AUSTRALIAN
Alliance
for Animals

25 March 2024

Draft Animal Care and Protection Bill (Vic)

Submission prepared by the Australian Alliance for Animals

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for Animals

About the Australian Alliance for Animals

The Australian Alliance for Animals is a national charity leading a strategic alliance of Australia's key animal protection organisations to achieve systemic change for animals. Through our six core member organisations, we have a combined supporter base of over two million people.

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In the spirit of reconciliation, we acknowledge the Traditional Custodians of country throughout Australia and their enduring connection to land, sea and community. We pay respect to their Elders past and present.

Animal Care and Protection Bill

25 March 2023

Introduction

The Australian Alliance for Animals welcomes the opportunity to comment on the draft Animal Care and Protection Bill. We commend the Legislative Reform team for their substantial work in progressing the Bill to this stage.

This is the first time since 1986 that Victoria will be creating an entirely new animal welfare law. A lot has changed in this time. Our scientific knowledge of animal sentience has advanced considerably, so too have our values and expectations around the way animals should be treated. The Victorian Government must ensure the new Animal Care and Protection Act reflects contemporary animal welfare science and Victorian values.

While there are many positive features in the Bill, we are disappointed that some promising elements proposed in the New Animal Care and Protection Laws Plan (the Plan) have not carried through into the draft Bill. The Bill certainly improves upon the outdated *Prevention of Cruelty to Animals Act 1986*, but based on current drafting, we do not believe it sets Victoria up for meeting the evolving expectations of the community over the next decade and beyond.

As currently drafted, the Bill fails to address key deficiencies of the 20th century model of animal welfare legislation. The lack of independent governance and administration, the use of wide-ranging exceptions for harmful practices, and the absence of consistent decision-making principles are still present within the current Bill.

This reform is a once-in-generation opportunity to address these deficiencies, to create a legislative framework that can deliver strong standards of animal welfare in an evidence-based and accountable manner for the people Victoria over the coming decades.

We offer 13 key recommendations for how the Bill could be improved to achieve this. We also support the submissions of our members Animals Australia, Humane Society International Australia, and FOUR PAWS Australia, which address the need for specific reforms to particular areas of animal use and interaction. We look forward to reviewing progress on the Bill's development and participating in its ongoing refinement.

AUSTRALIAN Alliance for Animals

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Better integrate and embed the principle of sentience within the Bill by referencing clause 6 in other clauses of the legislation relating to decision making and the exercise of duties, functions and powers, including but not limited to the development of the Ministerial Guidelines and the making of regulations under the Act.

Recommendation 2

Remove subclause 2 of clause 6.

Recommendation 3

Refine Part 2 to include decision-making principles and direct the ministerial guidelines towards applying those principles.

Alternatively, amend clause 14 to direct the ministerial guidelines towards applying the principle of sentience under clause 6 in the following way:

> *The Minister may issue guidelines for the purpose of assisting public authorities to consider the purposes and objects of this Act, and the principle of sentience under section 6, in the performance of a function or duty or in the exercise of a power, whether under this Act or another Act –*
>
> *a) that is of a public nature; and*
>
> *b) that relates to animals.*

Recommendation 4

Remove subclause 2 of clause 15.

Recommendation 5

Amend the Bill to include criteria for the making and adoption of regulations under the Act in the following manner:

> *Regulations made under this section must be based on:*
>
> *(a) the principles set out in section [ ]*
>
> *(b) contemporary scientific knowledge and technology*
>
> *(c) advice from the Expert Advisory Committee*
>
> *and be consistent with the purposes and care requirements set out in the Act.*

Recommendation 6

Better integrate the care requirements throughout the legislative framework by referencing them in the proposed regulation-making criteria set out in recommendation 5.

Recommendation 7

Strengthen the cruelty offences by replacing "unreasonable" with "unnecessary", and including further guidance for the courts on how to determine when an act or omission causes unnecessary harm, pain or distress by outlining relevant considerations, including:

- whether the harm could reasonably have been avoided or reduced
- whether the conduct which caused the harm was for a legitimate purpose such as a purpose benefitting the animal or to protect a person, property or another animal
- whether the harm suffered was proportionate to the purpose of the conduct concerned, and
- whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

Recommendation 8

Remove the exceptions to the care requirements and cruelty offences.

