10 years, with the review including a stakeholder and community consultation process. The current POCTA Codes of Practice have no mandatory review requirements. Some have not been reviewed for many years, are outdated and do not reflect current scientific understanding, or industry and community practices. Codes under the POCTA Act are not enforceable, with the exception of a few codes where compliance is required as a condition of conducting an activity (for example, the Code of Practice for the Debarking of Dogs).

Detailing the requirements for specific species and activities involving animals in the regulations would also help provide clarity for people. Categorising the regulations according to broad activities involving animals would make it easier for people to navigate and locate the laws than for the current 28 POCTA Codes of Practice.

The new legislative framework would also enable the incorporation of the *Australian Animal Welfare Standards and Guidelines for livestock and exhibited animals* which have been agreed to by Victoria, which the POCTA Act does not. The Standards and Guidelines would be adopted as appropriate into the Victorian regulations, so that the mandatory elements could be enforced. This would improve national consistency in animal welfare legislation and enforcement.

What would change?

- In general, relevant elements of the existing POCTA Codes of Practice (things people ‘must’ do) would be placed in the new regulations, which would make them enforceable. Other elements (things people ‘should’ do) would be placed in good-practice guidance.
- Grouping the regulations by activity would make it easier for people to locate the requirements of what they must or must not do.
- Codes of Practice do not have a requirement for regular review. Regulations in Victoria must be reviewed at least every 10 years to assess if any revisions are required.
- Relevant requirements of the *Australian Animal Welfare Standards and Guidelines for livestock and exhibited animals* (things a person ‘must’ do, rather than guidance on what they ‘should’ do) would be placed in regulations, making these enforceable in Victoria.

What would not change?

- The shift to regulations from codes of practice is not expected to significantly change how most people treat their animals.
- Major offences with significant penalties would be set in the new Act (and not the regulations).
- The regulations would continue to provide details of exceptions to key offences. Like the current POCTA Codes of Practice, if an activity is allowed in the regulations, a person doing that activity as prescribed by the regulations could not be prosecuted for a care or protection offence under the new Act.

Jurisdictional comparison

All jurisdictions have regulations under their animal welfare legislation, combined with more detailed requirements set in codes of practice.

In Victoria, most of the requirements in state-based codes of practice are not mandatory or enforceable under the POCTA Act. This is the same as other jurisdictions, such as Western Australia and New South Wales.

In Victoria (and other jurisdictions), a person charged with a cruelty or aggravated cruelty offence can defend the charge if they conducted the activity in accordance with a code of practice.

In New Zealand, if a defendant proves they followed a relevant code of practice, it is only a defence if the minimum standards of care were also met.

Compliance with a voluntary code of practice in Queensland does not automatically protect a person against prosecution of an offence under its *Animal Care and Protection Act 2001*. Although non-compliance with a voluntary code is not automatically an offence, non-compliance is admissible in evidence in a court case for an offence, such as a breach of duty of care. In addition to voluntary codes of practice, Queensland also has a range of codes that are compulsory or partly compulsory, with specially trained Authorised Officers able to monitor compliance with compulsory codes.

In the Australian Capital Territory, failure or reckless failure to comply with a mandatory code of practice is an offence, and Inspectors and Authorised Officers have powers to give written directions to rectify breaches of a mandatory code (with failure to comply with a direction also an offence).

Adoption of the Australian Animal Welfare Standards and Guidelines varies across jurisdictions. More information is provided at animalwelfarestandards.net.au.

How would regulations be made?

The new Act would include a power for making regulations.

The *Subordinate Legislation Act 1994* governs the making of regulations in Victoria. That Act requires that proper consultation occurs with the public or any sector that a proposed regulation will impact. An assessment of the costs and benefits of a proposed regulation, and of any other practicable means of achieving the same objectives, is also required. The assessment must include an assessment of the economic, environmental and social impacts of a proposed regulation.

Once a new Act was passed by both houses of Parliament and has received Royal Assent, the regulations would be developed. The commencement of the new Act would be delayed for two years to allow time for regulations to be developed.

In Victoria, a regulation must be reviewed at least every 10 years. A review may identify the need to revise a regulation. Revising a regulation can be a simpler process because it does not need to be debated and passed in Parliament, as required for amending an Act. This provides some flexibility in the legislative framework, because it is easier to revise a regulation in response to new scientific knowledge, changing industry practices or technology, administrative arrangements or community expectations. Revising a regulation still requires processes such as stakeholder and community consultation, and in most cases, an impact assessment to understand the costs and opportunities of any changes.

EXAMPLE**HOW WOULD IT WORK IN PRACTICE?**

- Under the current POCTA Act, the Code of Practice for the Private Keeping of Dogs sets minimum standards of care in relation to the housing of dogs, but there are no offences attached and so the standards are not enforceable. The new laws would allow regulations to be made that set care requirements for dogs, which an Authorised Officer could use to prevent a dog from suffering (early intervention) or to stop suffering from continuing. Setting the care requirements in the regulations with offences attached to them would make them enforceable. This would mean an Authorised Officer could take action in response to an alert in the morning of a hot day that a dog was fenced in with no shelter, before the dog suffered during the heat.
- Under the current POCTA Act, the Code of Accepted Farming Practice for the Welfare of Cattle sets minimum standards of care in relation to the husbandry and treatment of cattle, but there are no offences attached and so the standards are not enforceable. The new laws would allow regulations to be made that set care requirements for cattle, which an Authorised Officer could use to prevent cattle from suffering or to stop their suffering from continuing. Setting the care requirements in the regulations with offences attached to them would make them enforceable. This would mean an Authorised Officer could take action in response to an alert that a herd of cattle were confined to a low-lying paddock during prolonged wet weather. If the wet weather posed a risk of flooding, the Authorised Officer could pre-emptively take action to prevent the cattle being subjected to flooding, rather than responding to their welfare issues during or after the flooding.
- Setting care and protection requirements for all species recognised as sentient in the Act, and detailing how to achieve the requirements for different species and activities in the regulations would simplify the legislation and help people locate and meet the responsibilities that apply to them.

4. Decision-making principles

Decision-making principles



Decisions made under this, or any other relevant Victorian legislation, will need to consider the **care and protection of animals**.



The **care requirements** should be met for animals in the **care** or **control of people**.



Unreasonable **harm, pain** or **distress** for animals should be **avoided**.

Decision-makers must consider each of these **four principles**, alongside the benefits of the **activity**.

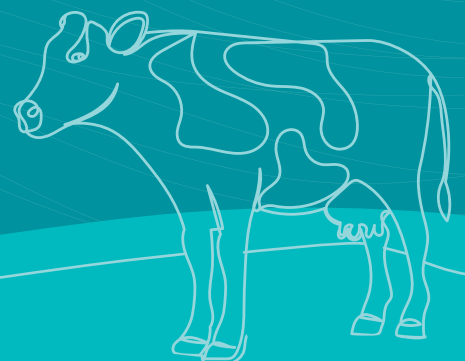


Where **harm, pain** or **distress** cannot be avoided, it should be **minimised**.



Alternatives that reduce **harm, pain** or **distress** should be **considered**.

Decision-makers may include **Ministers, Department Heads** and other staff making decisions such as **granting licences** or **developing regulations**.



4. Decision-making principles

Proposed approach

The new laws would include a set of principles that would need to be applied when certain decisions were being made, such as those under the Act relating to:

- Granting licences
- Developing regulations
- Making a declaration
- Approving a co-regulatory arrangement.

The decision-making principles would be:

- Care requirements should be met for animals in the care or control of people
- Unreasonable harm, pain or distress for animals should be avoided
- Where harm, pain or distress cannot be avoided it should be minimised
- Alternatives that reduce harm, pain or distress should be considered.

The decision-making principles would not apply to decisions by Authorised Officers under the new Act. Decisions made by Authorised Officers would have to be consistent with the compliance and enforcement provisions in the new laws.

The new laws would also include an obligation for public authorities and Ministers administering other Victorian legislation to consider the care and protection of animals, where relevant.

This would mean that authorities across different portfolios relating to other activities, such as fishing, hunting and the management of pest animals, must consider the care and protection of animals when making decisions that impact animals. This may include decisions relating to the review or development of other legislation.

The obligation to consider impacts on animals would not override an authority's existing statutory obligations. In some instances, other legitimate objectives may override these considerations, but the impacts on animals would need to be considered as part of the decision-making process.

The new laws would also provide the Minister for Agriculture with the ability to request information from public authorities to confirm those authorities have met their obligation. A public authority must comply with this request and the Minister may publish any information received.

All public authorities are required to comply with the Victorian Charter of Human Rights and Responsibilities when exercising their powers and functions.

Why this approach?

While animal care and protection considerations may already be part of decision-making in practice, including an obligation for them to be considered in the new laws would reinforce the commitment to animal welfare across the Victorian statute book. It would also recognise responsibilities for different portfolios across government, supporting the authority of the relevant Minister and department to continue to be the primary decision-maker.

This obligation acknowledges that legitimate and necessary activities may pose risks to animal welfare but would require animal care and protection to be considered in all areas of government decision-making.

The decision-making principles aim to maximise positive outcomes for animals in their interactions with humans.

The principles reinforce that animals have the capacity to feel, perceive their environment, and to have positive and negative experiences like pleasure and pain.

What would change?

- The POCTA Act does not include decision-making principles or an obligation for public authorities to consider animal care and protection. While many decisions made by government consider the impact on animals, this is not presently required by law. As a result, decisions can be made under other Acts or policy areas which have different priorities which may not adequately consider the need to minimise impacts on animals, and which may have unintended consequences.

What would not change?

- Decision-making processes would continue to consider costs and benefits alongside the care and protection of animals.
- Current legal and legitimate activities including hunting, fishing (existing commercial, recreational, aquaculture and traditional fishing activities), farming, racing, slaughter and pest control would be able to continue under the new laws.

Jurisdictional comparison

Victoria would be the first Australian jurisdiction to include decision-making principles in its animal protection legislation.

A similar obligation to apply decision-making principles is set in Victoria's *Flora and Fauna Guarantee Act 1988* (sections 4B and 4C).

How could regulations support this approach?

The decision-making principles would provide important direction about what to include in regulations.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- In deciding whether to recommend the making of a regulation that allows the use of a new type of trap to catch a pest animal, the Minister would need to consider if the trap causes unreasonable harm, pain or distress for animals, and whether alternatives are already available that reduce harm, pain or distress.
- In deciding whether to allow the recreational hunting of game species or the control of wildlife under an authorisation provided under Victoria's *Wildlife Act 1975*, decision-makers in the responsible departments and the Game Management Authority would need to consider the impact on the care and protection of the animals being hunted or controlled, including alternative ways to reduce their numbers.

5. Application of the new laws

Application of the legislation



Sometimes there is conflict between these concepts, and it needs to be clear whether an action is legal.

The legislation

- applies to the **actions of humans towards any animal** in Victoria
- also recognises that **animals** can be **owned** and **used for legal purposes**

There are some exceptions to care and cruelty offences.

People **cannot** be prosecuted for the following:



Activities in accordance with the *Traditional Owner Settlement Act 2010*



Activities permitted by the legislation (including in regulations and licences)



The **hunting of game** and **control or disturbance of wildlife** permitted under the *Wildlife Act 1975*



DECISION MAKING PRINCIPLES

exist to safeguard the care and protection of animals when decisions impact them under relevant Victorian legislation.

Veterinary treatment by a registered **veterinary practitioner**



The control of **pest animals** using a method authorised by regulations made under the *Catchment and Land Protection Act 1994*



Activities permitted under the *Fisheries Act 1995*.



Why?

Providing clarity in the way the legislation is applied will ensure that **legal and legitimate activities** involving animals can continue.

It means people know what they **can and can't do** to and with animals, especially where **different legislation** may apply.



5. Application of the new laws

Proposed approach

The new laws would apply to the actions of humans towards any animal in Victoria, while also recognising that animals can be owned and used for legitimate and necessary purposes.

To deal with circumstances where legitimate and necessary activities involving animals regulated under other legislation potentially conflict with care and cruelty offences, a clearly defined exception to the offences would be provided in the new laws.

People could not be prosecuted for a care or cruelty offence under the new laws when undertaking:

- Activities in accordance with Victoria's *Traditional Owner Settlement Act 2010* – if a Traditional Owner group has a natural resource agreement under the Traditional Owner Settlement Act, a member of that Traditional Owner group can carry out an agreed activity on land to which the agreement applies
- Veterinary treatment by a registered veterinary practitioner
- Activities permitted by the new laws (including in regulations and licences) when done in accordance with the new laws
- The hunting of game and control or disturbance of wildlife permitted under and done in accordance with Victoria's *Wildlife Act 1975*
- The control of pest animals using a method authorised by and done in accordance with regulations made under Victoria's *Catchment and Land Protection Act 1994*
- Activities permitted under and done in accordance with Victoria's *Fisheries Act 1995*.

These exceptions would only apply where the activities complied with the relevant other legislation.

These exceptions would not prevent Authorised Officers from exercising powers under the new laws to determine whether an exception applies.

Why this approach?

Providing exceptions to the new laws would enable legal and legitimate activities involving animals to continue. This includes activities such as livestock and poultry farming, fishing (commercial, recreational, aquaculture and traditional fishing), hunting and racing. The exceptions aim to reduce and manage any risks associated with these activities by being transparent about how the new laws apply.

Clarity is needed around the interaction of different animal-focused legislation in Victoria. The new animal care and protection laws aim to provide this clarity so that people can be confident they are not committing an offence when undertaking a legal and legitimate activity.

At present, some activities conducted in accordance with the requirements of other Victorian legislation (such as the *Meat Industry Act 1993*, the *Catchment and Land Protection Act 1994*, and the *Fisheries Act 1995*) are provided an exemption (as opposed to an exception) to the POCTA Act. These exemptions allow for the possibility that the POCTA Act does not apply, even where cruelty has clearly occurred. The exemptions also create the incorrect perception that animal welfare laws are not relevant for activities such as farming, fishing, hunting and pest control.

The table below sets out proposed exceptions to the requirements of the new laws, and the reason why the exception is necessary.

Proposed exception	Why the exception is necessary
<p>Activities in accordance with the <i>Traditional Owner Settlement Act 2010</i></p>	<p>This exception recognises traditional and cultural Indigenous activities involving animals.</p> <p>If a recognised Traditional Owner group has an agreement under Part 6 of Victoria's <i>Traditional Owner Settlement Act 2010</i>, nothing in the new laws would prevent any member of that Traditional Owner group bound by the agreement from carrying out an agreed activity in accordance with the agreement, and on land to which the agreement applies.</p> <p>This would continue the approach for Traditional Owners under the POCTA Act (which is a standard approach in Victorian legislation). It remains appropriate and necessary for the new laws to leave the regulation of activities relating to the Traditional Owner Settlement Act within that legislative framework. Any relevant care and protection considerations would be included as part of the development of agreements under that Act.</p>
<p>Veterinary treatment by a registered veterinary practitioner</p>	<p>This exception recognises that registered veterinary practitioners must be able to undertake necessary treatment of animals. Veterinarians must also comply with Victoria's <i>Veterinary Practice Act 1997</i> and are subject to Guidelines issued by the Veterinary Practitioners Registration Board of Victoria.</p> <p>A veterinarian can conduct activities such as resetting a broken limb or performing surgery which may cause pain to an animal. However, a veterinarian would not be permitted to de-claw a cat just because it is scratching furniture or beat a dog just because they are a veterinarian.</p>
<p>Activities permitted by the new laws (including in regulations and licences)</p>	<p>This exception recognises that a person who complies with regulations or a licence should not be subject to an offence. This will make it easier for people to know what they must and must not do.</p> <p>Some procedures and other actions are considered necessary for the health or management of the animal, for the health and safety of the people interacting with the animal, or for other benefits valued by society.</p> <p>These procedures and actions are currently included in the POCTA Codes of Practice, and compliance with them provides a defence against a cruelty offence. Procedures and other actions considered necessary are intended to be included in regulations in the new legislation, allowing those activities to continue.</p> <p>Other purposes such as scientific procedures are considered necessary in some circumstances but require controls such as licences to minimise the impacts on animals.</p> <p>For the exception to apply, a person must perform that activity exactly as permitted. For example, if a regulation allows a procedure but only if pain relief is provided, and a person performs that procedure without pain relief, the exception would not apply, and that person could be prosecuted for cruelty.</p>

Proposed exception	Why the exception is necessary
<p>The control of pest animals using a method authorised by regulations made under the <i>Catchment and Land Protection Act 1994</i></p>	<p>This exception recognises that some pest control methods are controlled under regulations attached to Victoria's <i>Catchment and Land Protection Act 1994</i>. From a legal perspective, it is important to explicitly allow these pest control methods under the new animal care and protection laws so that a person would not be committing an offence when doing something lawful under another authority, and so people know what they must or must not do.</p> <p>This exception recognises responsibilities for different portfolios across government, supporting the authority of the relevant Minister and department to continue to be the primary decision-maker. At the same time, the obligation to consider the decision-making principles, would require animal care and protection to be considered in all areas of government decision-making that relates to animals. For clarity, activities that result in the death of an animal, including for the management of pest animals, are not inherently inconsistent with the legislation.</p> <p>No exception would apply to the keeping of pest animals under a permit granted under the <i>Catchment and Land Protection Act</i> – the same requirements would apply to these animals as for any other animal.</p> <p>Pest control activities may also be regulated under Controlled conduct (see Section 8) and the Framework for specified classes of conduct (see Section 9) where this would not conflict with the <i>Catchment and Land Protection Regulations</i>.</p>
<p>The hunting of game and control or disturbance of wildlife permitted under the <i>Wildlife Act 1975</i></p>	<p>This exception recognises that game hunting is permitted and regulated under Victoria's <i>Wildlife Act 1975</i>. Activities involving the control or disturbance of wildlife are also regulated under that Act. From a legal perspective, it is important to explicitly allow these activities so that a person would not be committing an offence under the new laws when doing something lawful under another authority, and so people know what they must or must not do.</p> <p>This recognises responsibilities for different portfolios across government, supporting the authority of the relevant Minister and department to continue to be the primary decision-maker. At the same time, the obligation to consider the decision-making principles, would require animal care and protection to be considered in all areas of government decision-making.</p> <p>No exception would apply to the rehabilitation of injured wildlife or the keeping of wildlife under a permit under the <i>Wildlife Act</i> – the same requirements apply would apply to these animals as for any other animal. Requirements currently detailed in the Code of Practice for the Welfare of Wildlife During Rehabilitation may also be specified in regulations under the new laws.</p>
<p>Activities permitted under the <i>Fisheries Act 1995</i></p>	<p>This exception recognises that fishing activities are regulated under Victoria's <i>Fisheries Act 1995</i>. From a legal perspective, it is important to explicitly allow these activities so that a person is not committing an offence under the new laws when doing something lawful under another authority, and so people know what they must or must not do.</p> <p>This recognises responsibilities for different portfolios across government, supporting the authority of the relevant Minister and department to continue to be the primary decision-maker. At the same time, the obligation to consider the decision-making principles, would require animal care and protection to be considered in all areas of government decision-making.</p>

What would change?

