



ANIMAL CARE AND PROTECTION BILL - EXPOSURE DRAFT

Submission from Victoria's five major hunting organisations

Where hunting is legislated by an Act that defines hunting and killing an animal as “animal cruelty”, there will remain a fundamental and unresolvable contradiction. While assurances have been given that hunting will continue, and be excepted from offences under the proposed Bill, such assurances will only carry real weight if hunting is made exempt from the Act.

**Submission to the Animal Care and
Protection Bill – Exposure Draft
Victorian Government
Department of Energy, Environment and Climate Action (DEECA)
25 March 2024**

Executive Summary

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

The Associations do not accept the premise that hunting and 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.

Hunting, as carried out under the *Wildlife Act 1975*, the *Catchment and Land Protection Act 1994* or Codes of Practice, should be exempted entirely from the proposed Act, rather than being excepted from offences under certain conditions.

The Act recognises that exemptions from its provisions are appropriate by setting the precedent under the Preliminary Section of the Act, Part 1—10.

The Act needs to provide adequate safeguards for those accused of animal cruelty where those claims are found to be baseless.

The Associations are satisfied with how animal sentience has been defined and dealt with in the Exposure Draft of the Act.

The complete lack of detail around the supporting regulations for the Act does not allow a fully informed response and leaves considerable scope for overreach and unintended consequences from the legislation into the future.

The lack of prescription in the Act itself and the broad, undefined nature of the resultant regulations gives too much power to government with not enough oversight or accountability.

The ability to require licences for activities, without the Act specifying what those activities are, does not provide an acceptable level of accountability and is open to abuse.

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

If hunting is to remain under the Act, the Expert Advisory Committee and the Special Expert Advisory Committee must include a representative of the hunting Associations, with relevant experience and hunting expertise, to provide advice on all hunting related matters.

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

AOs have considerable powers and discretion under the Act and should hold formal qualifications relevant to the role obtained through an independent, objective, competency-based training system.

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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 and on *Victoria's New Animal Care and Protection Laws*². The first submission outlined the history and evolution of animal welfare into the animal rights movement we see today and warned about the agenda being pushed by the animal rights movement in its various guises. The second submission raised concerns about the very real likelihood of overreach and unintended consequences of the Bill, particularly in relation to hunting. The Associations appreciate the opportunity to now comment on the Exposure Draft.

Comment on the Exposure Draft

The Associations consider that the Draft Bill, as presented, has addressed some of the concerns raised. The intent to broadly exclude hunting from the legislation is recognised and acknowledged. However, there remains a significant risk of overreach and unintended consequences for hunting into the future from the Draft Bill.

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 Associations are satisfied with how the Draft Bill is worded in relation to sentience. However, as previously raised in previous submissions, the recognition of sentience is a platform from which the animal rights movement openly intends to impose a radical ideology over the rules, regulations and practices governments impose on the owners and users of animals. Moving from a platform of preventing actual cruelty to promoting a broad definition of "welfare" (drifting into "rights") 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 vague nature of many parts of the Draft Bill leaves considerable scope for well-funded and organised animal rights groups to challenge the legislation and potentially launch third-party legal challenges. Such actions have the very real potential to severely disrupt people going about legitimate animal use and hunting activities, creating uncertainty and cost for those caught up in such matters, including the government.

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 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 *Victoria's New Animal Care and Protection Laws*. 2022

The fundamental concerns of the hunting community are validated when a member of the Victorian Government (at the time of his statement), 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.”³

The frank acknowledgment that there is an animal rights agenda involved in the development of this proposed legislation undermines the Associations’ confidence in assurances around the “intent” of the legislation. This is especially so when significant provision remains within the legislation to impact negatively on hunting through future regulation, especially when those regulations are not currently available for scrutiny.

The *Prevention of Cruelty to Animals Act 1986* (POCTA) has been in existence for nearly 40 years, and this legislation is likely to have a similar lifespan. While provision needs to be made for future amendments, it is imperative that the legislation and associated regulations are fit for purpose and will achieve the intent that has been communicated to the Victorian public. That means that legislation is unambiguous and that adequate safeguards exist within the legislation to prevent unintended outcomes and overreach.