Alternatively, refine the exceptions to ensure the precise circumstances in which they apply is clear by:

a) applying the decision-making principles proposed under recommendation 3 to the decision makers responsible for authorising the conduct subject to the exceptions

b) only allowing exceptions for conduct that is prescribed in regulations made in compliance with the regulation-making criteria under recommendation 5

c) further qualifying the exceptions by requiring the conduct to be carried out 'in a way that caused no unnecessary harm, pain or distress'' and

d) removing cl.158 to ensure the minister cannot unliterally exempt certain activity under an approved industry arrangements from the application of the Act.

Recommendation 9

Amend the Bill to establish an independent Victorian Animal Welfare Authority to administer the new legislation.

Recommendation 10

Address limitations in powers to conduct routine compliance monitoring of industry and commercial facilities by:

a) increasing the transparency of approved industry arrangements by requiring the government to publicly report on the content and operation of the arrangements

b) expanding the power to conduct unannounced inspections under cl.229 to all commercial facilities using animals and not just those under licence, and

c) expanding the power of the minister to establish compliance inspection programs to all industries and commercial facilities using animals, without the need for evidence of noncompliance or the existence of new regulations.

Recommendation 11

Amend the Bill to include a process for civil proceedings to be brought under the legislation with appropriate safeguards, to supplement state enforcement efforts and increase compliance with the legislation.

Recommendation 12

Amend the Bill to strengthen the role of the Expert Advisory Committee (EAC) by:

a) relocating the EAC provisions from the miscellaneous section to the beginning of the Bill alongside the principle of sentience and ministerial guidelines

b) integrating the advice of the EAC into other key regulatory processes, including but not limited to, the making of regulations under the Act

c) empowering the EAC to inquire into animal welfare issues on its own initiative

d) allowing the EAC to publish some aspects of its advice and reports to help educate the community and inform public debate.

Recommendation 13

Amend cl.37 to include mulesing as a controlled procedure with a delayed commencement of 1 January 2030, and as an interim measure, amend the regulations to require best practice pain management including a combination of an analgesic prior to the procedure and a local anaesthetic immediately after.

Proposals to strengthen the Bill

1. Principle of sentience

We support the recognition of animal sentience as a principle in the Bill. Sentience recognition is now a cornerstone principle of contemporary animal welfare legislation around the world, so it is pleasing to see Victoria updating its legislation in this regard. The obligation for decision makers to have regard to the capacity of animals to subjectively perceive their environments and to experience positive and negative physical and mental states is a welcome development. Sentience is the reason animal welfare matters. Explicitly recognising this and applying this principle in the administration of the legislation and regulations will assist the legislation in achieving its purpose and better meet the expectations of the Victorian community.

We are, however, concerned about the lack of additional mechanisms within the Bill to assist in applying this principle. Clause 6 is not referenced anywhere else in the 231-page Bill. We note the Ministerial Guidelines may assist in operationalising the principle but there is no pathway for this built into the Bill. Instead, the Minister will have complete discretion to decide what goes into the guidelines and whether they make any mention of the need to pay regard to animal sentience or not (discussed further below).

We are also concerned about the intent behind subclause 2 and the message this sends to the community about the Government's commitment to recognising animal sentience in a practical way. There is nothing in cl.6 that gives rise to a civil cause of action. Curtailing rights of judicial review is unnecessary and sends the wrong signal. If the Government is committed to recognising animal sentience and having regard to it in the administration of the legislation, it should be prepared to be held to account on such an obligation.

We recommend that clause 6 is better integrated and embedded in the legislation by referencing it in other clauses of the Bill that relate to decision making and the exercise of duties, functions and powers under the legislation, including but not limited to, the development of the Ministerial Guidelines and the making of regulations under the Act. We also recommend subclause 2 be removed.

Recommendation 1

Better integrate and embed the principle of sentience within the Bill by referencing clause 6 in other clauses of the legislation relating to decision making and the excise of duties, functions and powers, including but not limited to the development of the Ministerial Guidelines and the making of regulations under the Act.