- Exceptions related to the *Catchment and Land Protection Act 1994* and exceptions to the *Wildlife Act 1975* would apply only to the specified activities, not all parts of those Acts. For example, the exceptions would no longer apply to the keeping of animals under permits granted under those Acts. If a person did not comply with the requirements of those Acts when undertaking a permitted activity, the new animal care and protection laws would apply.
- The new laws would provide greater clarity that exceptions would only apply to activities allowed under other specified legislation, and not entire industries or animal uses, and that cruelty to animals covered by other legislation can be prosecuted under the new laws.
- The new laws would not specifically mention on-farm slaughter, nor reference to the *Meat Industry Act 1993* or any Commonwealth Act (as the POCTA Act does). This does not change the requirements in practice, as those Acts do not allow 'unreasonable' harm, pain or distress. Any activity involving killing or wounding an animal (including slaughter) could be controlled as this is within the **Framework for specified classes of conduct**. This would allow regulations to prescribe how an activity may be done, including the adoption of Australian Animal Welfare Standards and Guidelines for the processing of livestock.
- The **decision-making principles** and obligation for public authorities and Ministers set in the new laws would mean the care and protection of animals must be considered when decision-makers are permitting activities where an exception applies.
- Only a specialist inspector authorised by the Minister can currently exercise powers to determine whether an exception applies. The new laws would allow any Authorised Officer to exercise powers to determine whether an exception applies if they reasonably suspect an offence (if allowed under their instrument of appointment – see Section 11: **Authorised Officers**).

What would not change?

- Current legal and legitimate activities including hunting, fishing (existing commercial, recreational, aquaculture and traditional fishing activities), farming, racing, slaughter and pest control would be able to continue under the new laws.
- Traditional Owner and veterinary exemptions would continue.

Jurisdictional comparison

New South Wales, the Australian Capital Territory, and New Zealand provide exemptions to animal cruelty offences for specific conduct, such as certain types of slaughter, hunting or pest control.

These exemptions usually apply with the requirement the activities are conducted in a humane way, or in a way that minimises harm, pain or suffering to an animal, or in accordance with other relevant legislation.

The Australian Capital Territory and Queensland do exempt behaviour conducted in accordance with an approved or prescribed code of practice. For example, it is not an offence to organise a rodeo event in these jurisdictions if it is done in accordance with the relevant codes of practice relating to rodeos.

Likewise, it is not an offence to use animals for research in New South Wales if the research is conducted in accordance with the *Animal Research Act 1985 (NSW)*.

In some jurisdictions, fish are not covered by animal welfare legislation. Fish are not covered by animal welfare legislation in South Australia and Western Australia. In the Northern Territory, wild fish are not covered and so animal welfare offences do not apply to fishing.

How could regulations support this approach?

In addition to the exceptions outlined above, regulations may provide more detail about legal and legitimate activities which are permitted or controlled, making it clear to people what they must or must not do.

If a person did something permitted by the regulations under the new Act, they couldn't be prosecuted for a care or cruelty offence under the Act for that conduct.

Detailing permissions and controls in the regulations would provide flexibility in the new laws. Revising a regulation can be a simpler process because it does not need to be debated and passed in Parliament, as required for amending an Act. It is easier to revise a regulation in response to new scientific understanding, changing industry practices or technology, administrative arrangements, or community expectations.

Revising a regulation still requires processes such as stakeholder and community consultation, and in most cases, an impact assessment to understand the costs and opportunities of any changes.

The regulation-making power under the new Act would allow regulations to be made for any activity that impacts the care and protection of animals (including where these may also be covered by other legislation), but regulations would not be made that conflict with the requirements of other legislation.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- Victoria's *Fisheries Act 1995* allows people with a fishing licence to catch and kill or release fish,
- Similarly, Victoria's *Catchment and Land Protection Regulations 2012* authorise two methods for the eradication or control of the European Rabbit. If a person complies with either of these methods, they would not be subject to a cruelty offence. Other methods of controlling rabbits must not cause unreasonable harm, pain or distress, or must be expressly permitted in regulations under the new laws. For example, as under the *POCTA Act*, the use of a specific type of trap would only be legal if permitted in the regulations under the new laws.
- Game hunting is currently regulated by the *Wildlife (Game) Regulations 2012* made under Victoria's *Wildlife Act 1975*. Provided the requirements of these regulations are complied with, it would not be an offence under the new animal care and protection laws to hunt game. Hunting of pest animals is currently regulated by the *Code of Practice for the Welfare of Animals in Hunting*, made under the *POCTA Act*. This would be replaced with regulations related to hunting under the new animal care and protection laws. Complying with those regulations would provide an exception to the cruelty offences for the hunting of game and pest species.

Care and protection

6. Care

Animal care requirements introduce an **enforceable minimum standard of care for animals** in the care and control of people.

Currently the **POCTA Act doesn't have enforceable standards of care**, and responsible agencies can only intervene when a report of cruelty is made.

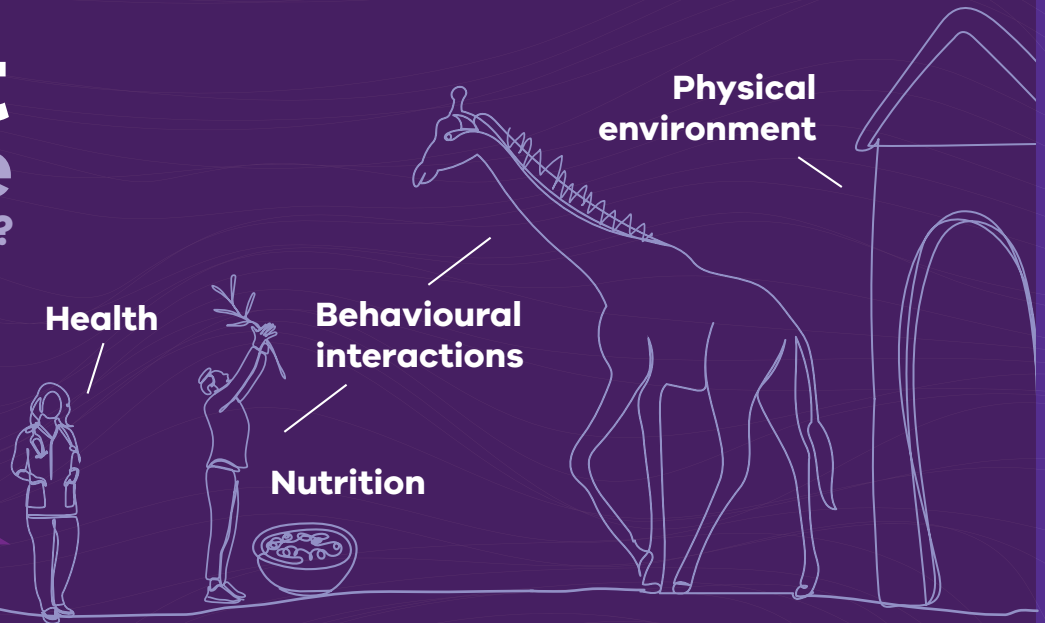


What are the requirements?

How do we define 'care'?



Practices that any reasonable person would undertake.



Why?

Community expectations and **scientific understanding** support a minimum level of acceptable care for animals beyond the absence of cruelty.

International markets expect a minimum threshold for animal welfare is met to gain market access.

These requirements apply to all animals in the care or control of people in Victoria, including pets, livestock and wildlife kept in zoos.



6. Care

Proposed approach

The new laws would introduce an enforceable 'care requirement' for animals under a person's care and control.

The care requirements would apply to all animals in the care or control of people in Victoria. This includes pets, animals on farms, kept in zoos or for rehabilitation, and animals being transported.

The care requirements would not apply to animals in the wild or not in someone's care, even where they interact with people (such as pest animals, wildlife being hunted or fished).

Care requirements would be those reasonably necessary for the health and wellbeing of an animal. The requirements would include (but not be limited to) providing:

- **Nutrition** – appropriate food and water to maintain health and vitality.
- **Physical environment** – a living environment that provides appropriate shade and shelter, rest areas, protection from reasonably foreseeable hazards, space to stand, lie, stretch and move into different positions, opportunities to exercise, and appropriate temperature, noise, lighting, air or water quality.
- **Health** – appropriate health or veterinary care, including to prevent, minimise or alleviate disease, injury or functional impairment.
- **Behavioural interactions** – appropriate opportunities to positively interact with humans, other animals and the environment, including ensuring that interactions are conducted in a manner that minimises anxiety, fear, pain or distress.

'Care' would not require best practice, nor would it preclude the legitimate use of animals for activities such as farming, breeding, racing or research. The care required should reflect practices that a reasonable person would undertake as a matter of course. Expectations of care would be informed by the current POCTA Codes of Practice and the Australian Animal Welfare Standards and Guidelines.

The care requirements would apply to the owner of an animal or a person in charge of an animal.

WHO IS A PERSON IN CHARGE?

A person in charge of an animal is a person who:

- Has the animal in their care, custody or control
- Is authorised or empowered to make decisions about the custody, care or control of the animal, including as part of their employment or in accordance with a formal or informal agreement.

More than one person can be in charge of an animal.

It would be an offence for a person who owns or is in charge of an animal to not ensure the care requirements are provided. Unreasonable harm, pain or distress of the animals would not need to occur before authorities could intervene. A person who failed to ensure the care requirements were provided would be liable to financial penalties of up to 125 penalty units (\$22,717 at 30 June 2022) or imprisonment of up to six months for an individual, or up to 625 penalty units (\$113,587 at 30 June 2022) for a body corporate.

A person would have a defence for failing to provide the care requirements if they could demonstrate they took all reasonable steps to provide them to the animal. For example, if a farmer provides their animals with 24-hour access to water and checks the water each evening but the water authority turned the water supply off overnight without notification, and the animals became dehydrated over the next day, the farmer could show they took reasonable steps to provide water.

More detail about the care requirements for specific species and activities may be provided in the regulations, as discussed more below.

Why this approach?

The current POCTA Act does not set enforceable care requirements for animals. Many types of care requirements are set out in the POCTA Codes of Practice or the Australian Animal Welfare Standards and Guidelines, but they don't cover all animals or situations. Some requirements in the POCTA Codes of Practice are also not enforceable, because the codes are not mandatory.

Setting care requirements in the new laws gives practical effect to the recognition that animals are sentient – they have the capacity to feel, perceive their environment, and to have positive and negative experiences like pleasure and pain.

The care requirements would enable earlier intervention to prevent harm, pain or distress (cruelty) to an animal before it occurs. This reflects community expectations that the law should safeguard animal welfare.

Setting enforceable care requirements would reassure Victorians that people who do not appropriately care for their animals could be prosecuted.

In addition, international markets are increasingly expecting that trading partners can demonstrate they provide animals with a minimum level of care.

What would change?

- Care requirements for animals would be set in Victorian law for the first time.
- The care requirements would be enforceable, so people could be prosecuted for failing to provide them, with penalties applying.
- Some actions defined as cruelty in the current POCTA Act may instead constitute a care offence under the new laws. For example, failing to provide sufficient shelter is a cruelty offence under the POCTA Act but would be a care offence under the new laws—although, if the failure was demonstrated to likely cause unreasonable harm, pain or distress, it would be a cruelty offence.

What would not change?

- Victorians would still be able to keep pets and farm animals under the new laws.
- Most Victorians already meet the care requirements the new laws would set, so wouldn't need to change how they care for their animals.
- Failing to care for an animal in a way that would likely cause harm, pain or distress would still be a cruelty offence under the new laws.
- Failing to provide sufficient food and water or veterinary treatment, or abandoning an animal would still be cruelty offences.

Jurisdictional comparison

Other contemporary animal welfare legislation sets out 'duty of care' or obligation-style requirements that set minimum acceptable and enforceable levels of care.

Australian jurisdictions that set care requirements in their legislation include Queensland, Tasmania, the Australian Capital Territory, and the Northern Territory.

New Zealand and the United Kingdom also set minimum care requirements in their legislation.

These jurisdictions frame care requirements in different ways, but generally require that people ensure the basic needs of an animal are met and relate to things like food, water, health, environment, and sometimes behaviour.

How could regulations support this approach?

The basic care requirements in the new Act would be supported by the regulations.

Regulations would set more detailed care requirements for different species and activities involving animals. The regulations would be informed by the current POCTA Codes of Practice, and the Australian Animal Welfare Standards and Guidelines.

For example, a regulation may set mandatory requirements for a particular species that require a person to provide:

- A minimum 10 litres of water a day
- Daylight conditions for a minimum or maximum number of hours each day
- Contact with other animals of the same species.

A person may choose an alternative way to meet these requirements (for example, keeping an animal with a different species), but if they meet the requirements, they couldn't be prosecuted for failing to meet the care requirements. This would allow flexibility and innovation for owners and people in charge of animals to meet the care requirements in ways that better suits their business or activity.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- Mice kept for scientific research need appropriate bedding, space to move around and places to hide as part of an appropriate physical environment (unless approved by an animal ethics committee as part of the research). While most mice would receive this as part of good lab practice and compliance with the Australian Code for the Care and Use of Animals for Scientific Purposes, under the new laws the researchers keeping the mice could be prosecuted with the offence of failing to provide care requirements if they did not do this.
- Many breeds of sheep need to be regularly shorn (usually once a year). Under the new laws, a person who failed to ensure their sheep were shorn at a reasonable frequency could be prosecuted for failing to meet care requirements. At an extreme this can cause unreasonable harm, pain and distress to the sheep due to the heavy weight of the wool, risk of fly strike and impeded movement. In these circumstances, the offence would escalate from a care offence to a cruelty offence.
- People who care for animals know what is reasonably necessary for the health and wellbeing of an animal can vary depending on the circumstances. The requirements for nutrition, physical environment, health and behavioural interactions need to be balanced practically to achieve overall health and wellbeing. The requirements are not static and not every requirement needs to be met at every point in time. The new laws would mean that where a person caring for animals has taken reasonable steps to meet the requirements in an appropriate way, they would not commit an offence. For example, transporting a cat to the veterinarian for treatment may involve temporarily placing it in a small cage that would not be appropriate for its long-term housing. Under the new laws, a person wouldn't be prosecuted for this temporary arrangement.

7. Cruelty

Cruelty offences

focus on protecting animals from cruelty, with **three offences** dealing with increasingly serious acts of cruelty against animals.



The POCTA Act has similar offences for cruelty and aggravated cruelty but does not have a more serious offence **for the most heinous deliberate acts of cruelty**.



What are the offences?

How do we define 'cruelty'

An act of cruelty is primarily any act or omission that causes or is likely to cause an animal **unreasonable harm, pain or distress**.

This includes **mental** as well as **physical** harm, pain or distress.



General cruelty

a person must not commit an act of cruelty.

PENALTY:

- Up to **250 penalty units** or **one year imprisonment** or both, for a natural person;
- Up to **1250 penalty units** for a body corporate.



Aggravated cruelty

a person must not commit an act of cruelty that results in the death or serious or protracted physical or mental impairment of the animal.

PENALTY:

- Up to **500 penalty units** or **two years imprisonment** or both, for a natural person;
- Up to **2500 penalty units** for a body corporate.

The above are both strict liability offences, which means it is not necessary to demonstrate anything about the person's state of mind (for example, whether the offence was deliberate); just that they did the act.



Intentional or reckless cruelty

a person must not intentionally or recklessly act or omit to act in a way that causes or is likely to cause unreasonable harm, pain or distress to an animal.

PENALTY:

- Up to **1250 penalty units** or **five years imprisonment** or both, for a natural person;
- Up to **6250 penalty units** for a body corporate.

For an offence like this, the prosecution must demonstrate both that the conduct occurred, and that it was intentional or reckless.



Why?

Responding effectively to cruelty

is fundamental to protecting animals from **unreasonable harm, pain or distress**. The community expects appropriate deterrents and penalties, especially for **the most serious acts of cruelty**.

7. Cruelty

Proposed approach

The new laws would introduce three escalating cruelty offences.

Cruelty offences would apply to the treatment of all animals in Victoria – both those in the care or control of people, and animals in the wild or not in someone's care.

These offences could apply to any person; they do not need to be the owner of an animal or the person in charge of an animal. For example, a person who kicks and harms another person's dog could be prosecuted for cruelty.

An act of cruelty would be primarily defined in the new laws as any act or omission that causes or is likely to cause unreasonable harm, pain or distress to an animal. Harm, pain or distress could be mental, as well as physical, and include experiences such as hunger, stress and fear.

The new laws would also describe specific actions considered as acts of cruelty, without the need to prove the conduct caused unreasonable harm, pain or distress. These actions include mutilating, beating or wounding an animal, abandoning a domesticated animal, or neglecting the care of an animal to the point of cruelty by failing to treat a sick or injured animal, or failing to provide food to an animal you're in charge of.

The new laws would set out escalating offences for increasingly serious cruelty as outlined in the table on the next page. The outcome for the animal (aggravated cruelty), and the person's state of mind (intentional or reckless cruelty) would be considered to contribute to the seriousness of the offence.

The new laws would also include guiding principles for the courts to have regard to when considering cruelty offences. Some cruelty causes more harm because of the wider implications of the offending. The guiding principles would draw the Court's attention to the fact that:

- An act of cruelty to an animal may normalise, provoke or perpetuate further cruelty to animals and humans, especially if the conduct is carried out for personal or commercial gain.
- An act of cruelty to an animal may be used to control or dominate another person and may accompany acts of family violence.

Current legal and legitimate activities involving animals would be able to continue under the new laws. As outlined in Section 5: **Application of the new laws**, where a potential conflict with the care or cruelty offences exists with legal and legitimate activities, this could be dealt with by providing a clearly defined exception to these offences for activities that are regulated under other legislation.

General cruelty

The new laws would set a base offence of 'general cruelty'.

Examples may include wounding an animal or failing to provide necessary veterinary attention. A general cruelty offence would carry penalties of up to 250 penalty units (\$45,453 at 30 June 2022) or imprisonment of up to one year for a person, or up to 1250 penalty units (\$227,175 at 30 June 2022) for a body corporate.

General cruelty would be a strict liability offence. This means a general cruelty offence could be prosecuted without the need to prove the accused intended any wrongdoing; just that they did the act.

Aggravated cruelty

The next level of cruelty offence would be 'aggravated cruelty'.

This is general cruelty that results in the death or serious physical or mental disablement or impairment of an animal.

For example, starving a cat would be considered as the base offence of 'general cruelty'. If the starving resulted in the cat's death or a permanent injury it would escalate to 'aggravated cruelty'.

An aggravated cruelty offence would carry penalties of up to 500 penalty units (\$90,870 at 30 June 2022) or imprisonment for up to two years for a person, and up to 2500 penalty units (\$454,350 at 30 June 2022) for a body corporate.

Aggravated cruelty would also be a strict liability offence. This means an aggravated cruelty offence could be prosecuted without the need to prove the accused intended any wrongdoing; just that they did the act.

Intentional or reckless cruelty

The new laws would introduce a new indictable offence for the most serious cruelty that is intentional or reckless.