The Associations do not accept the premise that killing an animal, per se, equates to cruelty. Nor do the Associations accept the premise that hunting an animal, per se, equates to cruelty. However, the Draft Bill clearly identifies both of these activities as being cruel and in contravention of the Act. Given that hunting involves the deliberate killing of animals, there is an almost impossible contradiction created from the intent of this Act and the achievement of a positive hunting outcome. It is unreasonable to expect that such a fundamental contradiction can readily be resolved under the same 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.

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. Subjective value-based views of welfare are just that, subjective. 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. Hunters need to be clearly and unequivocally protected from prosecution under the Act if an animal is wounded, as long as they have been acting reasonably and within the boundaries of standard hunting practices. Laws and codes of practice already exist that clearly outline requirements, expected behaviours and outcomes.

³ Email correspondence, Will Fowles, MP, to SSAA Victoria member dated 30 September 2022

Exemption of hunting from the Act

While protections for hunting and hunters from prosecution have been included in the Draft Bill through various exceptions, the Associations consider those protections can be strengthened and improved by simply exempting hunting from the Act. The Act recognises that exemptions from its provisions are appropriate through the precedent set under Part 1-10, Traditional owner agreement for natural resources. This section states that *“If a traditional owner group entity has an agreement under Part 6 of the Traditional Owner Settlement Act 2010, any provision of this Act that provides for an offence for carrying out an*

agreed activity does not apply to any member of the traditional owner group—

(a) who is bound by the agreement; and

(b) who is carrying out an agreed activity to which the offence applies in accordance with the agreement and on land to which the agreement applies.⁴

Such an exemption for hunting would alleviate many concerns of overreach and potential third-party litigation directed at hunters and hunting under the Act. Such an exemption would reduce any possible confusion and keep hunting separate from a Bill that is inherently incompatible with the realities of hunting. As is currently the case with POCTA, adequate protections against wanton animal cruelty would still exist if hunters were to operate outside the specific hunting legislation or COPs. If it is appropriate to exempt one particular group from the legislation then it is entirely appropriate to exempt others.

Transparency and accountability

The devil is always in the detail of legislation – and the subsequent regulations. While the stated intent regarding hunting in relation to the legislation is clear at this time, adopting a precautionary approach, the Associations see significant future risk for this legislation to create overreach into people’s lives, businesses and recreational pursuits. The complete lack of detail around the supporting regulations for the Act does not allow a fully informed response on those matters.

The broad, undefined nature of the resultant regulations gives too much power to the government to introduce regulations with not enough oversight or detail. If the intent of the Act is to license certain activities, then those activities should be specified in the Act. While it is acknowledged that circumstances may change over time, the Act can be amended as needed in the future.

However, an amendment to an Act is a transparent process that is fully scrutinised by Parliament and voted upon in both Houses. The current wording of the legislation, which leaves so much crucial detail in the regulations, leaves considerable scope for overreach and consequences not intended from the legislation at its formation. The Associations would expect that the final Bill would be amended to reflect a significantly greater degree of detail and prescription, rather than relying on the regulations to provide that detail.

While needing a firearm licence to possess, carry and use a firearm while hunting either game or pest species, there is currently no requirement to be licensed to hunt pest animals. The introduction of such a licence would impose an administrative and financial burden on hunters carrying out an activity that has enormous benefits for native wildlife, the environment and primary producers. While such licensing may not be the intent at this time, the Bill, as written could allow for such an

⁴ Pg 16 Animal Care and Protection Bill Exposure Draft 2024

imposition in the future. Such an imposition would be to the significant detriment of Victoria's hunters.

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."⁵ That is the case, and it has worked well with implied 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 Associations still consider the new Act to be unnecessary, with many seeing it as a politically motivated sop to the powerful animal rights lobby.

The fundamental question that the Associations do not consider having been satisfactorily answered is what the actual problem that the new legislation is trying to address. No evidence has been presented that demonstrates significant problems with animal cruelty issues that have emerged in recent times that the proposed new legislation can solve and that the current POCTA Act has not adequately dealt with. Legislation should not be introduced simply because there is a perception that there is a problem or that political lobbyists have presented an ideological viewpoint that has resonated with the animal rights movement.