Recommendation 2
Remove subclause 2 of clause 6.

2. Ministerial guidelines

The introduction of Ministerial guidelines under Part 2 to assist public authorities in the performance of their functions, duties and powers provides an opportunity for more robust and consistent animal welfare decision making across government. However, as currently drafted, Part 2 vests the Minister of the day with complete discretion to decide what will be in the guidelines and whether such guidelines will be developed at all.

The level of personal discretion built into to Part 2 gives rise to considerable risks. Ministers who do not consider animal welfare to be a priority may simply decide not to create such guidelines. Worse still, Ministers who wish to support particular industries or practices involving the use of animals could develop guidelines that emphasise the primacy of commercial or other non-welfare considerations in a way that is contrary to the spirit and purpose of the Act.

Considering the potential of such guidelines to have wide-ranging impacts on the welfare of animals and the extent to which the objectives of the Act are observed by other ministers and entities of the government, this power should not be left entirely to the discretion of an individual minister. This has the potential to lead to unintended consequences and to offend principles of the Rule of Law, particularly those relating to legal certainty and accountability.

The development of the new Animal Care and Protection Act presents the opportunity to move away from such uncertainty and the inconsistencies that have plagued animal welfare laws for over a century.

The New Animal Care and Protection Laws Plan (the Plan) proposed an innovative mechanism for addressing this issue. The Plan proposed to enshrine enforceable, whole-of-government decision-making principles in the legislation itself. This would have significantly improved the consistency and accountability of decision-making under the new Act and across government.

Unfortunately, the Bill has not followed through with this proposal. The Guide to the Bill refers to "technical and practical challenges" in justifying the dropping of the principles. However, similar legislative decision-making principles already exist in other Victorian legislation such as ss.4A, 4B, and 4C of the *Flora and Fauna Guarantee Act 1988* (Vic). This legislative regime demonstrates the practical effect and operation of such decision-making principles.

The power of the minister to make guidelines under this Act is for the purposes of ensuring the objectives of the Act are considered (s.4B(4)). As currently drafted, the power of the minister to make guidelines under the Bill is not linked to ensuring the consideration of any purpose,

objective, or principle of the Bill. Rather, it is left completely open for the minister to decide what the guidelines will be about. This is not appropriate. Part 2 must be refined to provide further parameters around the making of such guidelines to ensure they facilitate, rather than undermine, the Bill's intended objects and outcomes.

We recommend Part 2 is amended to include decision-making principles, as was originally proposed in the Plan, and to ensure the ministerial guidelines are directed towards facilitating the application of those principles. In the absence of this, Part 2 should, at the very least, refer to the principle of sentience contained in cl.6 as follows:

> *The Minister may issue guidelines for the purpose of assisting public authorities to consider the purposes and objects of this Act, and the principle of sentience under section 6, in the performance of a function or duty or in the exercise of a power, whether under this Act or another Act –*
>
> *a) that is of a public nature; and*
>
> *b) that relates to animals.*

We also recommend removing the restriction civil rights of judicial review under cl.15(2) for the same reasons expressed above in relation to cl.6(2). It is unnecessary and sends a poor message to the community that the government does not wish to be accountable for its obligations to properly consider animal sentience and the ministerial guidelines.

Recommendation 3

Refine Part 2 to include decision-making principles and direct the ministerial guidelines to applying those principles.

Alternatively, amend clause 14 to direct the ministerial guidelines towards applying the principle of sentience under clause 6 in the following way:

> *The Minister may issue guidelines for the purpose of assisting public authorities to consider the purposes and objects of this Act, and the principle of sentience under section 6, in the performance of a function or duty or in the exercise of a power, whether under this Act or another Act –*
>
> *c) that is of a public nature; and*
>
> *d) that relates to animals.*

Recommendation 4

Remove subclause 2 of clause 15.

3. Regulation-making power

The New Animal Care and Protection Laws Plan (the Plan) stated that "the new Act would include a power for making regulations" (p.21). However, the Bill does not include a power for making regulations.