Examples include deliberately burning a dog with a cigarette or shocking a racehorse with an electronic prodder. Indictable offences are heard before a Judge and/or a jury in the County or the Supreme Court of Victoria (although some may be heard summarily in the Magistrates Court under certain circumstances).

The new indictable cruelty offence would carry penalties of up to 1250 penalty units (\$227,175 at 30 June 2022) or imprisonment for up to five years for a person, and up to 6250 penalty units (\$1,135,875 at 30 June 2022) for a body corporate.

A successful prosecution would require demonstration of intent or recklessness.

Cruelty and aggravated cruelty offences are considered 'summary offences'. When a person is charged with a summary offence, the case is heard 'summarily' in the Magistrates' Court of Victoria by a Magistrate, rather than with a Judge and jury.

Demonstrating 'intent' requires the prosecution show that a person meant to do an action or cause a result.

Demonstrating 'recklessness' does not require that a person meant to do the action or cause the result, but that they were aware the consequence was probable but took the action anyway.

For an offence like this the prosecution must demonstrate both that the conduct occurred, and that it was intentional or reckless.

Why this approach?

The current POCTA Act lists specific acts or behaviours that constitute cruelty. This can create limitations or gaps in the law if a certain act or behaviour is not covered.

Providing three broad categories of cruelty offences in the new laws would be a more comprehensive approach to regulating undesirable conduct towards animals. Penalties could be more easily scaled to the seriousness of the cruelty.

The intentional or reckless cruelty offence aligns with community and stakeholder expectations that Victoria's laws can respond to the most heinous acts of cruelty, with appropriate high penalties.

What would change?

- A new indictable offence for intentional or reckless cruelty would enable prosecution for the most heinous deliberate acts of cruelty, with appropriate high penalties.
- The offences would more explicitly recognise that harm, pain or distress to an animal can be physical or mental.
- The new laws would set higher penalties for general cruelty and aggravated cruelty for a body corporate (more than doubling the penalties from 600 to 1250 penalty units for general cruelty, and from 1200 to 2500 penalty units for aggravated cruelty). This brings penalties in line with the general approach across the Victorian statute book.
- Guiding principles would be provided to the Courts for considering the penalties to apply if a person was found guilty of an offence.
- Some activities listed as cruelty under section 9 of the current POCTA Act would no longer be defined as an 'act of cruelty' in the new laws, unless it could be demonstrated they caused or were likely to cause unreasonable harm, pain or distress. For example, failing to provide shelter would be a care offence, unless it was demonstrated the lack of shelter caused or would likely cause unreasonable harm, pain or distress, in which case it would constitute a cruelty offence.
- Some other aspects covered in section 9 of the POCTA Act as 'acts of cruelty' would be addressed in the new laws under **Controlled conduct** or **Framework for specified classes of conduct**.

What would not change?

- The new laws would contain similar offences to the general cruelty offences and aggravated cruelty offences provided for in the current POCTA Act, with maximum penalties remaining the same for a person.
- Most activities listed as cruelty under section 9 of the POCTA Act would also be an 'act of cruelty' under the new laws. The table on the next page shows how each subsection of section 9 of the POCTA Act would be addressed in the new laws.

POCTA Act	New laws
<p>S9(1)(a) It is a cruelty offence to wound, mutilate, torture, override, overdrive, overwork, abuse, beat, worry, torment or terrify an animal.</p>	<p>Wounding, mutilation or beating an animal would be defined as an act of cruelty, so would not require separate or additional proof the conduct causes or would likely cause unreasonable harm, pain or distress.</p> <p>Torture, overriding, overdriving, overworking, abuse, torment and terrifying an animal would be covered under the general cruelty offences in the new laws, as these actions cause or would likely cause unreasonable harm, pain or distress to an animal – that is to show that an action ‘tormented’ an animal, distress or pain would need to be demonstrated.</p> <p>The term ‘worry’ in the current POCTA Act would not be included in the new laws as this is an action a person allows another animal to do, rather than doing to an animal themselves.</p> <p>Wounding an animal may also fall under the framework for specified classes of conduct with specific requirements detailed in regulations. See Section 9: Framework for specified classes of conduct for more detail.</p>
<p>S9(1)(b) It is a cruelty offence to load, crowd or confine an animal in a manner that causes or is likely to cause unreasonable pain or suffering.</p>	<p>Any action (including loading, crowding or confining an animal) conducted in a way that causes or would likely cause unreasonable harm, pain or distress to the animal would be a general cruelty offence under the new laws.</p> <p>Lower-level conduct may also be captured under the care requirements relating to handling and physical environment.</p> <p>Transporting an animal or keeping an animal in an intensive environment for a commercial purpose may also fall under the framework for specified classes of conduct with specific requirements detailed in the new regulations. See Section 9: Framework for specified classes of conduct for more detail.</p>
<p>S9(1)(c) It is a cruelty offence to do or omit to do an act with the result that unreasonable pain or suffering is caused, or is likely to be caused, to an animal.</p>	<p>Any act or omission that causes or would likely cause unreasonable harm, pain or distress would fall under the general cruelty offence.</p>
<p>S9(1)(d) It is a cruelty offence to drive, convey, carry or pack an animal in a manner that causes, or is likely to cause, unreasonable pain or suffering.</p>	<p>Any action (including driving, conveying, carrying or packing an animal) conducted in a way that causes or would likely cause unreasonable harm, pain or distress to the animal would be a general cruelty offence.</p> <p>Lower-level conduct may also be captured under the care requirements relating to handling and physical environment.</p> <p>Transporting an animal or a commercial purpose may also fall under the framework for specified classes of conduct with specific requirements detailed in regulations. See Section 9: Framework for specified classes of conduct for more detail.</p>

POCTA Act	New laws
<p>S9(1)(e) It is a cruelty offence to work, ride, drive or use an animal when it is unfit for the purpose and results in unreasonable pain or suffering to the animal.</p>	<p>Any action (including working, riding, driving or using an animal when it is unfit for the purpose) conducted in a way that causes or would likely cause unreasonable harm, pain or distress would be a general cruelty offence.</p> <p>Failing to provide veterinary treatment for an unfit animal would also be defined as an act of cruelty and would not require proof of harm, pain or distress.</p> <p>Lower-level conduct may also be captured under the care requirements relating to handling, nutrition, physical environment and health care.</p>
<p>S9(f) It is a cruelty offence for an owner or person in charge to not provide proper and sufficient food, drink and shelter to an animal that is confined or otherwise prevented from providing for itself.</p>	<p>Failing to provide sufficient food and drink to a confined animal would be defined as an act of cruelty, and would not require proof of harm, pain or distress.</p> <p>Lower-level conduct may also be captured under the care requirements relating to nutrition and physical environment.</p>
<p>S9(1)(g) It is a cruelty offence to sell, offer for sale, purchase, drive or convey an animal that appears to be unfit (because of weakness, emaciation, injury or disease) to be sold, purchased, driven or conveyed.</p>	<p>Any action (including selling, offering for sale, purchasing, driving or conveying an animal that appears to be unfit for the purpose) conducted in a way that causes or would likely cause unreasonable harm, pain or distress would be a general cruelty offence.</p> <p>Failing to provide veterinary treatment for an unfit animal would also be defined as an act of cruelty and would not require proof of harm, pain or distress.</p> <p>Transporting an animal for a commercial purpose may also fall under the framework for specified classes of conduct, with specific requirements detailed in regulations. See Section 9: Framework for specified classes of conduct for more detail.</p>
<p>S9(h) It is a cruelty offence to abandon an animal of a species that is usually kept in confinement or for a domestic purpose.</p>	<p>Abandoning an animal that is usually confined or kept for a domestic purpose would be defined as an act of cruelty and would not require proof of harm, pain or distress.</p>
<p>S9(i) It is a cruelty offence for the owner or person in charge to unreasonably fail to provide veterinary or other appropriate treatment to a sick or injured animal.</p>	<p>Failing to provide veterinary treatment to a sick or injured animal would be defined as an act of cruelty and would not require proof of harm, pain or distress.</p> <p>Lower-level conduct may also be captured under care requirements relating to health care.</p>

POCTA Act	New laws
<p>S9(j) It is a cruelty offence to intentionally administer to an animal or lay bait for an animal that contains poison or any other substance that has a harmful effect on the animal.</p> <p>Activities conducted in accordance with the <i>Catchment and Land Protection Act 1994</i>, <i>Wildlife Act 1975</i> or the <i>Drugs, Poisons and Controlled Substances Act 1981</i> are exempt from this provision.</p>	<p>Any action (including administering a substance) conducted in a way that causes or would likely cause unreasonable harm, pain or distress to the animal would be a general cruelty offence.</p> <p>Administering a substance may also fall under the framework for specified classes of conduct, with specific requirements detailed in the new regulations, which could also allow substances to be administered that cause harm, pain or distress in circumstances detailed in the regulations, as an exception to the cruelty offence. See Section 9: Framework for specified classes of conduct for more detail.</p>
<p>S9(k) It is a cruelty offence to use spurs with sharpened rowels on an animal.</p>	<p>Any action (including using spurs with sharpened rowels) conducted in a way that causes or would likely cause unreasonable harm, pain or distress to an animal would be a general cruelty offence.</p> <p>Spurs with sharpened rowels may also be controlled via the new regulations.</p>
<p>S9(l) It is a cruelty offence to carry out a prohibited procedure on an animal.</p>	<p>Any action conducted in a way that causes or would likely cause unreasonable harm, pain or distress to an animal would be a general cruelty offence.</p> <p>Prohibited procedures would remain prohibited Controlled conduct – see Section 8 for more detail.</p>

Jurisdictional comparison

Most other Australian jurisdictions follow a similar approach to general cruelty offences, with varying levels of detail provided about what constitutes cruelty.

Most other jurisdictions also have a higher-level offence for aggravated cruelty for more serious conduct that causes injury, serious permanent or prolonged loss of bodily function or death.

For the most serious acts of cruelty, some jurisdictions include elements of intent or recklessness in their aggravated cruelty offence, with associated higher maximum penalties. For example, the Australian Capital Territory has maximum penalties of three years of imprisonment or equivalent financial penalty. South Australia has a maximum penalty of four years of imprisonment or equivalent financial penalty. Tasmania has a maximum of five years of imprisonment or equivalent financial penalty.

Queensland and New South Wales address the most serious animal cruelty with offences in their crime Acts (*Criminal Code 1889* (Qld), *Crimes Act 1900* (NSW)), with maximum penalties of seven years and five years of imprisonment, respectively.

How could regulations support this approach?

Regulations may prohibit or regulate activities impacting the care and protection of animals. This may include prohibiting a specific activity considered cruel. In this case a lower penalty would apply for not complying with a regulation than for committing a cruelty offence. However, this would provide greater certainty that a specific activity was prohibited.

Regulations may also allow an activity that may otherwise be considered cruel, if this is deemed necessary for a legitimate purpose, in line with the **decision-making principles** (see Section 4). In this case, a person who complies with the regulations couldn't be prosecuted for a cruelty offence.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- Leaving a dog in a car during warm and hot weather can cause them significant distress, and they can suffer heat stroke and death. As under the current POCTA laws, a person who leaves a dog in a car could be charged with a cruelty offence under the new laws, if it resulted in the dog experiencing harm, pain or distress. If the dog suffered permanent damage to its internal organs which caused kidney failure and was subsequently euthanised, under the new laws a person could be charged with aggravated cruelty.
- Pinning or gluing a live bird to a road sign would cause it significant distress. A person who did this could be charged with a cruelty offence under the new laws, regardless of whether the bird was a pet, a wild native or an introduced species of bird. If the bird died as a result of the person's actions, the person could be charged with aggravated cruelty. If it could be demonstrated that the person intentionally or recklessly acted to cause unreasonable harm, pain or distress, under the new laws the person could be charged with intentional or reckless cruelty. If they filmed the cruelty to the bird for distribution on social media, this could be considered by the Court as normalising, provoking or perpetuating further cruelty.

Regulated activities

8. Controlled conduct

Controlled conduct

The POCTA Act controls similar forms of conduct but the new legislation will do this within a consistent framework.



What is controlled conduct?

Some activities with animals need to be **controlled** due to the **high risk of harm**.

Other forms of conduct with animals **have no legitimate societal purpose or use** to justify the risk of **unreasonable harm, pain or distress** to an animal.

These are managed under '**Controlled conduct**'.



Offences in Act

(up to **500PU, 2 years imprisonment / 2500PU** for a body corporate)

Baiting and luring

- Allowing or encouraging an animal to fight with another animal (or keep or use an animal for that purpose)
- Putting an animal in a situation where it will or is likely to be injured or killed by a dog
- Using or keeping an animal for use as a lure or kill to blood or train any dog

Offences in Act

(up to **250PU, 1 year imprisonment / 1250PU** for a body corporate, also infringeable **12PU / 60PU** for a body corporate)

Trap shooting

- Engaging in trap shooting
- Keeping or using a premises for trap shooting

Prohibited procedures

- De-clawing a cat
- Removing the venom sac of a reptile
- Cropping the ears of a dog
- Docking the tail of a dog, horse or cow
- Pin-firing a horse or dog
- Force feeding poultry
- Forcing poultry to fast to induce moulting
- Depriving an animal of iron (veal)
- Live-plucking poultry
- Teeth grinding of sheep

Vet-only procedures

Procedure that:

- enters a body cavity of an animal, or involves cutting or removing tissue from an animal, where that procedure would ordinarily be done using local or general anaesthesia

must be done by a vet UNLESS

- procedure is allowed to be undertaken by a non-vet by **regulations**.

Controlled devices

- Traps other than those allowed by **regulations**
- Electronic devices other than those allowed by **regulations**

REGULATIONS

(developed following a consultation process) to list:

- Allowed traps
- Allowed electronic devices
- Allowed procedures that would otherwise be vet-only procedures

Routine animal husbandry procedures by non-vets will be allowed in regulations where appropriate and necessary.

Where traps, devices and procedures are allowed in regulations, then they would not constitute an offence.



8. Controlled conduct

Proposed approach

Similar to the POCTA Act, the new laws would recognise that some conduct towards animals has no legitimate purpose that would justify the risk of causing unreasonable harm, pain or distress.

The new laws would also recognise that some activities need a high degree of control because of the risk of causing an animal unreasonable harm, pain or distress. These activities would be managed under 'Controlled conduct'.

Similar to the approach of the POCTA Act, the new laws would prohibit **baiting and luring**, as well as animal fighting such as cock fighting and dog fighting. High penalties would apply of up to 500 penalty units (\$90,870 at 30 June 2022) or imprisonment of up to two years for a person, with up to 2500 penalty units (\$454,350 at 30 June 2022) for a body corporate.

Trap shooting of live birds would also remain prohibited under the new laws, with similar penalties as set in the POCTA Act.

The new laws would address conduct and devices where prohibition or a high degree of control is justified because the conduct or device would cause an animal unreasonable harm, pain or distress, and/or because the activities have no legitimate purpose.

Similar to the POCTA Act, the new laws would prohibit some procedures considered unacceptable on animal welfare or animal management grounds.

Prohibited procedures would include:

- De-clawing a cat
- Removing the venom sac of a snake
- Cropping the ears of a dog
- Docking the tail of a dog, horse or cow
- Pin-firing a horse or dog (thermocautery) which involves treating an injury to a limb by burning, freezing, or dousing the limb with acid or caustic chemicals
- Teeth grinding of sheep
- Force feeding poultry
- Forcing poultry to fast to induce moulting
- Depriving an animal of iron for the purpose of livestock production for meat
- Live-plucking poultry, except for a few feathers (for any purpose) or an appropriate number of feathers required for therapeutic purposes.

The only exceptions to allow a prohibited procedure would be when a veterinary practitioner is performing the procedure for a therapeutic purpose (for example, removing an infected claw from a cat, or removing a cancerous venom sac from a snake), or where the Minister provides an exemption for necessary scientific research (following any other approvals required, such as from an Animal Ethics Committee).

The new laws would also provide that the default approach to some categories of procedures and devices would be their prohibition, unless the regulations specifically permitted certain activities within the categories. While those procedures and devices pose an inherent very high risk to animals, there are circumstances when they are appropriate. However, a high degree of oversight on how and when the procedures or devices are permitted (via regulations) is appropriate.

These would include **veterinarian-only procedures** where the default approach would be for these to be conducted by a registered veterinarian unless the procedure is allowed by regulations. Veterinarians must comply with the *Veterinary Practice Act 1997* and are subject to Guidelines issued by the Veterinary Practitioners Registration Board of Victoria. Veterinarian-only procedures would be procedures that enter a body cavity of an animal, or involve cutting or removing tissue from an animal, where that procedure would ordinarily be done using local or general anaesthesia. Procedures that fall within this definition could be conducted by people who are not veterinarians, where regulations allow this.

This would only cover procedures, not activities such as feeding an animal or giving it a tablet. There is no intention to ban common husbandry procedures where risks to animals are appropriately managed. Further consultation will be undertaken to identify relevant procedures and to develop the regulations that cover them.

Controlled devices would include:

- Using traps other than those allowed by regulations
- Using electronic devices capable of imparting or designed to impart an electric current or shock to the animal, other than those allowed by regulations.

Why this approach?

The new laws would provide a consistent approach to activities that are very high risk or simply not acceptable, with appropriate high penalties.

Clearly stating in the laws that these activities are prohibited or highly controlled will help support compliance and enhance enforcement activities.

Some of the activities have no legitimate purpose that would justify the risk of causing unreasonable harm, pain or distress. Other activities may cause unreasonable harm, pain or distress but there is a justification or benefit from the activity. These would be permitted, but in a controlled way to minimise the impacts as much as possible.

What would change?

- The new laws would provide for the consistent treatment of controlled conduct with a penalty equivalent to a cruelty offence.
- The new laws would provide higher penalties for prohibited procedures for a body corporate than the POCTA Act does. Under the new laws, the body corporate penalties would be 1250 penalty units (\$227,175 at 30 June 2022).
- The terminology for some prohibited procedures would be clarified in the new laws (for example, the term pin-firing would be used instead of thermocautery, to improve clarity of the prohibited behaviour).
- Some prohibitions would be extended to other species. For example, tail docking would be extended to include cows (with the exemption of veterinary treatment for therapeutic reasons) and thermocautery would be extended to include dogs.
- Some procedures were included as prohibited procedures in the POCTA Act as this enables conditions to be placed on how they are conducted. In the new laws, these procedures would be covered by the definition of 'veterinarian-only procedures' (for example, spaying an animal, debarking a dog).
- The new laws would prohibit procedures that are not currently specified as prohibited under the POCTA Act:
 - Force feeding poultry
 - Fasting poultry to induce moulting
 - Depriving an animal of iron for the purpose of livestock production for meat
 - Live plucking of poultry.

These procedures have long been unacceptable in Australia but were historically undertaken here or elsewhere for commercial reasons.

