



VICTORIA'S NEW ANIMAL CARE AND PROTECTION LAWS

Submission from Victoria's five major hunting organisations

“While assurances are given that hunting and other animal use activities will continue, the Associations are deeply concerned that the proposed legislation has the very real potential to make lawful hunting impossible. The animal rights movement would undoubtedly welcome that outcome.”

Victoria's New Animal Care and Protection Laws

Executive Summary

Victoria's main hunting bodies support appropriate, reasonable and workable legislation to ensure animals are treated humanely and protected from wanton cruelty.

For clarity and transparency and to avoid confusion, the proposed Act, as presented, should be called an Animal Rights Act and not an Animal Welfare Act.

Recognising and defining animal sentience is appropriate in the Act's definitions, but it does not need, and should not be, a major focus of legislation.

The significant lack of detail provided in the plan does not allow a fully informed response.

There is an expressed opinion that current legislation does not provide adequate protections for animals from cruelty. However, no evidence is offered to support that position.

The proposed Act and accompanying Regulations (which have not been specified) are likely to place an enormous and unnecessary legislative and regulatory burden on millions of Victorians. The impacts on Victoria's hunting community are likely to be particularly severe.

With such aspirational and ideological intent to the Act, it is almost certain that there will be significant unintended consequences.

There are divergent views on what constitutes genuine animal cruelty and what animal welfare should encompass. The proposed Act seemingly accepts a view espoused by the more radical elements of society.

The proposed legislation primarily defines an act of cruelty as "any act or omission that causes or is likely to cause unreasonable harm, pain, or distress to an animal either physically or mentally". That definition is extremely broad and raises serious concerns about overreach and the likelihood of unintended outcomes.

The Associations do not accept the premise that killing an animal, per se, equates to cruelty. Given that hunting involves the deliberate killing of animals, it is clear that there is an almost impossible contradiction created by the intent of this Act - that cannot then be resolved under it.

If this new Act is introduced, to prevent unintended consequences and overreach, there must be incontrovertible safeguards for industries and recreations that involve animals. That is particularly important for hunting.

Similar to the current Prevention of Cruelty to Animals (POCTA) Act, activities such as hunting need to be exempt from this new Act. Hunting activities should remain under the Wildlife Act 1975 and other relevant legislation and Codes of Practice.

There appears to be a significant lack of understanding of the realities and differences of hunting styles, intents and motivations in references made in the plan.

Codes of Practice and current regulations adequately address animal welfare outcomes in hunting.

It is not appropriate for RSPCA employees to be appointed as Authorised Officers under the Act. RSPCA has a clear conflict of interest between its animal rights agenda and its regulatory role. A

private organisation, with no government oversight or accountability, has no place having regulatory powers.

While assurances are given that hunting and other animal use activities will continue, the Associations are deeply concerned that the proposed legislation has the very real potential to make lawful hunting impossible. The animal rights movement would undoubtedly welcome that outcome.

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Background

Victoria's main hunting bodies support appropriate, reasonable and workable legislation to ensure animals are treated humanely and are protected from wanton cruelty. All the organisations involved with this submission have Codes of Conduct in place that relate to acceptable behaviour by their members while hunting and an expectation that members act in a lawful, ethical and humane way at all times.

All hunters should act in a way that minimises unintended consequences from hunting and strive to ensure that animals are killed as quickly and humanely as possible in any given situation. Hunters and hunting organisations should always be looking to improve hunter efficiency through education and skills development.

SSAA Victoria, ADA, F&GA, ABA and VHH made a submission on the *Directions Paper for a new Animal Welfare Act for Victoria*¹. That submission focussed on the history and evolution of animal welfare into the animal rights movement we see today and warned about the agenda being pushed by those organisations.

The Associations consider that the plan, as presented, goes well beyond what is required or reasonable to prevent cruelty to animals. It is reiterated that the "five freedoms" that this Act wants to legislate were always aspirational goals that were only ever evidence-informed, not evidence-based. To attempt to enshrine them in legislation, as the proposed Act does, is both inappropriate and ultimately unworkable.

Recognising animal sentience is appropriate in the definitions of the Act, but it doesn't need to be and shouldn't be, a major focus of legislation. The sentience front provides a cover to impose a radical ideology over the rules, regulations and practices governments impose on the owners and users of animals. The plan states that recognising animal sentience means that policy is based on the care and protection of animals, safeguarding their welfare before cruelty occurs. Moving from a platform of preventing actual cruelty to promoting a broad definition of "welfare" is a major victory for animal rights groups. Rather than appeasing these groups or allaying concerns, it is almost certain to create greater pressure from those groups in the future to take legislation even further.