The Plan proposes to convert all essential elements of the current industry codes and standards into regulations (p.18). Accordingly, the regulations will be critical in determining the extent to which the purposes and objects of the Act are realised as they will govern the welfare of the largest number of animals in the state.

Modern animal welfare law prescribes criteria for the making and adoption of animal welfare regulations to ensure consistency and accountability in the process of development. A lack of criteria for the making and adoption of regulations potentially allows for the adoption of standards and practices that enshrine cruel and harmful practices that contradict the purposes and care requirements of the Act.

For example, section 183A of the New Zealand *Animal Welfare Act 1999* sets out a process for how welfare regulations are to be made under the Act and states that regulations cannot prescribe standards that do not fully meet the legislation's duty of care obligations. Exceptions may be granted to avoid negative impacts on industry but only for a period of 10 years, before which, the regulations must be brought into line with the Act's key duties and obligations.

Such provisions ensure the process for making regulations, under which the welfare of millions of animals will be affected, is consistent and accountable, and ultimately leads to a more robust and coherent legislative framework.

The Bill should be amended to establish similar criteria to ensure that regulations are developed in an equally consistent and accountable manner, and do not contradict the purposes or care requirements of the Act.

This could be enacted in the following manner:

> *Regulations made under this Act must be based on:*
>
> *(a) the principles set out in section [ ]*
>
> *(b) contemporary scientific knowledge and technology*
>
> *(c) advice from the Expert Advisory Committee*
>
> *and be consistent with the purposes and care requirements set out in the Act.*

Recommendation 5

Amend the Bill to include criteria for the making and adoption of regulations under the Act:

Regulations made under this section must be based on:

(d) the principles set out in section [ ]

(e) contemporary scientific knowledge and technology

(f) advice from the Expert Advisory Committee

and be consistent with the purposes and care requirements set out in the Act.

4. Care requirements

We support the proposed care requirements in the Bill. This is a foundational component of modern animal welfare law providing for the substantive duties humans owe to animals under their care and control.

The care requirements should set a benchmark that flows throughout the legislative framework. Regulation-making criteria should refer back to the care requirements. An objective of the reform should be to bring all areas of animal use and interaction into as close alignment with the care requirements as possible.

Recommendation 6

Better integrate the care requirements throughout the legislative framework by referencing them in the proposed regulation-making criteria set out in recommendation 5.

5. Cruelty offences

We support the proposed cruelty offences including the three categories of offence. However, we recommend the term 'unreasonable' be replaced with the term 'unnecessary' as this sets a higher bar, narrowing the circumstances in which causing harm, pain or distress to animals can be justified.

We also recommend the legislation provide further guidance to the courts on determining the element of necessity (or unreasonableness as the case may be) in this context. We refer to s.4(3) of the UK *Animal Welfare Act 2006*, which codifies well-established principles of the common

law regarding this question.[1] It outlines a range of relevant factors for the court to consider, including:

- whether the harm could reasonably have been avoided or reduced
- whether the conduct which caused the harm was for a legitimate purpose such as a purpose benefitting the animal or to protect a person, property or another animal
- whether the harm suffered was proportionate to the purpose of the conduct concerned, and
- whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

We note that these factors are also broadly consistent with the proportionality principles set out in cl.116.

Recommendation 7

Strengthen the cruelty offences by replacing "unreasonable" with "unnecessary", and including further guidance for the courts on how to determine when an act or omission causes unnecessary harm, pain or distress by outlining relevant considerations, including

- whether the harm could reasonably have been avoided or reduced
- whether the conduct which caused the harm was for a legitimate purpose such as a purpose benefitting the animal or to protect a person, property or another animal
- whether the harm suffered was proportionate to the purpose of the conduct concerned, and
- whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

6. Exceptions

As a general principle, the Alliance does not support exemptions or exceptions from animal welfare legislation. While we support the proposal to move away from the use of certain wide-ranging exemptions, the proposed exceptions are still very broad and require further refinement.

Currently, the Bill provides exceptions for any conduct carried out under other legislative frameworks such as the *Catchment and Land Protection Act 1994*, the *Fisheries Act 1995*, and the *Wildlife Act 1975*. This is problematic because these Acts are not focused on animal welfare

[1] See *Ford v Wiley* (1889) 23 QBD 203 and subsequent cases outlined in Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford University Press, 2001).

and there is no obligation on the relevant ministers or other decision makers to consider animal welfare under their legislative frameworks.