- The new laws would provide for higher penalties than the POCTA Act for the sale or use of prohibited electronic devices.
- The new laws would introduce a new default approach to some procedures that should only be undertaken by a veterinarian, with these procedures prohibited for non-veterinarians unless specifically allowed in the regulations. This would provide flexibility to deal with instances where these types of procedures are appropriate for others to undertake, but provide clarity that in general they should only be performed by veterinarians with appropriate qualifications.
- Offences for controlled conduct are intended to be infringeable (to be detailed in regulations) which would increase the toolbox for regulators dealing with this conduct.
- The new laws would provide the opportunity to prosecute some of this behaviour under the more serious indictable offence of 'intentional or reckless cruelty', with associated higher penalties of up to 1250 penalty units or imprisonment of up to five years for a person, and penalties of up to 6250 penalty units for a body corporate. See Section 7: **Cruelty** for more detail on cruelty offences.
- The new laws would increase clarity around exceptions to controlled conduct. The Minister would be enabled to allow an exception on a case-by-case basis for scientific research authorised under a scientific licence after approval by an Animal Ethics Committee (for example, research into prohibited traps).
- Offences for baiting and luring activities would remain, with associated significant penalties. A similar but refined approach is proposed for the regulation of traps. Electronic devices and traps are already highly regulated under the POCTA Act, including their prohibition unless expressly allowed by regulations. This general approach would remain under the new laws.
- There is no intention to ban common husbandry procedures where risks to animals are managed or there is a requirement that only veterinarians undertake the procedure. Further consultation will be undertaken to identify relevant procedures, and to develop the regulations that cover them. Developing regulations requires stakeholder and community consultation, and impact assessments to understand the costs and opportunities.
- Registered veterinary practitioners would be able to perform a procedure on an animal, including most prohibited procedures, where the procedure is required for a therapeutic purpose.

What would not change?

- As under the POCTA Act, the presence of harm, pain or distress would not need to be proven for the controlled conduct offences to apply.
- Prohibited procedures under the POCTA Act would remain prohibited in the new laws, as would activities previously covered by specific offences (such as trap shooting of live birds).
- It would remain an offence to cause another person to carry out a prohibited procedure.

Jurisdictional comparison

Other Australian jurisdictions prohibit certain activities in their animal welfare Acts and regulations.

The approach to prohibiting certain activities in Victoria's new laws would align with other jurisdictions and community expectations. The new laws would also increase penalties for conducting prohibited activities to align with other jurisdictions.

New South Wales, Queensland, and the Australian Capital Territory all list various prohibited activities or procedures in their animal welfare legislation, unless they are performed by a veterinary practitioner and are in the interests of the animal. This includes the debarking of dogs, declawing of cats, tail docking, ear cropping (and in New South Wales, teeth grinding).

Other jurisdictions also prohibit activities such as the use of electrical devices (New South Wales and the Australian Capital Territory) and spurs (New South Wales), live animal baiting (New South Wales, South Australia, and Queensland), bullfighting, dog and cock fighting and coursing (New South Wales and Queensland). The Australian Capital Territory prohibits rodeos and greyhound racing.

How could regulations support this approach?

The new regulations would provide the necessary detail to support the operation of the Act so that some activities that would otherwise be prohibited would be allowed in certain circumstances.

Developing regulations requires stakeholder and community consultation, and impact assessments to understand the costs and opportunities.

Regulations would list:

- Traps that are allowed (and/or circumstances where traps can be used)
- Electronic devices that are allowed (and/or circumstances where electronic devices can be used)
- Procedures that would otherwise be veterinary-only procedures (and/or the circumstances in which a non-veterinarian can perform the procedures).

Where traps, devices and procedures are allowed in regulations, it would not be an offence to use them or carry them out provided any requirements in the regulations are complied with.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- Docking the tail of a cow would be considered a prohibited procedure under the new laws. If a farmer docked the tail of a cow, they would be committing a prohibited procedure and could be prosecuted. However, if a cow injured its tail and a veterinary practitioner subsequently docked the tail for a therapeutic purpose and in alignment with any other requirements, neither the farmer nor the veterinarian could be prosecuted.
- Surgical procedures that remove sensitive tissue from an animal must be conducted by a veterinarian. However, the regulations would also specify certain circumstances where the removal of sensitive tissue may be performed by a non-veterinarian. In these circumstances the regulations would specify who can perform these procedures and any competency requirements needed to ensure the procedure is performed correctly and with minimal suffering. For example, the regulations may specify that an appropriately skilled stock person may castrate a lamb that is younger than six months old.
- Procedures that enter an animal's body cavity are restricted to veterinarians unless the regulations permit a non-veterinarian to perform them. Examples of these procedures could include artificial insemination or pregnancy testing of livestock. Where permitted for non-veterinarians these would be strictly limited to the people identified in the regulations as being competent to perform them.
- Regulations could allow the use of non-lethal confinement animal traps as long as they met requirements including: (a) the trap must not be designed in a way that it may cause unreasonable pain or suffering to a trapped animal; (b) the trap must not grip or strike any part of the body of a trapped animal; (c) the trap must not contain hooks, protruding parts, or other design features that may injure the trapped animal. If a person set a confinement trap that complied with these requirements, they would not commit an offence.

9. Framework for specified classes of conduct

Control of specified classes of conduct



What is control of specified classes of conduct?

The **specified classes of conduct** allows some types of conduct to be controlled to manage animal activities with **potential risks of pain, harm and distress to animals** and to **ensure lawful, legitimate interactions with animals** have clear authority to continue.

Regulations (developed following a consultation process) to list:

General conduct

Offences in regulations for the care and protection of animals (up to **20PU / 100PU** for a body corporate)

Regulations may:

- Set conditions under which animals may be kept in captivity, including how their care requirements must or must not be met
- Prohibit or regulate activities impacting on the care and protection of animals

Specific offences with low level penalties including infringements.

Specified classes of conduct

Offences in Act for failing to comply with regulations when carrying out an activity in a specified class that regulations prescribe requirements for (up to **60PU / 300PU** for a body corporate)

Classes of conduct where regulations may make requirements for specific activities:

- Killing or wounding an animal
- Using an animal for testing (other than scientific procedures)
- Carrying out a procedure on an animal (other than scientific procedures)
- Administering a substance to an animal (other than scientific procedures)
- Showing or exhibiting an animal for a commercial purpose
- Keeping an animal in an intensive environment for a commercial purpose
- Transporting any livestock, or transporting any animal for a commercial purpose
- Organising an event in which animals are used in sport, competition or recreation

Activities that fall within a specified class of conduct that must be done in a certain way.

If the activity is not done in that way then the penalty applies.

If there are no regulations for how an activity must be done, then the activity may be allowed unless it causes a care or cruelty offence.

Licences

Offences in Act (**20-60PU / 100-300PU** for a body corporate)

MAY be required in regulations for:

- Activities within specified classes of conduct (up to 60PU/300PU for a body corporate)
- Other activities where regulations prescribe a requirement for a licence (up to 20PU/100PU for a body corporate)

ALWAYS required for scientific procedures (up to 120PU, 12 months imprisonment / 600PU for a body corporate)

Specific activities within specified classes of conduct that require a licence.



9. Framework for specified classes of conduct

Proposed approach

The new laws would set out a framework for specified classes of conduct. This framework would provide that regulations may prescribe controls for some types of conduct so that risks to animals of harm, pain or distress are appropriately managed and that legal and legitimate interactions with animals have clear authority to continue under the new laws.

If there are no regulations for how a particular activity must be done, then the activity would be allowed, unless it causes a care or cruelty offence.

For **general conduct**, similar to the approach under the current POCTA Act, the new laws would empower the making of regulations that set out requirements for how general activities or conduct relating to animals are performed. One of the requirements may be that a licence is required for a specific activity. A change to regulations to require a licence could only be made after stakeholder and community consultation and an impact assessment to understand the costs and opportunities.

For failing to meet these requirements for general activities or conduct, a maximum 20 penalty units for a person (\$3,634 at 30 June 2022) and 100 penalty units for a body corporate (\$18,174 at 30 June 2022) would apply.

For **specified classes of conduct**, the new laws would also empower the making of regulations setting out requirements for particular activities that fall within each specified class of conduct, with higher penalties than the POCTA Regulations applying.

The new framework for specified classes of conduct would create offences relating to each class of conduct. These offences would only be relevant if the regulations set requirements for that particular activity (not for all activities within the class of conduct). If regulations prescribed requirements for an activity, failure to comply with these mandatory requirements would trigger the offence in the Act, with penalties of up to 60 penalty units for a person (\$10,904 at 30 June 2022) and 300 penalty units for a body corporate (\$54,522 at 30 June 2022).

Specified classes of conduct where regulations may, following required consultation and regulatory change, prescribe requirements for particular activities under the new laws would include:

- Killing or wounding an animal
- Using an animal for testing (other than scientific procedures)
- Performing procedures on an animal (other than scientific procedures)
- Administering a substance to an animal (other than scientific procedures)
- Showing or exhibiting an animal for a commercial purpose
- Keeping an animal in an intensive environment for a commercial purpose
- Transporting an animal for a commercial purpose
- Organising an event in which animals are used in sport, competition or recreation.

Undertaking an activity allowed by the regulations would provide an exception to the care and cruelty offences. See Section 5: **Application of the new laws** for more details. Making detailed regulations about some activities that fall within specified classes of conduct would make it explicit that they are permitted provided they are performed in a certain way. This would give certainty to people undertaking those activities while ensuring associated risks and impacts to animals were managed or minimised.

It is a requirement of section 13 of Victoria's *Subordinate Legislation Act 1994* that a regulation does not overlap or conflict with another regulation.

Regulations may also state that a **licence** is required for a particular activity that falls within a specified class of conduct. If regulations required a licence, it would be an offence to carry out that activity without a licence.

The new Act would only empower regulations to be made requiring a licence; it would not mean a licence would be required for all, or even most activities that fall within these classes.

Any licences required would be set in the regulations following stakeholder and community consultation and an impact assessment to understand the costs and opportunities.

Where an activity was licensed, Authorised Officers could enter the property where that activity is undertaken to monitor compliance with licence conditions (with safeguards for what is reasonable). See Section 12: **Authorised Officer powers** for more detail.

Licences would continue to be required for scientific procedures, with higher penalties applying. See Section 10: **Scientific procedures** for more detail.

Why this approach?

Animals play an important role in our society and there are many legitimate purposes and uses for them that should continue under the new laws. Some purposes may justify the acceptance of the risk of causing harm, pain or distress to an animal with or without additional requirements. The POCTA Act manages these risks *ad hoc*, with different types of activities involving animals and/or equipment regulated to manage or control these risks.

Under the new laws, this type of conduct would be controlled so that risks to animals of harm, pain or distress were appropriately managed, and that legal and legitimate interactions with animals have clear authority to continue. The new laws would provide greater certainty and clarity about what is and what is not permitted, which would support compliance and enforcement activities.

While the POCTA Act includes requirements for animals in research, teaching and rodeos, other activities that would likely cause animals significant harm, pain or distress are not addressed. Similarly, while some devices (such as traps) are directly regulated under the POCTA Act, other forms of equipment with a high risk of causing harm, pain or distress are not included.

Specifying classes of conduct in the new laws would let people know they must check the regulations for any additional requirements relating to that conduct.

Detailing any specific requirements in the regulations would provide flexibility in the new laws. Revising a regulation can be a simpler process because it does not need to be debated and passed in Parliament, as required for amending an Act. Regulations can be revised in response to new scientific understanding, changing industry practices or technology, administrative arrangements or community expectations. Revising a regulation still requires processes such as stakeholder and community consultation, and in most cases, an impact assessment to understand the costs and opportunities of any changes.

What would change?

- Requirements for specific industries and animal uses with risks to animal care and protection are inconsistently spread across the POCTA Act, Regulations and Codes of Practice. A single framework for specified classes of conduct in the new laws would provide a consistent approach.
- Various 'permits' or approvals currently apply to rodeos, trapping and electronic devices. The new laws would provide for a more consistent approach to permitting these activities under a licence in terms of administration, applications, granting, conditions, fit and proper person assessment, renewal, varying, suspending or the cancelling of licences. The new laws may also enable a broader range of activities to be licensed if appropriate, following consultation and impact assessments.
- Details for some controlled activities currently included in the POCTA Act would move to the new regulations. For example, many details relating to rodeo licensing would be more appropriately dealt with in regulations as part of the category for regulated conduct for 'organising an event in which animals are used in sport, competition or recreation'.
- The new laws would provide Authorised Officers the powers to enter and monitor compliance with any licence (with safeguards for what is reasonable).
- Some detail about scientific licences in the POCTA Act would move to the regulations – see Section 10: **Scientific procedures** for more detail.

What would not change?

- The new Act would not change current requirements for specific activities. Any changes would be made when developing the new regulations, which must include stakeholder and community consultation, as well as impact assessments. If there are no regulations for how a particular activity must be done, then the activity would be allowed, unless it causes a care or cruelty offence.
- Similar to the POCTA Act, conduct deemed to cause an animal harm, pain or distress, or activities with a high-risk of causing harm pain or distress would be regulated. This includes special requirements and licensing for rodeos. There would still be similar types of procedures, equipment and conditions permitted in regulations, as are currently covered by the POCTA Act and Codes of Practice, to allow the upholding of animal welfare protections while balancing the practicalities of modern animal care and industries.
- Registered veterinary practitioners could perform a procedure on an animal, including a prohibited procedure, if they determine the procedure is required for a therapeutic purpose.
- The new laws would continue to provide a power to grant licences for specified classes of conduct in certain circumstances, with more details provided in the regulations.
- Scientific procedure and rodeo licence holders that hold a licence issued under the POCTA Act would transition to a licence under the new laws. This may include 'grandfathering' licences that exist at the commencement of the new laws, and allowing them to continue operating for up to 12 months.
- It is not intended to regulate procedures or activities that would be unlikely to cause an animal unreasonable harm, pain or distress, or constitute a failure to meet care requirements (for example, clipping a dog's toenails).

Jurisdictional comparison

Other jurisdictions have varied approaches to allowing or regulating high risk activities. Many include these activities in codes of practice, which are mandatory in some states (for example, Queensland has a range of codes that are compulsory or partly compulsory, with specially trained Authorised Officers able to monitor for compliance with compulsory codes).

In the Australian Capital Territory, failure or reckless failure to comply with a mandatory code of practice is an offence, and Inspectors and Authorised Officers have powers to give written directions to rectify breaches of a mandatory code (with failure to comply with a direction also an offence).

In other Australian jurisdictions, the number of licensed activities in the legislation itself is usually brief, with more detail provided in regulations or as guidance or operating procedures outside the legislation.

All jurisdictions include provisions for the licensing of scientific research and teaching. South Australia's legislation also includes requirements for rodeo permits. The Australian Capital Territory's legislation requires licensing for pet businesses, with permits for circuses and travelling zoos and trapping.

Licensing provisions are not included in New South Wales' *Prevention of Cruelty to Animals Act 1979*, as two other Acts focus on animal research and exhibited animals.

The proposed penalties in the new laws are in line with those set in other jurisdictions.

How could regulations support this approach?

The new regulations would provide detail about activities within specified classes of conduct, such as what people must and must not do, or how a licensing scheme would operate.

Failing to comply with the requirements set in the regulations would be an offence, with penalties defined under the new Act. If there were no prescribed requirements for a particular procedure, conduct or equipment in the Act or regulations, that procedure, conduct or equipment would be permitted as long as it didn't constitute a care or cruelty offence.

More details and information would be drawn from the POCTA Codes of Practice, the Australian Animal Welfare Standards and Guidelines and other sources, in consultation with stakeholders.

Licences would not be required for all activities in specified classes of conduct. However, a licence for some activities may be identified as necessary during development of the regulations. Revising a regulation requires stakeholder and community consultation, and in most cases, an impact assessment to understand the costs and opportunities of any changes.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- Intensive piggeries would fall into the specified class of conduct for keeping an animal in an intensive environment for a commercial purpose. If it were determined that more detailed requirements were required in this industry, regulations may set out specific requirements for an intensive piggery such as the types and sizes of pens required. The content of the regulations would be informed by the current POCTA Codes of Practice, industry standards and any Australian Animal Welfare Standards and Guidelines that may be developed. If a farmer did not meet these requirements (for example, had smaller pens or overcrowding) they could be prosecuted for the offence of keeping animals in an intensive environment in contravention of the regulations. If no specific regulations were made about keeping a piggery, the piggery would need to meet the general care requirements under the new laws.
- The new laws would allow for regulations to be made that require a licence for organising an event in which animals are used in sport, competition or recreation. This would allow regulations to be made requiring a licence for organising a rodeo (which currently requires a licence under the POCTA Act). Any changes to specific activities requiring a licence would require stakeholder and community consultation, as well as impact assessments.

10. Scientific procedures

Proposed approach

Regulating scientific procedures would continue to be important under the new laws.

The new laws would include offences specific to scientific procedures relating to licences and the treatment of animals during scientific procedures. General provisions across Purpose and Application, Care and Protection, Compliance and Enforcement and Administrative sections would all apply to scientific procedures under the new laws.

Scientific procedure (as currently defined under the POCTA Act) means any procedure, test, experiment, inquiry, investigation or study which is carried out on or in connection with an animal in the course of which:

- (a) an animal is subjected to –
 - (i) surgical, medical, psychological, biological, chemical or physical treatment; or
 - (ii) conditions of heat, cold, light, dark, confinement, noise, isolation or overcrowding to which an animal of that species is not accustomed; or
 - (iii) abnormal dietary conditions; or
 - (iv) electric shock or radiation treatment; or
 - (b) any tissue, material or substance is extracted or derived from the body of an animal –
- and which is for –
- (c) the purpose of acquiring, demonstrating or developing knowledge in the field of medical, dental, veterinary, agricultural, behavioural or biological science or in any other field of science; or
 - (d) the purpose of acquiring, demonstrating, exercising or developing techniques used in the practice of medical, dental, veterinary, agricultural, behavioural or biological science or in any other field of science; or
 - (e) the purpose of developing or testing the use, hazards, safety or efficiency of vaccines, substances, drugs, materials or appliances intended for use in, on or in connection with human beings or animals; or
 - (f) any other purpose prescribed for the purposes of this paragraph –
- but does not include –
- (g) the treatment of an animal for the purpose of promoting its health or welfare by or in accordance with the instructions of a veterinary practitioner; or
 - (h) the conduct of animal husbandry carried out in accordance with a Code of Practice; or
 - (i) the collection, taking, banding and marking of wildlife within the meaning of and in accordance with the *Wildlife Act 1975*; or
 - (j) any or any type of procedure, test, experiment, inquiry, investigation or study prescribed for the purposes of this paragraph.

Scientific procedures could only be conducted under a licence. The licence could apply to a premises (where the occupier of the premises regulates the people conducting the actual procedures), to fieldwork, or to the breeding of animals used in scientific procedures.

This approach retains key offences and scientific licence classes from the POCTA Act.

In the new laws, administrative processes for scientific procedures would be dealt with alongside other licences and regulated activities. However, due to the significant penalties for non-compliance associated with scientific licences (up to 250 penalty units – \$45,435 at 30 June 2022, or one year imprisonment for a person and 1250 penalty units – \$227,175 at 30 June 2022 for a body corporate), requirements to hold a licence and associated offences would be included in the new Act rather than the regulations (as for some other licences).

Consistent with the POCTA Act, the new laws would include offences relating to 'a failure to euthanise an animal injured in a scientific procedure' and to 'surgical operations that must be performed under anaesthetic' or in accordance with the relevant regulations.