The concerns of the hunting community are validated when a member of the Victorian Government, in this case, Will Fowles, Member for Burwood, says:

*"I am proud of the Andrews Government's strong animal rights agenda, including the imminent introduction of a brand new Animal Welfare Act. That said, there is always more to do."*²

The frank acknowledgment that there is an animal rights agenda involved in the development of this proposed legislation undermines any confidence the Associations might have had that providing feedback on the plan would contribute to an improved legislative outcome.

¹ Response of the Australian Bowhunters Assn, the Australian Deer Assn, Field and Game Australia, the Sporting Shooters Assn of Australia (Victoria) and the Victorian Hound Hunters Inc. to the Directions Paper for a New Animal Welfare Act for Victoria. 2020

² Email correspondence, Will Fowles, MP, to SSAA Victoria member dated 30 September 2022

Comment

The Associations do not accept the premise that killing an animal, per se, equates to cruelty. Given hunting involves the deliberate killing of animals, it is clear that there is an almost impossible contradiction created from the intent of this Act and the achievement of a positive hunting outcome. It is not reasonable to expect that such a fundamental contradiction can then be resolved under the proposed Act that creates that very contradiction.

The aspiration of protecting animals from wanton cruelty is both understood and supported. However, the proposed legislation clearly goes much further than protecting animals from cruelty. Legislating aspirational welfare requirements to be compulsory actions in complex and highly variable real-world situations is fraught with danger. Subjective views of welfare are just that, subjective. It is agreed that values are as relevant to developing legislation and policy as data and facts. However, it is important that the difference between the two is both understood and articulated. The Associations believe that the proposed legislation creates a platform that allows for the prosecution of a values-based ideology under the guise of a facts and data-driven objective position.

All ethical hunters strive to ensure a rapid and humane death for any animal hunted. However, unintended consequences will occur. Laws and codes of practice already exist that clearly outline requirements, expected behaviours and outcomes. If the new legislation is introduced, there would need to be strong and unambiguous protections for hunters in any instance where an optimal outcome is not achieved.

There is a lack of clarity within the document as to its real intent. It refers to preventing cruelty, animal protection and animal welfare in interchangeable contexts. What is telling is the opening paragraph, where it is stated that "we need the right powers and tools for when people don't treat animals as they should"³. On a broad level, that statement would be supported. However, it is clear from the wording and proposed inclusions in the Act that the definition of how animals should be treated comes from a more radical and extreme viewpoint than the average person would support.

The devil is always in the detail of legislation - and the subsequent regulations. It is impossible to provide detailed feedback when so little actual detail is provided in the plan. However, taking a precautionary approach, the Associations see enormous potential for this legislation to create significant overreach into people's lives, businesses and recreational pursuits. This submission will only focus on those matters specifically related to hunting.

Reference is made to the fact that the "POCTA Act has supported Victoria's reputation for fostering a high standard of animal welfare for more than 30 years."⁴ That is the case, and it has worked well with exemptions in place for certain activities, including hunting. While there is little doubt that POCTA could be updated in some areas, the fundamental objectives and outcomes of the Act remain relevant. The proposed new Act is unnecessary; many would see it as a politically motivated sop to the powerful animal rights lobby.

It is likely to place a huge and unnecessary burden on all Victorians. "Millions of us care for a pet, work with animals, or we interact with animals for recreation and other activities"⁵. Therefore, millions of Victorians are going to be impacted.

³ Victoria's new animal care and protection laws Plan pg3

⁴ Victoria's new animal care and protection laws Plan pg 7

⁵ Victoria's new animal care and protection laws Plan pg 3

One must ask, what is the actual problem that the new legislation is trying to address? What and where are the enormous problems with animal cruelty that have emerged that the proposed new legislation can solve and that the old POCTA Act does not cover? Are these problems measurable? How widespread are they? Legislation should not be introduced simply because there is a perception that there is a problem.

Regulation should be as minimal as necessary to achieve the desired outcome. The proposed Act and accompanying regulations are going to be prescriptive and create an enormous burden on millions of Victorians. To what end? It is conceded in the plan that the vast majority of people appropriately care for their animals⁶. If that is the case, why bring in legislation and regulation that effectively creates numerous new offences and a presumption of guilt, not innocence, of an offence? It appears that people will have to prove they followed the legislation as a defence against a charge rather than those laying the charge proving they didn't.

The Associations see enormous scope for unintended consequences from this proposed new Act. While allowing hunting, fishing and farming, the requirement for Ministers and Authorities to consider the principles of the Act while administering other portfolios and Acts is going to introduce a significant extra administrative burden for government itself. "Victoria would be the first Australian jurisdiction to include decision-making principles in its animal protection legislation"⁷. Victoria will therefore be the first state that will have to navigate the problems that requirement will create.

What form does the consideration take? How does the Minister or Authority conclusively demonstrate that the matters have been adequately considered? What protections would exist to prevent challenges to decisions?