The wide scope of the exceptions as currently proposed risks undermining the objectives of the reforms in creating a more consistent and coherent legislative regime. This risk was intended to be mitigated under the New Animal Care and Protection Laws Plan (the Plan) via the proposed decision-making principles. The principles were intended to provide guidance to decision makers outside the agriculture portfolio who were responsible for authorising the conduct that would be covered by the exceptions, to ensure such authorisation considered the care and welfare of animals. However, the Bill's failure to include the decision-making principles, and instead, to propose non-binding ministerial guidelines has taken away this safeguard.

Unless the decision-making principles are re-instated in a revised version of the Bill, the exceptions will need further refinement and qualification if the purposes of the Act are not to be subverted. The Rule of Law requires certainty. Blanket exceptions for acts authorised under different legislative frameworks, which do not address animal welfare, fail to provide that certainty. As a general principle, the Alliance's position is that no exception should be granted in the absence of regulations prescribing the precise circumstances in which the exception applies. Such regulations should be made under the relevant animal welfare legislation to ensure they are made in the appropriate legislative context. This context may come from the regulation-making criteria, proposed in recommendation 5.

In addition to this, we strongly recommend that a general qualification be applied to all exceptions which requires the relevant conduct to be carried out 'in a way that caused no unnecessary harm, pain or distress to the animal.' An equivalent qualification exists in relation to defences under the NSW *Prevention of Cruelty to Animals Act 1979* (see s.24).

Finally, we wish to strongly object to the proposed power for the minister to unilaterally exempt certain activity under an approved industry arrangement from having to comply with the care requirements (cl.158). This extraordinary power has the potential to undermine the Animal Care and Protection Act, its regulations, and the advice of the Expert Advisory Committee. It should be removed. Approved industry arrangements must, at the very least, be required to abide by relevant industry regulations and standards. Any activity falling below the basic duty of care requirements should be protected via compliance with the relevant regulation, not via ministerial decree.

Recommendation 8
Remove the exceptions to the care requirements and cruelty offences. Alternatively, refine the exceptions to ensure the precise circumstances in which they apply is clear by:

a) applying the decision-making principles proposed under recommendation 3 to the decision makers responsible for authorising the conduct subject to the exceptions

b) only allowing exceptions for conduct that is prescribed in regulations made in compliance with the regulation-making criteria under recommendation 5

c) further qualifying the exceptions by requiring the conduct to be carried out 'in a way that caused no unnecessary harm, pain or distress', and

d) removing cl.158 to ensure the minister cannot unliterally exempt certain activity under an approved industry arrangements from the application of the Act.

7. Victorian Animal Welfare Authority

The Bill establishes a raft of new administrative and regulatory functions and processes with a range of different decision makers. The complexity of animal welfare regulatory services is going to increase substantially following the introduction of the legislation. In addition to this, the Victorian community is increasingly seeking greater assurances across all animal-based industries and will increasingly expect government to provide more robust standards, stronger compliance monitoring and enforcement services, and greater transparency and public reporting on such services.

To meet these increasing demands, the Bill should be amended to establish a Victorian Animal Welfare Authority to undertake key regulatory and administrative responsibilities under the new Act. We note that Animal Welfare Victoria already exists as a distinct branch within Agriculture Victoria. This reform would see Animal Welfare Victoria formally recognised in the new legislation as the administering authority, improving the independence and accountability of regulatory decision-making under the legislation.

Specific responsibilities for the Authority could include:

- overseeing the appointment and training of inspectors
- providing secretariat support for the Expert Advisory Committee
- administering the licensing regimes for certain animal activities
- administering the controlled procedures and conduct framework
- administering the Compliance Inspection Schemes
- determining animal forfeiture applications
- the approval of official forms for use under the Act
- the recognition of interstate prohibition orders
- publicly reporting on compliance and enforcement activities.