Current processes for scientific licensing would continue, including:

- Applying for a licence
- Granting of a licence by Secretary
- Issuing a licence
- Licence conditions
- Fit and proper person assessment
- Renewing
- Varying, suspending, or cancelling a licence.

As outlined in Section 5: **Application of the new laws**, an exception to offences in the new laws would apply to activities that are permitted by a licence. However, this exception would only apply to the specific conduct permitted by the licence. Otherwise, general requirements and offences would apply.

For example, a mouse used for scientific research into diet may have its diet modified in a way that would otherwise constitute a failure to meet the new care requirements. The care requirements for the mouse relating to its physical environment and behavioural interactions would still need to be met.

The new laws would also allow the Minister to exempt conduct or equipment that would otherwise be prohibited to enable scientific research authorised under a scientific licence on a case-by-case basis (for example, research into prohibited traps).

Why this approach?

When animals are used in scientific research there is a risk for those animals to experience harm, pain and distress.

The new laws would continue the approach of the POCTA Act for regulating the use of animals in scientific research and teaching, which aligns to the nationally agreed Australian Code for the Care and Use of Animals for Scientific Purposes.

This approach strikes a balance between a high degree of regulation to minimise the risk of animals experiencing unreasonable harm, pain and distress, while allowing necessary research.

What would change?

- The definition of 'animal' for scientific procedures would no longer be different to the definition for the rest of the Act. The definition of animal in the POCTA Act used for scientific procedures would be adopted across the legislation.
- While key offences in the POCTA Act would be retained in the new laws, they would be slightly enhanced, namely to provide higher penalties for body corporates, in line with the cruelty offences. See Section 7: **Cruelty**.
- Enforcement and administration provisions in the new laws would apply to the whole Act, with no specific provisions related to scientific licences as is currently the case under the POCTA Act. This would include powers, offences, enforcement, monitoring compliance, searches, seizure, warrants, duties, powers, notices to comply, adverse publicity orders, recovery of costs, preparation of reports with fees, payment of fees, infringements, protection against self-incrimination, and review by the Victorian Civil and Administrative Tribunal. See Section 12: **Authorised Officer powers**.
- The new laws would create a single class of Authorised Officer. A subset of specifically qualified Authorised Officers would have powers to inspect scientific premises as part of their authorisation. Enforcement related to scientific procedures would remain a specialist field requiring specific experience and training. Bringing scientific inspectors under a general Authorised Officer provision will support consistency in the legislation. See Section 11: **Authorised Officers**. Authorised Officers would retain powers to proactively monitor compliance with scientific licences.
- The new laws would provide clarity about when approval or supervision of an Animal Ethics Committee for animal research and teaching activities is required. Regulations may provide more detail about requirements for the composition of Animal Ethics Committees, in line with the Australian Code for the Care and Use of Animals for Scientific Purposes. These requirements could clarify the criteria for members of Animal Ethics Committees (such as qualifications and experience), as well as their decision-making principles and procedures.

What would not change?

- The general approach to scientific procedures (conduct requiring a licence and approach to licences) would remain closely aligned with the POCTA Act.
- Scientific procedures would continue to require a licence, which can apply to a premises (where the occupier of the premises regulates the people conducting the actual procedures), to fieldwork, or to the breeding of animals used in scientific procedures.
- Offences specific to scientific procedures would remain essentially the same as under the POCTA Act.
- The animals covered by the new laws for the purposes of scientific procedures would remain the same as under the POCTA Act.
- Enforcement related to scientific procedures would remain a specialist field requiring specific experience and training.

Jurisdictional comparison

South Australia, Queensland, and the Australian Capital Territory include provisions in their legislation for the licensing of scientific research and teaching.

New South Wales has a dedicated *Animal Research Act 1985*.

All Australian jurisdictions are required to recognise the Australian Code for the Care and Use of Animals for Scientific Purposes in their legislation. The approach to regulating scientific procedures in Victoria's new laws has been designed with this in mind.

How could regulations support this approach?

Specific regulations for the use of animals in research and teaching would be developed to provide more detail for scientific procedures. They may also regulate other uses of animals in research and teaching.

This would allow regulations to be made where animals may be kept in a research or education context but not meet the definition of a 'scientific procedure' above. For example, classroom pets in childcare or primary schools. Developing regulations requires stakeholder and community consultation, as well as impact assessments.

Regulations relating to particular species or circumstances of animals may also apply to animals in research and teaching. For example, regulations may be made about the conditions for keeping certain animals in captivity, which also detail the care requirements. These regulations may set cage sizes for poultry, or stocking density for livestock, which research organisations keeping these animals for research would need to comply with.

Using animals for testing (other than for a scientific procedure) is a category of regulated conduct, with regulations able to prescribe mandatory requirements with penalties attached of 60 penalty units for a person (\$10,904 at 30 June 2022) and 300 penalty units for a body corporate (\$54,522). This would capture activities that fall outside the definition of scientific procedures, but which still use animals.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- If a researcher at a new university wished to start undertaking research using animals at the university, the university would need to apply for a scientific procedures premises licence, and meet all the requirements detailed in regulations or licence conditions (such as forming or being approved to use an Animal Ethics Committee to approve research conducted under the licence).
- The research would need to be approved by the university's Animal Ethics Committee and the university would be subject to audits. Even if the research caused harm, pain or distress to the animals involved, if it was approved by the Animal Ethics Committee, undertaken in accordance with the Australian Code for the Care and Use of Animals for Scientific Purposes, and undertaken under a licence, the researcher couldn't be prosecuted for cruelty. If the researcher did something not approved by the Animal Ethics Committee or failed to meet care requirements for the animals, they could be prosecuted for care and cruelty offences.
- If the university did not apply for a licence, the university (as a body corporate) and the individual researcher could be prosecuted for allowing or conducting scientific procedures without a licence.
- If the research was undertaken without a licence and caused unreasonable harm, pain or distress, the researcher could also be prosecuted for cruelty.
- If a teacher in a government school required the use of animals for science education that met the definition of a scientific procedure (for example, conducting an inquiry involving subjecting an animal to conditions to which an animal of that species is not accustomed), they would require approval from an Animal Ethics Committee – most likely the Victorian Schools Animal Ethics Committee. As is the case under the POCTA Act, the school would also need a scientific procedures premises licence (or be covered under the Department of Education and Training licence). The animals would continue to have to be appropriately housed and cared for, including over weekends and school holidays.
- For animals in school for purposes that don't meet the definition of scientific procedures, scientific licensing requirements would not apply. Care and cruelty offences would apply and regulations and guidelines may provide additional direction for the care and protection of these animals.

Compliance and enforcement

Compliance and enforcement

To enforce the legislation, **Authorised Officers** need a **compliance and enforcement toolkit** to allow them to:



monitor the care and welfare status of animals, **encourage people** to obey the law, and to **take action** when they do not.

The new toolkit is similar to that in the **POCTA Act** but has been modernised to enhance effectiveness.

A **power** is a legal permission to perform a specific action, such as **entering a property** to investigate an animal welfare complaint or **providing food** to a malnourished animal.

These powers can be used for proactive monitoring of animal use to prevent animal cruelty occurring, and for reactive investigation of a suspected offence after it has occurred.

Tools for enforcement include:

notices

infringement notices and notices to comply, with penalties attached



undertakings

a written agreement to remedy an issue



court orders

binding directions given by a court placing restrictions on owning or interacting with animals to prevent further harm



Safeguards help us **balance protecting animals** with protecting human rights.



The **compliance and enforcement toolkit** also allows animals to be **seized**, and in certain circumstances disposed of.

Why?

The toolkit responds to the **expectations of the community, industry, and animal welfare groups** as well as domestic and international markets, that **laws for the care and protection of animals** will be enforced.



11. Authorised Officers

Proposed approach

Authorised Officers would be those authorised with powers under the new laws to undertake compliance and enforcement activities. This could include responding to complaints of animal cruelty, entering and inspecting properties, and issuing notices.

Under the current POCTA Act, there are three types of enforcement officers: Inspectors, Specialist Inspectors, and Authorised Officers.

Under the new laws, only one type of enforcement officer would be created, referred to as an Authorised Officer. The instrument of their appointment would identify which powers under the Act they may exercise. An instrument of appointment is a formal document that permits a person to be an Authorised Officer and outlines the terms and conditions of their appointment.

The new laws would restrict who can be appointed by the Secretary of the relevant department as Authorised Officers, including:

- Public servants (working for a government department) – for example, Department of Jobs, Precincts and Regions employees
- RSPCA Victoria officers
- Local government officers, who are also appointed under Victoria's *Domestic Animals Act 1994*, and who may be limited to operating in a specific local government area
- Officers appointed under other relevant legislation that are required to perform functions under the new laws – for example, officers of a statutory authority who are not employed under Victoria's *Public Administration Act 2004*, such as Greyhound Racing Victoria
- Other individuals with the specialist expertise required to undertake a particular function under the Act (including during an emergency).

As under the POCTA Act, Victoria Police officers would not need to be appointed as they would automatically be recognised as Authorised Officers under the new laws.

A person would need to demonstrate they are a 'fit and proper person' to be appointed as an Authorised Officer. For example, a person convicted of animal cruelty couldn't be appointed as an Authorised Officer.

A person would also need to be employed in a role that requires them to perform duties under the new laws to be appointed as an Authorised Officer.

They would also require appropriate qualifications or training to become an Authorised Officer, and the Secretary would be able to direct Authorised Officers to complete additional training or qualifications at any time. This training might cover the appropriate use of investigation powers, or humane euthanasia methods for animals.

When appointed as an Authorised Officer (other than a police officer with their own identification), each officer would be issued with an identification card they would produce or show when undertaking their duties. Authorised Officers would usually be appointed for three years. This appointment could be renewed multiple times and may be varied or revoked at any time.

Why this approach?

A single Authorised Officer category would streamline and simplify the appointment of enforcement officers, while allowing for specific training and use of powers in the instrument of appointment for each Authorised Officer.

This would future-proof authorisations in the new laws, to allow flexibility and responsiveness to changing needs for the roles of Authorised Officers.

It would also allow for the appointment of Authorised Officers or specialised experts, such as wildlife veterinarians, during emergencies.

What would change?

- The three categories of enforcement officer under the POCTA Act (General Inspector, Specialist Inspector or Authorised Officer) would be consolidated into a single category (Authorised Officer). Differences in the specialist skills required by Authorised Officers performing different roles would be managed by authorising different powers in each officer's instrument of appointment, dependent on the role they are performing.
- Authorised Officers would be appointed to their roles by the Secretary rather than the Minister, and the Secretary could delegate this task if needed.
- A person would need to demonstrate they are a 'fit and proper person' to be appointed as an Authorised Officer.
- There would be more flexibility for the Secretary to require training or qualifications for Authorised Officers.
- The POCTA Act requires a 'declaration of an emergency' before Authorised Officers can be appointed quickly in an emergency. This requirement would not be included in the new laws.

What would not change?

- The new laws are not intended to change the current role of Authorised Officers.
- Authorised Officers would continue to be drawn from a range of different organisations.
- There would still be special requirements to enforce certain parts of the new Act. While not classified as a separate category, only Authorised Officers with specialised skills would be able to exercise powers requiring those skills and this would be done through their instrument of appointment. For example, compliance monitoring of a facility where scientific procedures are conducted on animals is a specialised skill. This would not be part of the instrument of appointment for most Authorised Officers, and would continue to be a specialised activity.

Jurisdictional comparison

Most other Australian jurisdictions have two classes of Authorised Officers to enforce their animal welfare legislation, variously called inspectors, officers, authorised officers, general inspectors, scientific inspectors or authorised persons.

The two classes of Authorised Officers can be categorised as having either general enforcement duties or specialist enforcement duties. The general enforcement duties relate to enforcing the majority of the animal welfare legislation, whereas the specialist enforcement duties largely relate to licensing and scientific research and education activities that involve animals. Some other specialised enforcement duties relate to greyhound racing (New South Wales) and food production (Queensland).

The exceptions to this are South Australia and proposed legislation in New South Wales, where a single class of inspectors are used for all enforcement activities.

All jurisdictions provide for police officers to enforce animal welfare laws.

All jurisdictions include state or territory government employees as people who can become authorised officers, although South Australia, Tasmania, the Australian Capital Territory, and the Northern Territory do so indirectly (that is, any person who has completed the appropriate training can become an Authorised Officer, irrespective of whether they are a government employee or not). Appointment as a specialised Authorised Officer may also require specialised qualifications or training, such as being a veterinary practitioner.

New South Wales, Queensland, South Australia, Tasmania, the Australian Capital Territory, and Western Australia also include RSPCA officers.

The Australian Capital Territory relies solely on RSPCA inspectors to enforce animal welfare laws. The Northern Territory relies solely on government employees.

Western Australia and the Northern Territory allow local government employees to become Authorised Officers.

Any person with the appropriate skills or qualifications can be appointed as an Authorised Officer in South Australia, Tasmania, and the Australia Capital Territory. This may include local government employees, although in practice they are not used for animal welfare enforcement.

How could regulations support this approach?

Victoria's new laws would allow for regulations to require certain things of Authorised Officers.

Regulations could:

- State which powers under the legislation that a class of Authorised Officers is authorised to exercise, or under which circumstances a certain class of Authorised Officers is authorised to access certain powers (noting this can also be done via the instrument of appointment for individual Authorised Officers)
- State the qualifications or training that Authorised Officers must obtain
- State the form of the 'proof of authorisation' issued to an Authorised Officer by the Secretary to show they are an Authorised Officer.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- A local government employee may be appointed as an Authorised Officer under the new laws in conjunction with their appointment under Victoria's *Domestic Animals Act 1994*. Their duties would involve enforcing the new animal laws within the local community and may include tasks such as investigating animal welfare complaints. The Authorised Officer's instrument of appointment would stipulate the specific powers they are permitted to use during these investigations, such as powers of entry and investigation, and would limit their investigations to their local government area. This means the Authorised Officer may enter a property to investigate an animal welfare complaint but would not have the power or permission to conduct specialist enforcement duties, such as auditing scientific premises that use animals. Reports received of animal cruelty in another local government area would be referred to Authorised Officers employed by that local government.
- A public servant employed by the Department of Jobs, Precincts and Regions may complete specialist training regarding the use of animals for scientific research purposes, including the care requirements of research animals, the complex licensing requirements of scientific research facilities, and the appropriate methods for conducting research audits. On the successful completion of the training, the public servant may be appointed as an Authorised Officer with a specialisation in scientific procedures. The instrument of appointment may stipulate they may use general and investigative powers and are permitted to conduct routine auditing on scientific research facilities that use animals. Other Authorised Officers without this permission would not be able to enter and inspect licensed scientific facilities.

12. Authorised Officer powers

Proposed approach

The new laws would set out the powers available to monitor and enforce compliance with the laws. A power is a legal permission to perform a specific action, such as entering a property to investigate an animal welfare complaint, or for providing food to a malnourished animal.

The powers to monitor and enforce compliance are largely used by Authorised Officers, although on some occasions they require approval or issuing by a higher level of authority such as the Minister or Secretary of the relevant department. The Minister or Secretary would be able to delegate most of these approval decisions to an appropriate person at a lower level, following a formal process.

Unlike the POCTA Act, which provides different compliance and enforcement powers relating to scientific procedures, the powers in the new laws would apply across the entire Act.

Some powers can be used for proactively monitoring animal use to prevent animal cruelty, while other powers relate to reactive investigations of a suspected offence after it has occurred. The new laws would set rules so that powers are exercised proportionally and in appropriate situations.

ENTRY POWERS

The new laws would provide for an Authorised Officer to enter a place that is open to the public (for example a public road, or a park) and inspect that place for evidence of non-compliance.

An Authorised Officer would also have powers to enter public places to take action to enforce compliance where necessary.

The laws would also set out when Authorised Offices could enter private property that is a dwelling or premises.

Premises and dwellings

- Premises are property, such as a farm, or non-residential buildings.
- A dwelling is a building where someone lives and sleeps.

Authorised Officers could enter private property that is a premises or dwelling with the owner's consent. However, what they could do once they entered would be limited (it wouldn't include searching for evidence) and the owner could withdraw their consent at any time.

An Authorised Officer could also apply to a Magistrate for a search warrant to enter a premises or a dwelling to investigate an offence and search for evidence.

Similar to the powers of entry permitted under the POCTA Act, the new laws would provide for Authorised Officers to enter private property without the owner's consent or a warrant under certain circumstances. The circumstances justifying the use of entry powers would vary depending on whether it is a premises or a dwelling being entered. In most cases Authorised Officers would only be able to enter premises if they had a reasonable suspicion of non-compliance with the laws.

Reasonable suspicion and reasonable belief

- A reasonable belief requires a genuine belief, with a stronger factual basis than would be required to support a reasonable suspicion.
- A suspicion is less than a belief, but more than a possibility or a hunch – it has to have a basis in fact, but it is less than the threshold of believing something has occurred based on observable facts.

Entry to a premises without consent or a warrant

An Authorised Officer could be able to enter a premises without consent or a warrant if they were:

- Assisting an animal or person (for example, in the case of an animal attack)
- Securing evidence in certain circumstances
- Monitoring compliance with notices, enforceable undertakings, licences and approved arrangements
- Undertaking inspection as part of a Compliance Inspection Scheme the Minister has authorised (see below)
- Seizing animals in certain circumstances authorised by the Minister (see Section 13: **Seizure and disposal of animals**).

Entry to a dwelling

An Authorised Officer would be able to enter a dwelling (a building where someone lives and sleeps) to respond to serious or urgent situations where immediate action is required because a person is at risk of serious injury or death due to an animal's behaviour, or an animal is at risk of death or serious disablement.

An Authorised Officer would also be able to enter a dwelling or premises to monitor compliance with a court order, if compliance monitoring was part of the conditions included in the order when it was made. For example, if an order was made banning a person from living in the same house as a certain species, the order may also permit Authorised Officers to conduct inspections to check if animals of that species are in the house where the person is living.

Restrictions on the use of powers

Each of these powers of entry would contain thresholds that must be met so they are only used to the extent needed for the care and protection of animals, and so the powers are exercised appropriately.

For example, an Authorised Officer would be able to enter a premises with a 'reasonable suspicion' that an animal is experiencing harm, pain or distress or that someone has committed an offence. However, to enter a dwelling would require a 'reasonable belief' that an animal is experiencing serious harm, pain or distress and that the situation is so serious and urgent that immediate action is necessary.

Similarly, there would be safeguards on the powers of entry that mean an Authorised Officer must:

- Enter only for legitimate purposes
- Only exercise power to enter as frequently as necessary to achieve the purpose of entry
- Give reasonable notice of entry unless an exception applies (for example, monitoring compliance with a control order)
- Leave after the purpose of entry is achieved
- Inform the occupier if additional justification for remaining on the property arises
- If entry is by consent, leave if consent is withdrawn (unless there is another power that applies that justifies staying)
- Provide proof of authorisation upon entry.