Given historical practice from extreme animal rights and environmental groups, it is considered there would be significant opportunity and scope for third parties to take legal action and seek injunctions on Ministerial and Authority decisions under this requirement. While government might be liable to defend these cases, they are likely to negatively impact on recreational and business activities while they are contested, particularly if the court were to order an injunction.

Flirting with animal rights under the guise of welfare - while stating that the ownership and use of animals can continue - creates tensions in the legislation that are not easily resolved. The sensible approach is to continue the precedent from the POCTA Act and have exemptions. Dealing with pets and companion animals is fundamentally different to dealing with wild animals in a hunting situation. The legislation should be limited to dealing with pets and companion animals, not hunting, fishing and farming.

The example persona of a hunter provided in the plan again shows where a lack of detail exists. "*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.*"⁸ Those regulations have not been provided. Are the CoPs going to be retained? If so, why the need for additional regulations? They will impose an unnecessary burden and over-regulation.

⁶ Victoria's new animal care and protection laws Plan pg 3

⁷ Victoria's new animal care and protection laws Plan pg 25

⁸ Victoria's new animal care and protection laws Plan pg 86

The question also needs to be asked why rabbits and deer have been used in the example. Are all other animals currently hunted in Victoria going to be covered? Game animals currently hunted in Victoria include four species of deer, stubble quail and eight species of duck. Pest species hunted include rabbits, hares, foxes, wild dogs, feral cats, feral pigs and feral goats.

The example provided in Section 4, Decision-making principles, in relation to *making a decision on hunting* demonstrates a fundamental lack of understanding about hunting⁹. Game hunting is not about reducing numbers. Game hunting is about the sustainable use of a natural resource for the provision of food, skins, trophies etc. A surplus number of animals from the population is harvested each year while maintaining a sustainable base population. Pest hunting may be about reducing numbers, but the focus should really be on reducing negative impacts. In some cases, a reduction in numbers may achieve that. In others, the actual numbers may be irrelevant. Has consultation with the Game Management Authority (GMA) occurred during the formulation of this proposed legislation? Given the Authority's regulatory and enforcement role in hunting and knowledge of hunting matters, it would be a major oversight if it had not been.

Of further concern is the wording "in deciding whether to allow the recreational hunting of game species.." in that same example¹⁰. The Associations have an expectation that game hunting will continue for all species unless there is a demonstrated threat to the sustainability of the species in question. In that improbable scenario, other management actions should be considered and adopted before hunting was disallowed. To consider the intent of the proposed Act in the context of recreational hunting is inappropriate. If, as stated, the Act does allow for the continuation of hunting, this anomaly needs to be removed.

The fundamental lack of understanding of hunting issues and hunter motivations demonstrates why hunting organisations consider that hunting needs to be exempt from the Act. Hunting should remain regulated through legislation developed by those with a thorough understanding of the particular issues surrounding hunting. The Wildlife Act 1975, the Wildlife (Game) Regulations 2012 and the Hunting Code of Practice meet those requirements. The hunting associations have a strong background in working with government in a cooperative and meaningful way and are prepared to work constructively with government on any future changes necessary to that Act, regulations or Codes of Practice.

⁹ Victoria's new animal care and protection laws Plan pg 25

¹⁰ Victoria's new animal care and protection laws Plan pg 25

Application of the new laws

It is encouraging to see the statement that people could not be prosecuted for a care or cruelty offence under the new laws when undertaking... "the hunting of game and control or disturbance of wildlife permitted under and done in accordance with Victoria's Wildlife Act 1975"¹¹. However, there needs to be much greater clarity provided around this issue.

Concerningly, there is no reference in this section to the general hunting of pest species, a widely practised activity on both public and private land. The control of pest animals, using a method authorised by and done in accordance with regulations made under Victoria's CaLP Act 1994, only refers to ripping rabbit warrens and fumigating them.

In the example section it states, in part, that "*Hunting of pest species 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.*"¹²

The Associations reiterate their position that hunting, including pest hunting, needs to be removed from the proposed legislation and made exempt from its provisions, provided adherence to hunting laws, regulations and Codes of Practice are followed.

¹¹ Victoria's new animal care and protection laws Plan pg 27

¹² Victoria's new animal care and protection laws Plan pg 31

Cruelty

As previously mentioned, the Associations do not accept the premise that killing an animal, per se, equates to cruelty. Given hunting involves the deliberate killing of animals, it is clear that there is an almost impossible contradiction created from the intent of this Act and the achievement of a positive hunting outcome.

The proposed approach's definition of cruelty as "any act or omission that causes or is likely to cause unreasonable harm, pain or distress to an animal", and its further definition that these acts can be mental, as well as physical¹³, should create concern for all Victorians.

It goes further to state that 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 wounding an animal. Does that mean that a hunter, complying with all requirements, has committed an offence if an animal being hunted is not killed, but is wounded?