That said, it is clear that the Government is committed to introducing the new Act, so feedback is provided in that context to help ensure that hunters are not unnecessarily or inadvertently impacted by the new legislation.

Potential for overreach and unintended consequences

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 will 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"⁶. Victoria will, therefore, be the first state that will have to navigate the problems which that requirement will create.

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 the government might be liable to defend these cases, they are likely to negatively impact 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. It is foreseeable that the Act will be challenged in court. The sensible approach is to continue the precedent from the POCTA Act and have exemptions. Dealing with pets and companion animals fundamentally differs from 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 Associations' previous submissions have raised concerns about a fundamental lack of understanding about hunting in forming this legislation. No evidence has been provided to the Associations that the Game Management Authority (GMA), the Authority responsible for regulating

⁵ Victoria's new animal care and protection laws Plan pg 7

⁶ Victoria's new animal care and protection laws Plan pg 25

and enforcing game hunting laws in the state, has even been consulted, let alone been actively involved in developing the proposed Act.

If hunting is to remain under the Act, the Expert Advisory Committee and the Special Expert Advisory Committee must include a representative (or representatives) of the hunting Associations. That representative must have the relevant experience and hunting expertise to provide advice on all hunting related matters. It would also be appropriate to include a representative from the Game Management Authority.

However, it remains the Association's view that 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 (overdue to be replaced), and the Hunting Code of Practice meet those requirements. The hunting associations have a strong background in working with the government in a cooperative and meaningful way and are prepared to work constructively with the government on any future changes necessary to the Wildlife Act, the Game Regulations or Codes of Practice to improve welfare outcomes.

Protection against baseless and/or malicious reporting

While the Act identifies and creates numerous offences in relation to animal welfare and cruelty matters, it is concerningly silent on providing protections and adequate safeguards for those accused of animal cruelty where those claims are found to be baseless. Ideologically driven animal activism and malicious reporting of animal cruelty offences are increasing. The draft legislation should also offer protection against baseless or malicious reporting of cruelty allegations.

It is imperative that the legislation directs that animal welfare complainant details are obtained and recorded. 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, a mechanism needs to be put in place to ensure a person is not subjected to ongoing searches or harassment by AOs as a result of those reports. There must be a clear appeals and redress system to protect victims of incorrect, false or malicious reporting.

Appropriate safeguards need to be put in place to protect those making genuine and reasonable reports. However, those groups and individuals making repeated baseless or malicious complaints need to be held accountable. Significant penalties should apply to those making vexatious complaints.

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 applied for malicious or vexatious complaints being made and an independent review of complaints made over inspections or the actions of AOs.

It is not appropriate for RSPCA employees to be appointed as Authorised Officers (AOs) 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 2024. Confidence in the impartiality and objectiveness of AOs and their enforcement of legislation is undermined by such an arrangement. The new legislation

is looking to the future, and it is the appropriate time to review and change arrangements that may have been appropriate in the past but have now passed their use-by-date.

All AOs have considerable powers and discretion under the Act and should hold formal qualifications relevant to the role obtained through an independent, objective, competency-based training system. Ongoing professional development should also be mandatory.

Conclusion

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

The Associations do not see any objective need for a new Welfare Act. However, given the Government's commitment to introducing such an Act, the most appropriate outcome would be for hunting and related activities to be made exempt from the Act.

It is considered that there is enormous scope for unintended consequences and overreach of the Act. Vague definitions, enormous scope for licensing of activities that are not specified in the Act and the development of a raft of regulations that are yet to be defined do not give the Associations any great confidence that the proposed Act will not adversely impact hunting.

There are widely divergent views on what constitutes genuine animal cruelty and what animal welfare should encompass. The proposed legislation has fundamentally changed focus from preventing cruelty to animals to a much broader and more subjective area of animal welfare. It needs to be very careful that it achieves its stated objectives but is not open to challenges or abuse that will make the eventual keeping or use of animals impossible or the conditions so onerous that such activity is effectively untenable.

The proposed Act asks the Parliament to accept and adopt 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 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.

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 in Australia in 2024.

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 over time. The animal rights movement would certainly welcome that outcome.