GENERAL POWERS

As well as powers to enter, the new laws would include a range of general powers that an Authorised Officer could use once they entered a property, including powers to:

- Require information
- Require a person to give name and address
- Use the assistance of another person
- Use reasonable force to open a cage or container
- Detain a vehicle
- Secure evidence
- Issue directions
- Examine animals
- Take samples from animals or things
- Muster, yard or secure animals
- Provide for the care or treatment of an animals (including feeding and watering)
- Euthanise animals
- Make and keep records (for example, take photographs)
- Require production of documents
- Examine things.

In most cases Authorised Officers could only use these powers for purposes directly tied to the reason for entry. For example, Authorised Officers could seek and collect information in most circumstances but could only search for and collect evidence when they have entered to investigate an offence (not just to assist an animal).

These powers would also contain safeguards, which would be detailed in the new laws. For example, an Authorised Officer could euthanise an animal, but only under certain circumstances, such as when it would be unreasonable for the animal to be left alive because of the harm, pain or distress the animal is suffering or is under imminent threat of suffering, or because the behaviour of the animal is a danger to other animals or people.

Compliance Inspection Scheme

The new laws would provide for the Minister to establish a Compliance Inspection Scheme that allows the Minister to monitor a particular industry or activity for compliance with the laws. The new laws would require the Minister to announce the focus of the scheme in advance (following consultation) so that members of the targeted industry or activity are aware they will likely be the subject of increased monitoring in the immediate future. This monitoring might take the form of inspections of businesses at a reasonable time to confirm if they are complying with a specific regulation or part of the legislation.

The new laws would allow the Minister to respond where additional monitoring is necessary for market access reasons, to check compliance with a new requirement of the Act or regulations, or because there is evidence of widespread non-compliance in an industry.

In order to establish a Compliance Inspection Scheme, the Minister would need to be satisfied that there is a risk to the care and protection of animals.

POWERS FOR PEOPLE OTHER THAN AUTHORISED OFFICERS

Like the POCTA Act, the new laws would include a small number of powers for people other than Authorised Officers. This would allow veterinary practitioners and the responsible person at a saleyard to euthanise an animal without the consent of the owner, if it would be unreasonable for the animal to be left alive because of the harm, pain or distress it's suffering or is under imminent threat of suffering, or because the behaviour of the animal is a danger to other animals or people.

This approach would be similar to an existing provision in the POCTA Act.

Why this approach?

The changes to Authorised Officer powers would make it easier to enforce compliance with animal welfare legislation.

Streamlining and clarifying Authorised Officer powers in the new laws would support improved compliance and enforcement and better outcomes for animals.

Similar to the POCTA Act, the powers available to Authorised Officers would be relatively strong compared with Authorised Officer powers under other Acts. This reflects the recognition that animals are sentient, with the capacity to feel and perceive their environment and have positive and negative experiences like pleasure and pain.

At the same time, it's important the laws include safeguards and clear thresholds for Authorised Officer powers to balance the need to protect animals with the need to protect human rights, privacy, impacts on business operations and regulatory burden.

What would change?

- The new laws would lower some thresholds for entry and add a new power to enter a dwelling without a warrant in certain circumstances or emergency situations.
- While the POCTA Act requires a reasonable belief before a warrant can be issued to enter a premises to search for evidence, the new laws would only require a reasonable suspicion to obtain a search warrant to enter premises to search for evidence. This is because it can be difficult to form a reasonable belief about the state of an animal without inspecting it (which usually requires entry), but a reasonable suspicion can be formed on the basis of information that can be determined before entry (such as a credible complaint).
- While the POCTA Act requires a search warrant for entry to a premises for assisting an at-risk animal other than in urgent or emergency scenarios, or where authorised by the Minister, the new laws would allow entry to a premises (but not a dwelling) without a search warrant to prevent or respond to harm, pain or distress in a broader range of circumstances that do not need to be emergencies.

What would not change?

- The new laws would include many similar entry powers to those set in the POCTA Act.
- General powers available to Authorised Officers would not change significantly. While some look different, this reflects the streamlining of the Act rather than a significant shift in general powers.

Jurisdictional comparison

Other jurisdictions provide similar powers in their animal welfare legislation, with some differences in thresholds and how these are organised, reflecting different legislative approaches to powers across the statute book.

A number of jurisdictions provide very broad powers to enter premises (but not dwellings) to administer or enforce animal welfare laws. For example, South Australia allows officers to enter and search a premises for administering and enforcing its *Animal Welfare Act 1985*.

The Australian Capital Territory allows an inspector to enter a premises for the purposes of its *Animal Welfare Act 1992*.

New Zealand allows an inspector to enter any land or premises at any reasonable time for the purposes of inspecting any animal.

How could regulations support this approach?

Powers for Authorised Officers outlined in this section would also be available for enforcing the regulations under the new laws.

The powers themselves would be outlined in the Act. The regulations may include some directions about the exercise of powers under the Act. For example, the regulations may provide directions about the circumstances when a class of Authorised Officer would be authorised to access certain powers.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- Authorised Officers would be able to exercise powers under the new laws to investigate complaints. For example, if a credible complaint was made to the RSPCA Victoria animal cruelty hotline that puppies kept at a breeder's house (dwelling) were being spayed by a person who is not a veterinarian and without anaesthetic, an Authorised Officer may visit the property to investigate. If the occupier didn't give their consent to enter the dwelling, the Authorised Officer may need to apply for a warrant to investigate the non-compliance (illegal spaying) and to prevent further suffering.
- The Authorised Officer may base their application for a warrant on their observation of young puppies with healing wounds in the hallway of the dwelling. In this situation, the Authorised Officer would be exercising a power of entry to a dwelling without consent but with a search warrant. The Authorised Officer would also exercise a power to inspect the animals, and to make and keep records about the animals.
- An Authorised Officer may exercise powers to assist an animal. For example, if a person calls the RSPCA Victoria animal cruelty hotline after noticing their neighbour's horse is distressed with colic and the owner doesn't live at the property and can't be contacted, an Authorised Officer would be able to enter the property to inspect the horse and arrange veterinary treatment. In this situation, the Authorised Officer would be exercising a power of entry to a premises without consent or a warrant to assist an animal. The Authorised Officer would also exercise a power to examine an animal and a power to arrange treatment for an animal.
- Following a bushfire, an Authorised Officer would be able to enter a property at the request of the owner to assess the condition of burned sheep and to euthanise any sheep in such a state of pain and distress they would continue to suffer if not euthanised. In this situation, the Authorised Officer would have entered the premises with consent, and exercised a power to examine the animals, and a power to euthanise the animals.

13. Seizure and disposal of animals

Proposed approach

The seizure and disposal of animals is an important power for those enforcing the new laws to ensure the care and protection of those animals.

Seizing an animal is when Authorised Officers take an animal into their custody. Depending on the type of seizure, the animal can usually be held for a period of time before they must be returned to the owner, or the animal must be declared 'forfeited'.

Once an animal is 'forfeited', the decision-maker is able to 'dispose' of the animal. Depending on the condition and circumstances of the animal, this can mean: selling the animal to a new owner, or to an abattoir for production animals; rehoming the animal (giving away); or humanely destroying the animal where veterinary advice indicates this is the humane thing to do, or if the animal is aggressive or has behavioural problems which makes it unsuitable to rehome.

The seizure powers in the new laws would be similar to powers available under the POCTA Act, while the powers and processes for what happens to an animal once it was seized would be streamlined to avoid the need to keep that animal in unsuitable conditions for a lengthy period.

For some types of seizure, the owner of the animal would be able to seek a review of a decision to forfeit an animal. However, in circumstances where animals may need to be disposed quickly (for example, dogs that have been trained to fight, or production animals that need to be sent to the abattoir before they grow too large) the availability and duration of a merits review like this may not always be consistent with the need to treat seized animals as sentient beings rather than a type of property. Limitation of the availability of merits review is consequently being considered, noting that this would engage rights under the Charter of Human Rights and Responsibilities, and any limitations of charter rights would need to be reasonable and demonstrably justified.

A person who believes any decision about seizure or forfeiture was made unlawfully would be able to seek judicial review by asking a court to consider whether the decision was made according to the law (but not the merits of the decision).

The new laws would provide for animals to be seized in four circumstances:

- Immediate seizure to minimise harm, pain or distress
- Immediate seizure of an animal kept in contravention of a control order
- Seizure following notice of intent to seize and dispose of an animal
- Immediate seizure in special circumstances.

These are explained in more detail below.

IMMEDIATE SEIZURE TO MINIMISE HARM, PAIN OR DISTRESS

An Authorised Officer would be able take an animal into their custody if it is necessary because the animal is experiencing or would likely experience harm, pain or distress. For example, an Authorised Officer may seize an abandoned animal, an animal that is severely undernourished, or an animal used in baiting or luring. This type of seizure could also occur under a search warrant if a warrant is required to enter the place where the animal is located.

Once an animal was seized, a decision would be made as to whether it is appropriate for the animal to be returned to the owner. This decision is not tied to the outcome of any charges or court case. The decision is based on an assessment of whether the animal would likely experience unreasonable harm, pain or distress if returned to the owner. If the animal cannot be returned, it would be 'forfeited' to the Crown, and may be rehomed, sold, or destroyed depending on the condition and circumstances of the animal.

Decisions about forfeiture would be subject to a robust process. This process is being developed, and would consider the need to not unduly lengthen the time that an animal would need to be kept in custody. If an animal was seized without prior notice, in most cases the owner of the animal must be given an opportunity to make submissions that the animal should be returned to them, and in some cases could seek review of a decision to forfeit their animal.

The Minister would have discretion to provide financial compensation to a person whose animal was forfeited and disposed of, unless the person was convicted of an offence under the new laws.

The Secretary of the relevant department would be able to determine that fighting dogs and cocks must be disposed of quickly if necessary without merits review processes, as these animals cannot be rehabilitated and are difficult to house safely.

IMMEDIATE SEIZURE OF AN ANIMAL KEPT IN CONTRAVENTION OF A CONTROL ORDER

An Authorised Officer would be able to immediately seize an animal kept in contravention of a control order (an order made by a court banning a person from owning or having interactions with animals. See Section 14: **Enforcement toolkit**).

A person whose animal was seized would have opportunity to submit to the Minister that animal was not being kept in contravention of a control order. The Minister would then determine if they have a reasonable belief the animal was being kept in contravention of a control order, and if so, would decide if the animal was to be disposed of. The Minister's decision would be final and merits review may be limited following further consideration of the Charter of Human Rights and Responsibilities.

SEIZURE FOLLOWING NOTICE OF INTENT TO SEIZE AND DISPOSE OF AN ANIMAL

The new laws would allow the Secretary to give Authorised Officers the power to issue a notice of intent to seize and dispose of an animal where the Secretary reasonably believes the animal is experiencing or is at risk of experiencing unreasonable harm, pain or distress, or their care requirements not being met, if action is not taken. The notice would direct a person to take action to address risks to the care and protection of animals.

After the notice was issued, an Authorised Officer would be able to return to the property to check compliance, and if the person has not complied, seize the animals and dispose of them without further notice. The issuing of the notice would give people a clear warning and opportunity to change their treatment of animals at risk. If they didn't comply with the notice, their animals could be disposed of without merits review processes, including review by the Victorian Civil and Administrative Tribunal (VCAT).

This approach reflects the need to deal with seized animals quickly (particularly animals kept in large numbers for meat production) before their condition deteriorates, or they become difficult to process in an abattoir or dispose of humanely.

IMMEDIATE SEIZURE IN SPECIAL CIRCUMSTANCES

The Minister would be able to give Authorised Officers the power to seize and dispose of animals immediately in special circumstances, when an event or situation has resulted in a number of animals being placed at risk of experiencing harm, pain or distress and it is not practical for animals to be maintained by regulators.

As with seizure following a notice of intent to seize and dispose, animals seized using this process could be disposed of quickly, to prevent them deteriorating further.

The powers to seize and dispose of animals outlined above would not give a power of entry where that power does not already exist, but they may be exercised (where requirements are met) upon entry.

SEIZURE PROCESSES

Despite any other powers or processes (including review processes), an Authorised Officer (as well as a registered veterinarian) would always be able to humanely end an animal's life if the animal was injured or ill and experiencing pain and suffering and would continue to suffer if left alive.

For all seizures where an animal is seized and maintained by the department or enforcement agency, the costs associated with maintaining the animal (such as feeding and any veterinary services required) would be able to be recovered from the owner of the animal. Not paying these costs would mean an animal is forfeited and may be disposed of.

Any proceeds from selling an animal that is forfeited would be offset against costs of maintenance, with any remaining proceeds returned to the owner.

Why this approach?

The recognition of animals as sentient, with the capacity to subjectively feel, perceive their environment and have positive and negative experiences like pleasure and pain, means they should not be treated the same as inanimate objects when they are seized.

Unlike the seizure and disposal of inanimate property, where the main concern is the impact on the property rights of the owner, the seizure and disposal of animals also needs to be informed by the impacts on the care and protection of the 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 impacts on the welfare of seized animals. Keeping animals for long periods can also have significant financial implications for the department or an enforcement agency.

Under the new laws, the Minister would be able to authorise disposal of an animal, even where court proceedings are not finalised. This would address the existing issue of animals needing to be kept in unsuitable conditions during lengthy court proceedings.

Making most decisions to forfeit an animal subject to a robust process, including giving the owner an opportunity to make submissions, would provide an important safeguard against the inappropriate confiscation of property.

What would change?

- The new laws would streamline seizure powers and reduce the number of powers needed by using more general language.
- The new laws would not require a seized animal to be retained and maintained during a court proceeding unless the animal itself was evidence (which would be rare).
- The Minister, rather than a court, would be able to determine that a seized animal that would be at risk if returned to its owner may be forfeited to the Crown and disposed of if it can't be maintained in suitable conditions.

What would not change?

- The new laws would include several important powers similar to powers under the POCTA Act that are commonly used, including the power to seize and dispose of animals following non-compliance with a notice of intent to seize.
- The new laws would not change the usual rights to judicial review of administrative decisions made under legislation by a court.

Jurisdictional comparison

Legislation in all Australian jurisdictions provides powers to seize and dispose of animals, connected with an offence or to alleviate suffering.

In some jurisdictions, like the Australian Capital Territory, seized animals can be sold or rehomed in the interests of welfare, with this decision subject to review.

In other jurisdictions, like Western Australia, a court must make the decision allowing animals to be forfeited and sold or rehomed before the completion of a court proceeding.

Some jurisdictions, like New South Wales, provide different powers to deal with the seizure and disposal of stock animals following the issue of a notice in writing.

All jurisdictions allow the destruction of animals that are suffering.

How could regulations support this approach?

Regulations may prescribe the information to be provided in a notice of intent to seize and dispose of animals.

Regulations may also set how compensation for forfeited animals (where payable) is calculated.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- A notice to seize and dispose of animals may be issued to a large livestock company in financial trouble and as a result, failing to appropriately care for a large number of animals. If the requirements of the notice were not complied with, the animals could be seized and disposed of.
- The power to immediately seize an animal to minimise harm, pain or distress could be used to seize malnourished, distressed horses following severe neglect. The seized animals could be provided with veterinary care, treatment and rehabilitation. If it were determined it was not appropriate for the horses to be returned to the owner as they would likely experience harm, pain or distress, the horses could be retained by the enforcement agency and maintained in appropriate conditions, or if this were not practical, they could be sold or rehomed.
- Kittens abandoned in a local rubbish park rubbish bin could be seized and rehomed as they have no owner.
- A search warrant may be issued allowing an Authorised Officer to remove an animal from a property to examine it or undertake tests to determine evidence of new or old injuries. The animal seized for this purpose would have to be returned once examination or testing is complete if the care and protection of the animal would not be placed at risk by returning it.

14. Enforcement toolkit

Proposed approach

The new laws would include enforcement tools such as notices, undertakings and orders. The new 'enforcement toolkit' would enhance the tools currently available under the POCTA Act and provide additional tools to better manage enforcement.

NOTICES

Notices are a formal written communication used to notify someone that compliance or enforcement action has been taken against them.

Two key notices that would be available under the new laws are:

- Infringement notice
- Notice to comply.

Infringement notice

Infringement notices are an enforcement tool that allow Authorised Officers to respond immediately to minor breaches of the Act or regulations by issuing a notice with a fine.

An infringement notice can be issued 'on the spot' at the time of the offence or mailed. An infringement notice sets out the details of an alleged offence and a fixed penalty amount. A person has the options of: paying the penalty; having the matter dealt with by a court (contesting the notice); or applying for an internal review. If a person pays the infringement penalty, the matter is considered as dealt with, with no criminal conviction or finding of guilt recorded against that person. If a person contests the notice in court and is found guilty, significantly higher maximum penalties apply and a criminal conviction may be registered.

Infringement notices would be considered when an Authorised Officer is able to make a straightforward and objective assessment of compliance with a provision.

The list of infringeable offences would be finalised during drafting of the regulations. Proposed infringeable offences may be:

- Failing to comply with a notice to comply
- Regulated conduct offences
- Licence offences
- Prohibited conduct offences.

Notice to comply

The new laws would also provide for a notice to comply as a key tool for enforcement to be used in situations where a person is required to perform or cease certain actions to comply with the legislation.

An Authorised Officer would be able to issue a notice if they believe someone is committing or would likely commit an offence. This might be an offence of failing to comply with the new care requirements, a cruelty offence, or an offence against a regulation.

Following issue of the notice, regulators would be able to conduct inspections to assess compliance with the notice.

To safeguard against this power being used inappropriately, an Authorised Officer must get approval from a supervisor or more senior person in their organisation before returning to check compliance with a notice.

If the person issued a notice doesn't take the actions outlined in the notice, they will have committed an offence of not complying with the notice, and penalties would apply. This would be a separate offence to any care or protection offence.

Failure to comply with a notice to comply may also be an infringeable offence.

Enforceable undertaking

An enforceable undertaking would be a written agreement between the Secretary of the relevant department and a person or entity in relation to non-compliance or alleged non-compliances with the laws (irrespective of whether or not the person/entity has been charged).

An enforceable undertaking would only be available at the Secretary's discretion.

An enforceable undertaking would allow for a person or entity to commit to actions to remedy their non-compliance with the laws within a timeframe, while being monitored for compliance.

This would provide a new compliance and enforcement tool for animal protection (although it is used in consumer law, and occupational health and safety law). An enforceable undertaking may be used where the focus is on improving animal care and protection outcomes, rather than punishment for offences.

The person (or body corporate) couldn't be prosecuted for the alleged breach while the undertaking was in force, but the conduct could be taken to a court if the person didn't comply with the enforceable undertaking.

Orders

A **court order** is a formal set of instructions made by a court that describes how a person must act following a conviction to reduce the opportunity for further offending.

A **control order** is a type of court order that can be made under the legislation.

Control orders under the new laws would be similar to those applicable under the POCTA Act, with minor improvements. Control orders are a key tool to prevent further harm to animals when a person has been convicted of an offence.

A control order would be able to:

- Ban a person from owning or being in charge of specified animals
- Apply conditions that must be complied with whenever the person owns or is in charge of animals
- Prohibit or place conditions on a person living in a house where animals of a specified species live, or operating, being involved in or being employed by a business that involves animals.