Where will such outcomes sit under the proposed legislation? Again, to provide the most clarity to hunters and the general public, hunting should be exempt from the Act. There are stated concerns that the current POCTA Act creates confusion¹⁴. Hunters are not confused by the current requirements and expectations. It would appear that the proposed legislation has much more scope to create even greater confusion.

A fundamental question - that needs a very clear answer - is how an objective determination of "mental harm or distress" to an animal would be made. Additionally, what is the definition of "likely", in this context, and how will objective decisions be made on the basis of "likelihood"? It is inevitable that numerous assumptions would have to be made when making decisions in relation to both of these matters. As a result, the Associations see significant potential for overreach of legislation in this area.

¹³ Victoria's new animal care and protection laws Plan pg 38

¹⁴ Victoria's new animal care and protection laws Plan pg 27

Compliance and Enforcement

The entry power of Authorised Officers (AOs) needs to be limited. It is not appropriate that AOs have greater entry rights to premises and dwellings than Victoria Police. Reasonable suspicions and reasonable beliefs are, by their very nature, subjective. Anonymous complaints, that may well have no merit, would be sufficient to trigger entry to premises under the proposed Act. Given animal rights activism, there is significant scope for this power to be misused. Such misuse should be actively discouraged, with penalties applying for malicious or vexatious complaints being made.

It is imperative that animal welfare complainant details are obtained and that protections are put in place to prevent misuse. A register of complaints and complainants should be instigated to allow for monitoring of those making complaints and the nature of the complaints being made. If baseless complaints are made, there needs to be a mechanism put in place to ensure a person is not subjected to ongoing searches or harassment by AOs as a result of those reports. There needs to be a clear appeals and redress system to protect victims of incorrect, false or malicious reporting.

It is not appropriate for RSPCA employees to be appointed as Authorised Officers under the Act. RSPCA has a clear conflict of interest between its animal rights agenda and its regulatory role. A private organisation, with no government oversight or accountability, has no place having such extensive regulatory powers in Victoria in 2022. Confidence in the impartiality and objectiveness of AOs and their enforcement of legislation is undermined by such an arrangement.

Conclusion

Victoria's major hunting organisations fully support appropriate, reasonable and workable legislation to ensure animals are treated humanely and protected from wanton cruelty.

However, the proposed legislation goes much further than that and is, in reality, a thinly disguised Animal Rights Act. Such an Act will not allow for many current activities involving animals and will create confusion and discord for those who own and utilise animals. With such aspirational and ideological intent to the Act, it is almost certain that there will be significant unintended consequences.

The proposed Act and accompanying Regulations (which have not been specified) will likely place an enormous and unnecessary legislative and regulatory burden on millions of Victorians. The impacts on Victoria's hunting community are likely to be particularly severe. It is considered that there is enormous scope for unintended consequences and overreach of the Act. If the Act is introduced, there need to be incontrovertible safeguards for individuals, industries and recreations that involve animals to prevent unintended consequences and overreach. That is particularly important for hunting.

There is a significant lack of detail in the plan, which does not allow a fully informed response. However, based on what is included, it is considered that the proposed Act is not suitable for regulating hunting. There appears to be a distinct lack of understanding of hunting demonstrated through the comments and scenarios provided in the plan and an inherent contradiction in the desired outcomes of the Act and the desired outcomes when hunting. As a result, hunting should be exempt from the proposed Act and continue to be regulated through current arrangements. Codes of Practice and current regulations adequately address animal welfare outcomes in hunting.

There are widely divergent views on what constitutes genuine animal cruelty and what animal welfare should encompass. The proposed legislation primarily defines an act of cruelty as "any act or omission that causes or is likely to cause unreasonable harm, pain, or distress to an animal either physically or mentally". That definition is extremely broad and raises serious concerns about overreach and the likelihood of unintended outcomes.

The proposed Act is accepting a view that is espoused by the more radical elements of society. The Associations do not accept the premise that killing an animal, per se, equates to cruelty. Given hunting involves the deliberate killing of animals, it is clear that there is an almost impossible contradiction created by the intent of this Act that cannot then be resolved under it.

Community expectation is identified as a key reason for the introduction of a new Act. There is an expressed opinion that current legislation does not provide adequate protections for animals from cruelty. However, no evidence is provided to support that position. There is no demonstration provided of how the current POCTA Act is significantly failing to protect animals from cruelty.

It is not appropriate for RSPCA employees to be appointed as Authorised Officers under the Act. RSPCA has a clear conflict of interest between its animal rights agenda and its regulatory role. A private organisation, with no government oversight or accountability, has no place having regulatory powers.

While assurances are given that hunting and other animal use activities will continue, the Associations are deeply concerned that the proposed legislation has the very real potential to make lawful hunting impossible. That outcome would certainly be welcomed by the animal rights movement.