Under the new laws, a control order would be able to last for any period of time, including the life of the person, and may be made in addition to or instead of other penalties.

The new laws would also continue to allow the recognition of control orders made in other states and territories in Australia, so that people cannot cross state borders and continue cruel activities.

It would be an offence not to comply with a court order. This would be a separate offence to any care or protection offence.

Powers including entry and seizure and disposal of animals would apply to deal with animals kept in contravention of a control order. See Section 12: **Authorised Officer powers** and Section 13: **Seizure and disposal of animals** for more detail.

The new laws would also enable courts to make adverse publicity orders (where a court orders a person or body corporate to publish information about their non-compliance) in an expanded range of circumstances beyond just scientific procedures offences.

Why this approach?

A wide range in the seriousness of non-compliance can occur across animal-use sectors, from minor administrative errors to serious acts of malicious animal cruelty.

The new laws would allow for a more graduated and nuanced response to enforcement, tailored to the offending. Tools to enable early intervention would also safeguard animal welfare.

What would change?

- While the approach to infringeable offences under the POCTA Act would be maintained in the new laws, they would be expanded, particularly with the introduction of care requirements offences.
- As the scope of the conduct covered by the regulations would be greatly expanded under the new laws, a greater number of offences would be infringeable, which would make compliance activity more flexible.
- A notice to comply would be infringeable and would provide an Authorised Officer power to re-enter a premises to monitor compliance with the instructions in the notice. This would come with an additional requirement for approval from an Authorised Officer's supervisor to issue a notice to comply (as it will authorise a power of entry).
- The penalty for non-compliance with a notice to comply would fall from 120 penalty units in the POCTA Act to 60 penalty units in the new laws to cover care requirements (noting that a person could also be charged for the offence that prompted the notice to comply).

- The new laws would provide enforceable undertakings, which are a new enforcement tool not available under the POCTA Act.
- Control orders would be able to prevent a person from residing in the same dwelling as an animal, or prevent them from working with animals, with the maximum length of a first control order extended from 10 years to the lifetime of the person, and it would be clear that multiple control orders can operate concurrently or consecutively.
- The new laws would also extend adverse publicity orders (where a court orders a person or body corporate to publish information about their non-compliance) beyond just scientific procedures offences to be applicable across the legislation.

What would not change?

- The core enforcement tools available would remain the same. Infringements, notices to comply, and control orders are all available under the POCTA Act and would remain the key enforcement tools available under the legislation. The changes made to these would refine and streamline these tools rather than making significant changes.

Jurisdictional comparison

All other Australian jurisdictions use a mix of enforcement tools similar to those in the new laws.

All jurisdictions include the power to issue notices or directions in their Act. In most jurisdictions this includes an entry power. For example, in Queensland's *Animal Care and Protection Act 2001*, a power of entry is granted where an animal welfare direction has been given and the entry is made at a time or interval stated in the direction to check compliance with the direction.

Penalty notices or infringement notices appear broadly similar across jurisdictions.

All jurisdictions include provisions for court orders, although the type of order provided for varies.

All jurisdictions provide offences for failure to comply with a court order.

No other jurisdictions include enforceable undertakings or similar tools in their animal welfare legislation.

How could regulations support this approach?

Infringeable offences would be set out in the regulations.

Regulations would also prescribe forms and information to be provided in notices to comply and notices of intent to seize and dispose of animals, which may include information about how to complain about the conduct of an Authorised Officer.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- Following examination of some animals in poor body condition, an Authorised Officer would be able to issue a notice to comply. The notice would state the animals are required to be fed a certain number of times per day and provided with shelter to allow their body condition to improve. The Authorised Officer would then be able to return to the property at a reasonable time to check the condition of the animals and make sure they have shelter as stated in the notice.

Administration

15. Co-regulatory approved arrangements

Proposed approach

The new laws would provide the ability to recognise co-regulatory approved arrangements.

Approved arrangements, or co-regulation arrangements, recognise that government is not the only body that regulates animal-related activity.

The new laws would introduce approved arrangements (also known as co-regulation) as a means of recognising animal sector-led standards, quality assurance schemes, memberships, qualifications, audit arrangements or processes as alternative ways to meet the requirements of the new laws at an equivalent or higher standard.

This would allow flexibility when several appropriate alternative ways to care for animals are possible, which can improve animal welfare outcomes.

An approved arrangement would be a written agreement between an organisation and the government about how to set and enforce standards of care and protection for activities involving animals. The agreed standards of care would need to meet or exceed the care requirements provided by the legislation and could not be used to approve any prohibited conduct or equipment. That is, an approved arrangement would never be used to reduce the standard of care and protection provided to animals in Victoria.

Under a proposed approved arrangement, an organisation would become a controlling authority and monitor the conduct of its participants through an assurance or similar scheme. The role of government would be to assess the robustness of the accreditation scheme and monitor the conduct of the controlling authority, rather than monitoring individual participants.

This would reduce the regulatory burden on the government to monitor many individual participants, as well as the compliance burden on industry to demonstrate compliance with multiple schemes (such as compliance with the legislation through a licence, market access requirements, or other welfare-related assurance schemes for branding/marketing).

Participating in the approved arrangement could be sufficient for industry to demonstrate compliance with other assurance requirements.

Due to the seriousness of a co-regulatory responsibility, there must be a high threshold for entry, and the decision to accept or deny an approved arrangement would be made by the Minister. Applicants would undergo a rigorous approval process and must comply with any additional conditions of the agreement the Minister deems appropriate (such as reporting requirements). An appropriate frequency of audit to assure each agreement would be determined. Authorised Officers would be able to use their compliance and enforcement powers to investigate suspected at-risk animals.

If the controlling authority did not comply with the terms of the approved arrangement, the Minister would be able to vary, suspend, or revoke the arrangement. Non-compliance could also result in participants to an approved arrangement being liable for an offence under the legislation. Other non-financial penalties could also apply, such as the publication of non-compliance information.

Why this approach?

Demonstrating compliance with the legislation (such as through a licence, or by following the requirements in regulations) as well as the requirements of an industry or other non-government scheme is a regulatory burden. Non-government regulatory arrangements could be adopted where they meet or exceed the minimum legislated standards in place of direct government regulation to reduce this regulatory burden.

However, simply adopting non-government schemes without oversight poses risks. Co-regulation between industry and government is therefore proposed to be introduced in the form of approved arrangements.

Rather than focusing on individual regulated parties, as it must in licensing schemes, the efforts of government can be better placed in setting requirements and evaluating approved arrangements.

An approved arrangement can be beneficial to industry, as well as government, and can improve the care and protection of animals across Victoria. By enabling recognition of an industry scheme to achieve standards above the minimum, this can encourage others to aim for the same.

What would change?

- There is no related framework in the POCTA Act to recognise co-regulatory arrangements.

What would not change?

- Industry-led assurance and accreditation schemes would continue without change. It would be optional for an organisation to apply to have their scheme formally recognised under an approved arrangement.
- Approved arrangements are unlikely to apply to smaller businesses and organisations, such as cat breeders, veterinary practitioners, petting zoos, and wildlife carers.
- Prohibited conduct and devices would still be prohibited under an approved arrangement.
- Approved arrangement participants would still be subject to the requirements of the legislation when interacting with animals, except to the extent that the arrangement specifies alternative ways to meet or exceed particular requirements.
- Enforcement agencies would remain responsible for compliance action in response to breaches.

Jurisdictional comparison

No other Australian animal welfare legislation allows for co-regulatory arrangements. The proposed approach would make Victoria an Australian leader in the co-regulation of animal welfare.

Variants of co-regulatory arrangements exist in the Commonwealth *Biosecurity Act 2015* and in Victoria's *Livestock Management Act 2010*, and its *Domestic Animals Act 1994*.

How could regulations support this approach?

The regulations may set out relevant matters for the administration of approved arrangements, including:

- Application and renewal process, and timeframes
- Details of monitoring and auditing requirements
- Criteria for approval of arrangements (such as the ability to meet or exceed the minimum standards outlined in the new laws, agreement to independent monitoring and auditing, and reporting and record-keeping requirements)
- The fees charged for assessing, approving, auditing and reviewing approved arrangements.

EXAMPLE

HOW WOULD IT WORK IN PRACTICE?

- An industry body for an activity that would ordinarily require a licence may propose an approved arrangement for industry participants, where third-party auditors regularly check compliance of those participating in the scheme. In order to become an approved arrangement, the scheme would need to meet the requirements for independent auditing, reporting and record-keeping. Once approved, the arrangement would be an alternative to a licence, which may reduce regulatory burden on participants and government by building on existing assurance schemes.
- If an international market or customer introduced a market access requirement related to welfare, such as providing pain relief for certain procedures, an approved arrangement may be used to demonstrate compliance. While the requirement may be covered under the laws in Victoria, it may not be proactively monitored. An approved arrangement may allow a government-endorsed approved arrangement, with independent auditing used to satisfy the market requirements and ensure market access for arrangement participants.

16. Other administrative arrangements

The new laws would provide for a range of administrative arrangements and provisions to support the functioning of the legislation.

Cost recovery

Regulatory bodies can incur significant costs for administering and implementing animal welfare laws. Where appropriate and within Victorian government guidelines, costs should be recovered and the new laws would prescribe where this will occur. Where a direct benefit is enabled, such as via licences and approved arrangements, these costs would be recovered.

The new laws would permit the recovery of costs for the following activities:

- Licences
 - such as application fees, licence fees, charges related to ongoing monitoring of compliance
- Approved arrangements
 - such as assessing a proposed arrangement, fees for carrying out audits
- Seizure and disposal of animals
 - such as costs of mustering and transporting
- Provision of care for animals
 - such as the provision of sustenance, transport or housing of animals
- Arranging and paying for a service related to animal care and protection
 - such as veterinary treatment
- Enforcing an adverse publicity order when it has not been complied with
 - such as advertising costs.

The new laws would set the power to recover costs related to the above areas. Regulations would provide the details such as cost amounts or cost formulas, who pays under what circumstances, and what the consequences might be for non-payment. Developing regulations requires stakeholder and community consultation, as well as impact assessments.

Fees could be waived due to individual or broad hardship.

Review mechanisms

The new laws would prescribe specific decisions where an impacted person could seek review by the Victorian Civil and Administrative Tribunal (VCAT). This would provide those with a direct interest in decisions a right of review.

The decisions where VCAT review could be sought are proposed to include:

- Licence decisions, including the refusal to grant or renew a licence; the imposing of conditions; and decisions to vary, suspend or cancel a licence
- Approved arrangement decisions, including the refusal to grant or renew an approved arrangement; the imposing of conditions; and decisions to vary, suspend or cancel an approved arrangement
- Potentially, some decisions relating to the seizure and forfeiture of animals, subject to further consideration of how to balance review processes with the welfare of seized animals that need to be kept in custody.

VCAT review rights would be in addition to internal review (non-legislative) procedures with different regulators under the new laws.

VCAT and internal review rights would be in addition to the other usual avenues of legal recourse including judicial review, appeals, or civil court action.

Grants and compliance funds

The new legislation would establish two new funds:

- **Animal Care and Protection Fund** – to provide grant money to people and organisations improving animal welfare outcomes in Victoria
- **Compliance and Implementation Fund** – for cost recovered funds to be used to support extension activities of implementing the legislation.

These funds will comply with key financial management requirements for Victorian Government agencies. These requirements include implementing effective administrative controls and delivering maximum value for money.

ANIMAL CARE AND PROTECTION FUND

The purpose of the Animal Care and Protection Fund would be to promote the wellbeing, care and responsible management of animals in the Victorian community. It would achieve this by providing grants to support external non-government programs, services and initiatives, typically those offered by not-for-profit organisations. The Animal Care and Protection Fund could be funded by mechanisms such as budget commitments.

Grants from the Animal Care and Protection Fund may be made (on recommendation of the Minister) that support:

- a) Improvements to animal welfare for companion animals, working animals, livestock and wild animals kept in captivity
- b) Education and raising community awareness of animal welfare responsibilities
- c) The promotion and improvement of animal welfare practices, principally for animals reared for food or fibre in production, husbandry, transportation and slaughter systems
- d) The preparation for, planning for and response to the needs of animals in emergencies
- e) Developing new ways to replace, reduce, or refine the use of animals in research, testing, and teaching
- f) Increasing the scientific understanding and knowledge of animal sentience.

The Animal Care and Protection Fund would replace the current Animal Welfare Fund established in Part 7F of the *Domestic Animals Act 1994*. This would broaden the scope of the grant scheme from benefitting domestic animals to benefitting all animals.

COMPLIANCE AND IMPLEMENTATION FUND

The Compliance and Implementation Fund would support departmental activities in administering the legislation, such as with education and compliance activities, and would be funded through recovered costs in administering the legislation.

The Compliance and Implementation Fund would be broader in scope than the existing Animals in Research and Teaching Welfare Fund currently administered under Part 3B of the POCTA Act. This would enable more cost recovered funds to be targeted toward more animal care and protection activities.

Expert advisory committee

The new laws would provide for an expert advisory committee to be established to provide advice on animal welfare-related matters to the Minister and department on request.

The main objective of the expert advisory committee would be to facilitate the incorporation of expert scientific, public policy and regulatory policy understandings into decision-making under the Act. This would enable decision-makers to have regard to accepted best practice and best available current scientific and regulatory knowledge when making decisions on topics such as:

- The care and protection of animals in Victoria
- Current best practice and scientific knowledge
- Scientific questions for input into setting care and protection standards
- Reviews of legislation
- Public policy and regulatory best practice including cost-benefit analysis
- Making a temporary declaration in response to an emergency
- Establishing a Ministerial Compliance Inspection Scheme.

The establishment of the expert advisory committee reflects a commitment to good governance and the importance of a scientific evidence base in administration of the legislation.

The expert advisory committee would comprise experts in animal health and welfare, ethical standards or public policy across different species and industries, and who have been appointed by the Minister based on their experience, knowledge and skills. The Minister would be able to renew or remove members of the committee based on performance, or the changing needs of areas of expertise.

Members of the expert advisory committee would provide independent expert advice on request. While the advisory committee would not hold any decision-making power, members must consider the decision-making principles of the legislation when formulating advice. See Section 4: **Decision-making principles.**

When making decisions, the Minister or department may request and consider committee advice in conjunction with other sources of expert advice, as well as stakeholder and community consultation. When making a temporary declaration or Ministerial Compliance Inspection Scheme, the Minister would have to seek advice from the expert advisory committee.

In situations where the committee does not possess sufficient knowledge to provide advice on a particular subject, a sub-committee of individuals with the required knowledge and experience would be established.

It is envisaged the current Peer Review Committee system used under the POCTA Act to provide advice on scientific procedures would form one such sub-committee.

Personas:

How the new laws may affect people who interact with animals

I am a...

Recreational fisher

Dee is a licensed recreational fisher in Port Phillip Bay. She enjoys fishing for leisure and fresh food. Dee is a responsible fisher with good fishing practices and complies with her fishing licence. Dee would like to know how the legislation will impact her recreational fishing activities.

HOW WILL THE NEW LAWS AFFECT ME?

Fishing would continue to be a legal activity and further licensing would not be required beyond the current requirements for a recreational fishing licence. The recognition of animal sentience in the laws would not change Dee's ability to fish and kill animals, as they would not be given legal rights. Dee is a conscientious recreational fisher and ensures the animals she catches are either immediately released or killed with minimal harm, pain, or distress. She manages risks to fish welfare by following the *Fisheries Act 1995* and *Recreational Fishing Guide*. By complying with the relevant legislation and regulations she cannot be prosecuted for cruelty. However, similar to current requirements, if Dee did something not permitted by the relevant legislation (like mutilating a live fish), then she could be prosecuted for cruelty.

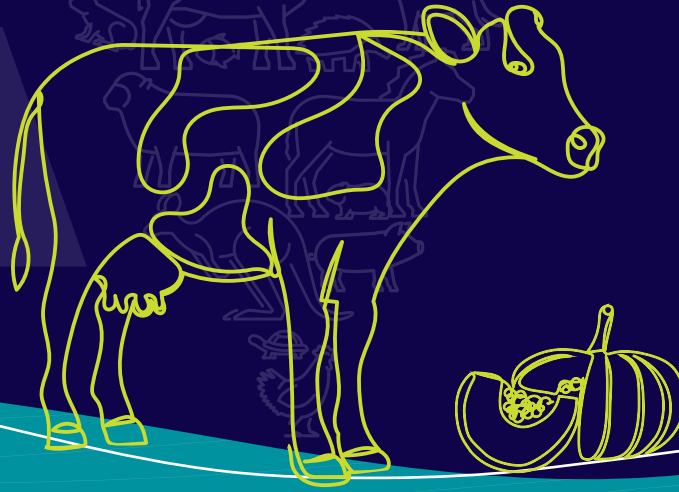
Dee should know the definition of an animal would be expanded under the legislation to include live cephalopods (octopus, nautilus, or cuttlefish). This may impact how she views these animals.

If Dee was to transport any live animals before she killed them, she would become a 'person in charge' and would need to adhere to the 'care requirements' and any relevant regulations.

Other changes to the legislation are unlikely to affect Dee's fishing activities.

I am a...

Farmer



Jacqui is a farmer with 500 cattle on her property. Jacqui owns all the cattle and manages them with the help two part-time and two casual staff. Jacqui would like to know if the legislation will affect her farming activities.

HOW WILL THE NEW LAWS AFFECT ME?

Under the legislation, Jacqui would be considered a 'person in charge' of livestock. This means that when she has the cattle in her care, custody, or control, she would be legally responsible for providing care and protection.

In addition to Jacqui, other people who have care, custody or control of the cattle would also be considered 'persons in charge'. This applies to all people whose decisions or actions can influence the welfare of the animals. This may include people such as the farmhands responsible for daily livestock care through to any other persons with responsibility for making decisions about the animals' care or husbandry. This means each animal could have multiple people responsible for its care and protection.

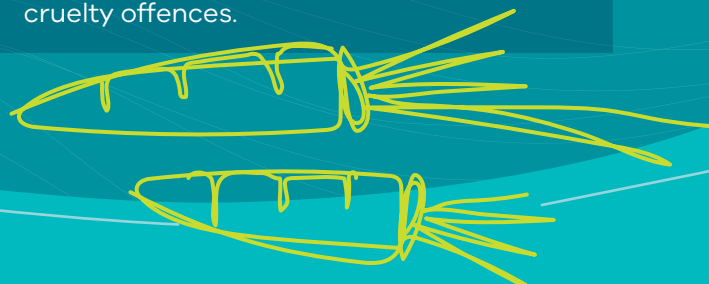
Jacqui can check specific care requirements by referring to regulations relating to livestock. These regulations would specify any requirements and conduct for livestock care, such as allowing some painful procedures to be performed if required.

The regulations would replace the livestock codes of practice and incorporate the Australian Animal Welfare Standards and Guidelines.

As a 'person in charge' Jacqui would be responsible for meeting the care requirements relating to the nutrition, environment, health care and behavioural interactions of the livestock. Care requirements would always apply, including during husbandry, handling, transport, saleyards and at abattoirs. Because Jacqui and her staff adhere to the codes of practice for livestock, not much in the way of the day-to-day care of the animals is expected to change.

Other changes in the laws are unlikely to affect Jacqui's business. Farming would continue to be a legal activity in Victoria, and Jacqui's farm would not require a licence under the new laws. If a new licence requirement for a particular activity was identified in the future, this could only be made in regulations after stakeholder and community consultation and an impact assessment to understand the costs and opportunities. Certain procedures and/or management of animals would continue to be regulated and regulations would be refined following stakeholder consultation.

Practices that cause unreasonable harm, pain or distress would continue to be cruelty offences.



I am a...

Pet owner



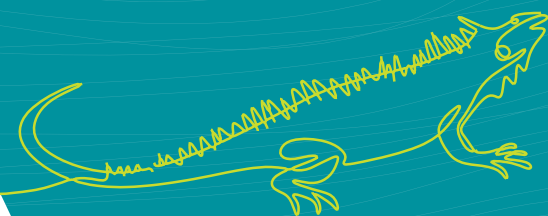
Ian is an animal lover who has adopted a variety of pets. He has an eclectic collection of cockatiels, rabbits, lizards, and cats. Ian wants to provide the best care for his animals and has joined several clubs and organisations to swap information with other pet owners. Ian wonders whether the legislation will impact him, as he is already providing the best possible care for his animals.

HOW WILL THE NEW LAWS AFFECT ME?

The legislation would introduce minimum care requirements for animals in terms of their nutrition, environment, health, and behaviour. This means Ian would be responsible for meeting these legally enforceable minimum requirements of care for his animals. Ian is a conscientious pet owner following good practices for the care of his animals which means the new laws are unlikely to affect Ian and his activities.

These enforceable legal obligations to meet care requirements would also apply to any person helping Ian care for his animals, such as a neighbour, caring for his pets when he goes away on holidays. In addition to improving animal welfare, the laws would legally recognise what Ian has always known – that his pets are sentient. This means they can have pleasant and unpleasant experiences (fear, joy), bodily sensations (hunger, satiation) and perceive their environment (hard concrete, soft blankets). This recognition allows sentience to be considered as a factor in legal decisions. Activities that result in unreasonable harm, pain or distress for animals would continue to be an offence.

Ian would also need to check if there are any specific care requirements for his animals in the regulations. Ian would be able to check which requirements he exceeds, meets, or needs to adjust to reach minimum care requirements to meet his legal obligations toward his animals.



I am a...

Hunter



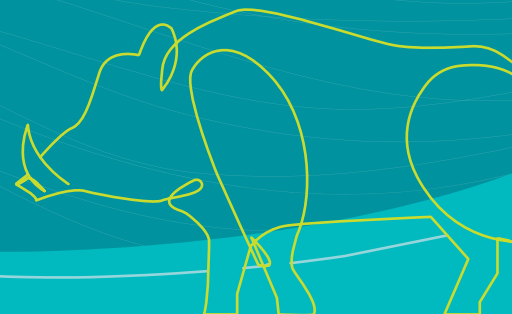
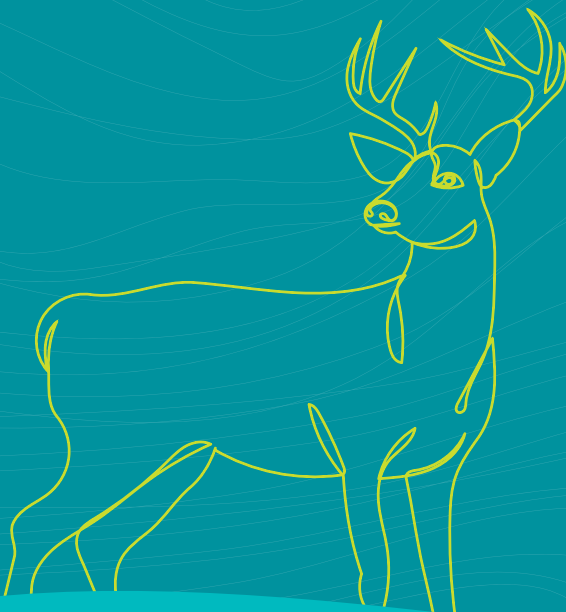
Matthew is a recreational hunter who holds a game licence. He enjoys hunting as a recreational activity as well as for the wild harvested food source. Matthew practises his marksmanship regularly and is a responsible hunter who complies with the requirements of his game and firearms licences. Matthew would like to know how the new legislation will impact his recreational hunting activities.

HOW WILL THE NEW LAWS AFFECT ME?

Under the legislation, hunting animals such as deer and rabbits continues to be a legal activity. The recognition of animal sentience in the legislation would not change Matthew's ability to hunt and kill animals. The new laws would not change any of the requirements under other legislation to hold a game licence to hunt deer, and a firearms licence. If he were to hunt game, Matthew would still need to comply with all requirements of his game licence including relevant provisions of the Wildlife (Game) Regulations 2012 and the relevant Codes of Practice relating to hunting.

Where the Wildlife (Game) Regulations 2012 and the relevant Codes of Practice relating to hunting are silent on some activities, Matthew should look to the regulations relating to animals in the wild for further guidance.

Regulations may be made under the legislation for hunting to reduce the risk of animal cruelty occurring, as it is an activity that falls under the specified class of conduct for killing or wounding an animal. As long as Matthew complies with any requirements that were detailed in the regulations, Matthew can continue hunting and would not be subject to cruelty or aggravated cruelty offences. An example of these requirements might be related to the hunting of pest animals, such as rabbits, using approved hunting equipment and methods to minimise the risk of unreasonable harm, pain, or distress. Deer hunting would continue to be regulated under current legislation and regulations relating to game hunting.



I am a...

Scientific researcher



Lee is a scientific researcher with animals at a university. Lee works primarily in cancer research alongside their staff. Lee would like to know if the legislation will affect their research and work with animals.

HOW WILL THE NEW LAWS AFFECT ME?

Under the legislation, working with animals for scientific purposes would still require a licence, a licence nominee, and Animal Ethics Committee (AEC) approval. Lee and staff would also be considered a 'person in charge' of animals. This would apply to people at all levels of responsibility whose decisions or actions can influence the welfare of the research animals. These include people such as the animal technicians that are responsible for daily animal care through to any other persons with the ability to make decisions about animal care or husbandry. This means that each animal could have multiple people who are responsible for its overall care and protection.

The laws would introduce 'care requirements' for all animals. In addition to meeting their responsibility under the Australian Code for the Care and Use of Animals for Scientific Purposes, Lee and staff would also have a legislative responsibility to meet care requirements relating to nutrition, environment, health care and behavioural interactions. Lee and their team would also be responsible for ensuring that any conduct and care involving animals complies with the legislation and relevant regulations unless they have an exemption via an approved AEC approved application and/or ministerial approval.

Some specific conduct, such as research involving non-human hominids or conducting procedures that are otherwise prohibited, may require both AEC and ministerial approval, and may have additional requirements.

Lee would be able to check any additional requirements for scientific procedures in regulations. These regulations would also specify any additional requirements and offences relating to animal care, procedures, or any controlled conduct specific to animals in research and teaching. Lee would still need to adhere to all relevant care and protection regulations for specific species unless otherwise stated in their AEC approved application.



I am a...

Pest controller



Pradeep runs a licensed pest control business, dealing with a range of pests including rodents, spiders, and insects. Pradeep's main business is the control of rats and mice, using a combination of exclusion barriers, poisons, and traps. Pradeep wants to know if the new legislation will impact his pest control business.

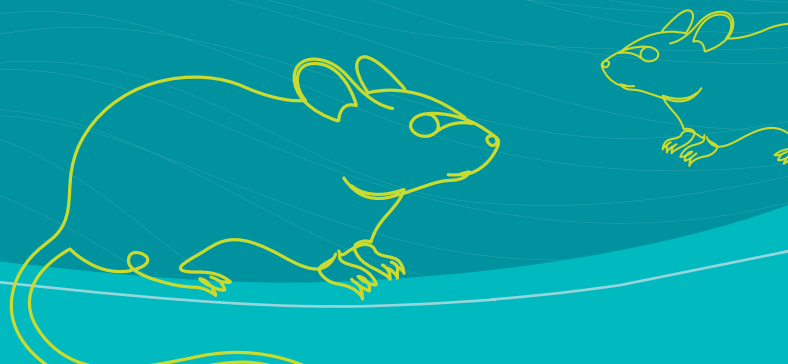
HOW WILL THE NEW LAWS AFFECT ME?

Under the legislation Pradeep's pest control methods, such as poisons and traps, would be classified as regulated activities because they involve killing or wounding animals. Killing or wounding animals is permitted for pest control purposes as long as it does not cause unreasonable harm, pain, or distress, and complies with any requirements in the regulations.

There are also a small number of methods permitted to landowners under notice of the Catchment and Land Protection Regulations 2012 relating to rabbits. If a pest controller dealing with rabbits used these methods as approved by the legislation, they would not be subject to the cruelty offences. Because insects are not classified as animals, killing insects and spiders would not be classified as regulated conduct.

Other changes to the legislation are unlikely to impact Pradeep's pest control business. The use of glue traps would continue to be prohibited. Licences and requirements under other legislation such as the *Public Health and Wellbeing Act 2008* and the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* and associated regulations would continue to apply. If Pradeep was to capture and confine a live animal, he would become a 'person in charge' and would need to adhere to the 'care requirements' and any relevant regulations.

Just like under the *Prevention of Cruelty to Animals Act 1986*, the types of traps that are permitted would be detailed in the regulations. Pradeep would need to refer to these to see which types of traps are approved and how to use them.



I am a...

Wildlife foster carer

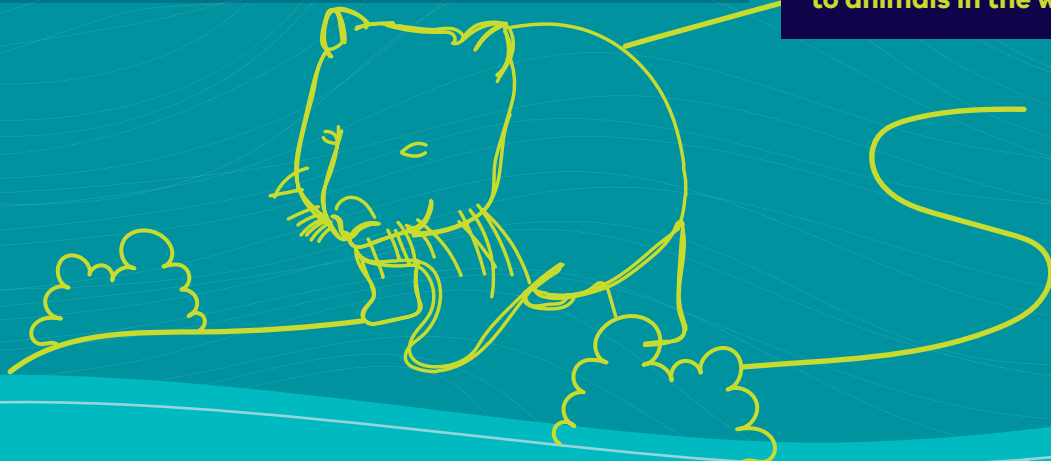
Mae is a trained volunteer wildlife foster carer who rescues and cares for wildlife for the purpose of releasing them back into the wild. Mae rescues injured animals, cares for them at home if they don't need veterinary treatment, and takes them to the vet when treatment is required. Mae would like to know if the legislation will affect the rescue activities undertaken by volunteers.

HOW WILL THE NEW LAWS AFFECT ME?

Under the legislation, Mae would have a legal responsibility to meet minimum care requirements for the wildlife she rescues. Mae and any other volunteers who work with her would be considered a 'person in charge' for the animals while they are under their care, even though they are wildlife and the carers are volunteers. Shelter operators must meet care requirements in the same way as a foster carer. This means she and the volunteers would be required to provide appropriate food, water, environment, health care and behavioural interactions. Once the animals are rehabilitated and released back into the wild, Mae would no longer be a person in charge and have no further obligations. Mae already meets the requirements of the Code of Practice for the Welfare of Wildlife during Rehabilitation, the Wildlife Act 1975, and requirements to be an authorised wildlife foster carer. The legislation is not expected to significantly change the way Mae undertakes her rescue and wildlife care activities performed under the current Code of Practice, her foster carer authorisations, and her general good practices.

Mae and her affiliated Wildlife Shelter would also be able to apply for funding to improve and assist their rescue operations via the 'Animal Care and Protection Fund'. Other changes in the legislation are unlikely to affect Mae as her activities rescuing animals do not cause unreasonable harm, pain, or distress.

Mae would be able to check for more specific requirements regarding wildlife care and species-specific needs in the regulations relevant to animals in the wild.



I am a...

Racehorse trainer



Gary is a thoroughbred racehorse trainer who manages a training and stud business. Gary owns and trains three of these horses, while another 17 horses that he manages and keeps on his property are owned by other people. Gary has staff for various husbandry, training, and transportation duties. Gary would like to know if the new legislation will affect his horse training and stud activities.

HOW WILL THE NEW LAWS AFFECT ME?

Under the legislation, Gary would be considered a 'person in charge' of the horses. This means he would legally be responsible for the horses' care and protection. In addition to Gary, other people who have care, custody or control of the horses would also be considered 'persons in charge'. This would apply to all people whose decisions or actions can influence the welfare of the horses, or who have the horses in their custody or control. At different times this could include people such as the strappers responsible for daily horse care through to managers making decisions about horse care and training methods.

Horse owners would also be responsible for ensuring their horse is left in the care of competent people. This means each horse could have multiple people responsible for its care and protection.

Care requirements relating to nutrition, environment, health care and behavioural interactions would always apply, including during husbandry, training, transport, race days and at saleyards. Because Gary and his staff adhere to the Code of Practice for the Welfare of Horses and the *Racing Act 1958*, little in the way of the daily care of the horses would change. Other changes in the laws are unlikely to affect Gary's business. Horse racing would continue to be a legal activity and Gary would not be required to obtain a licence for his horses or current activities under the new laws. Practices that cause unreasonable harm, pain or distress to animals would continue to constitute cruelty offences.

Gary would need to check if there are any specific animal care requirements for horses and how they can be met by referring to the relevant regulations for the care of horses. Information relating to the care and protection of horses in sport, recreation, and entertainment, would also be covered by the relevant regulations.



I am a...

Veterinarian



Carmen is a veterinarian and owner of a veterinary clinic. Carmen employs several staff to help with animal husbandry and care under her supervision. Carmen would like to know if the legislation will affect her veterinary and business activities.

HOW WILL THE NEW LAWS AFFECT ME?

As a registered vet, Carmen can continue to undertake any animal treatment that she considers necessary for therapeutic purposes without needing to worry that this would constitute a cruelty offence. Carmen and her staff would have to comply with any regulations that specify how these animal procedures must be performed. Carmen specifically, would also be able to undertake any particularly invasive 'veterinary-only procedures', such as cutting or removing sensitive tissue. This means that she would be able to continue to treat animals based on her veterinary training and veterinary standards.

Under the legislation, Carmen would also be considered a 'person in charge' if animals stay at the clinic and would be legally responsible to provide for their care, as per the care requirements. This would also apply to other people supervising animals such as the veterinary nurses responsible for daily animal care. Because Carmen and her staff already adhere to the current relevant codes of practice for animals and the *Veterinary Practice Act 1997*, not much in the way of the daily care, treatment or management of the animals is expected to change.

As under the current *Prevention of Cruelty to Animals Act 1986*, Carmen would continue to be able to euthanise any animal, without the consent of the owner, if it would be unreasonable for the animal to be left alive because of the harm, pain, or distress the animal is suffering or is under imminent threat of suffering, or because the behaviour of the animal is a danger to other animals or people.

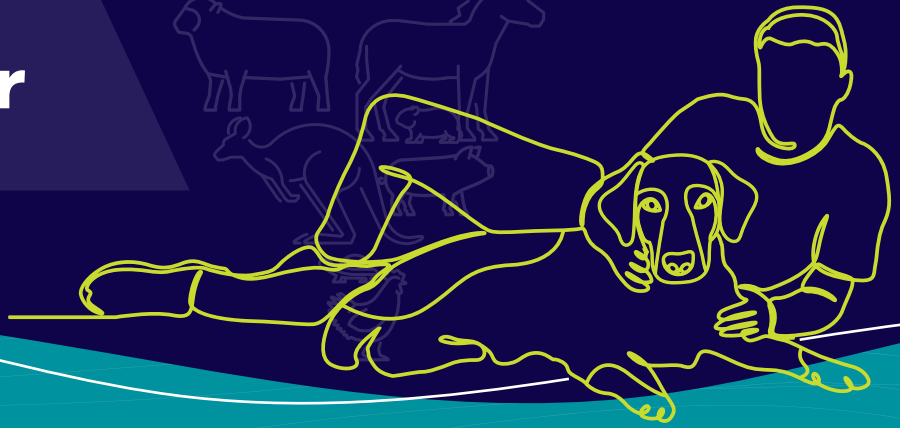
Other changes in the laws are unlikely to affect Carmen's veterinary work and business.

Carmen would be able to check any specific care requirements for animals and how they can be met by referring to the regulations. These regulations would specify additional requirements, such as those related to performing prohibited procedures when necessary for a therapeutic purpose (e.g., removing a dog's tail due to permanent damage), and any veterinary-only procedures performed by a veterinarian or a veterinary student under direct supervision of a veterinarian (e.g., spaying a cat).



I am a...

Dog breeder



Theo is a Dogs Victoria registered Labrador breeder making him a 'recreational breeder' under Victorian laws. Theo obtains all his information about breeding from the Dogs Victoria Guideline for Breeders, and complies with their rules of conduct regarding dog care and breeding practices. Theo would like to know if the legislation will affect his dog breeding activities.

HOW WILL THE NEW LAWS AFFECT ME?

The new legislation would introduce minimum care requirements for animals in terms of their nutrition, environment, health, and behaviour. This would make basic standards, that Theo already complies with, legally enforceable. Theo would be responsible for continuing to meet these care requirements for dogs and puppies in his care. However, once a puppy is sold and has left the property with its new owner, the responsibility for meeting its care requirements transfers to the new owner.

Where standards specific to dogs are required, such as transport, Theo would be able to check what these are and how he can meet them by referring to the relevant regulations. Because he has been complying with the Code of Practice for the Private Keeping of Dogs, as well as the guidelines and Code of Ethics provided by Dogs Victoria, little in the way of daily care of the dogs would change for Theo.

Dog breeding would continue to be a legal activity in Victoria when conducted in accordance with the *Domestic Animals Act 1994*.

While the legislation allows regulations to require licences in relation to breeding animals, dog breeding is already regulated with registration requirements under the *Domestic Animals Act 1994*, so duplicate licence requirements would not be introduced.

Activities that cause unreasonable harm, pain or suffering to animals would still constitute cruelty offences under the new legislation. Performing surgical procedures such as desexing puppies would continue to be controlled and must only be performed by a registered vet. Prohibited procedures such as tail docking and ear cropping for cosmetic purposes would continue to remain illegal unless performed for therapeutic purposes by a registered vet.