Under such an arrangement, Agriculture Victoria could continue to play an important role in the provision of technical advice and assistance, industry extension services, and informing the development of policy. Likewise, current entities such as RSPCA Victoria would continue to play

an enforcement role, but they would report to the Animal Welfare Authority as opposed to Agriculture Victoria.

Establishing an independent Victorian Animal Welfare Authority not only makes sense from a regulatory perspective but will also provide additional benefits of improving public confidence in the administration and enforcement of animal welfare law. Social research commissioned by the federal Department of Agriculture in 2018 noted that members of the public raised concerns over the perception of conflicting interests when "the same regulatory body responsible for the promotion for the agricultural industry was also responsible for ensuring animal welfare standards" (Futureye, Australia's Shifting Mindset on Farm Animal Welfare, 2018, p.16).

More recent research undertaken in 2023 by BehaviourWorks Australia found that over 80% of Australians believe the final say on animal welfare policy decisions should be made by an independent and impartial authority. Over 68% believed this should be an independent government agency dedicated to animal welfare, while only 22% supported Departments of Agriculture playing this role (BehaviourWorks Australia, Australian Animal Welfare Survey, 2023).

Such perceptions are only likely to increase unless more investment is made in meeting the expectations of the community. The establishment of a Victorian Animal Welfare Authority would send a strong signal that the Victorian Government takes animal welfare seriously and this would be supported by the community.

Recommendation 9
Amend the Bill to establish an independent Victorian Animal Welfare Authority to administer the new legislation.

8. Compliance monitoring

We support the comprehensive suite of powers afforded to authorised officers under the Bill. However, there are limitations in the powers and arrangements for routine inspections of commercial facilities.

The Bill proposes a range of mechanisms for monitoring compliance within industry and commercial settings, including through the establishment of approved industry arrangements (cl.152), licensing with unannounced inspections under cl.229, and compliance inspection programs (cl.314).

However, there are limitations with all of these mechanisms:

- approved industry arrangements are effectively recognised industry QA schemes. They are not transparent and place compliance monitoring responsibilities in the hands of a private company "connected with" the industry (cl.153)

- the power of unannounced inspections under cl.229 can only be exercised with respect to companies licensed under the Act. Presumably, the Victorian Government does not propose to licence all companies that use animals for commercial purposes
- the power to establish a compliance inspection program is limited to industries where there is evidence of a lack of compliance or where there are new regulations less than two years old.

These limitations should be addressed by making the approved industry arrangements transparent via government reporting on both the content of the approve industry arrangement (including the factors outlined in cl.160) as well as the operation of the arrangement, such as the number of inspections and number of non-compliances detected during a given period.

Additionally, the power to conduct routine unannounced inspections under cl.229 should not be limited to licensed activities but should apply to all facilities where animals are used for commercial purposes. This power is afforded to authorised officers in NSW (see s.24G of the *Prevention of Cruelty to Animals Act 1979*).

Finally, the power to establish a compliance inspection program should not be limited to industries where there is evidence of noncompliance or new regulations in place. The minister should be empowered to establish a compliance inspection program for any industry or commercial activity involving the use of animals.

Recommendation 10

Address limitations in powers to conduct routine compliance monitoring of industry and commercial facilities by:

a) increasing the transparency of approved industry arrangements by requiring the government to publicly report on the content and operation of the arrangements

b) expanding the power to conduct unannounced inspections under cl.229 to all commercial facilities using animals and not just those under licence, and

c) expanding the power of the minister to establish compliance inspection programs to all industries and commercial facilities using animals, without the need for evidence of noncompliance or the existence of new regulations.

9. Civil proceedings

To further supplement enforcement capacity, the Victorian Government should introduce provisions for civil proceedings under the Act. The Bill currently proposes to limit rights of civil proceedings under cl.6(2) and cl.15(2) and restricts standing to file charges under the legislation to government officers and RSPCA Victoria (cl.185). This is unfortunate. The role of private litigants has been recognised in other legislative settings of public interest including Australian

consumer law and environmental protection legislation as a legitimate and effective means of ensuring government acts in accordance with the law and of supplementing state enforcement efforts to increase compliance with the law.

Provisions for civil proceedings should be introduced into the Bill to facilitate this important accountability and enforcement mechanism. Appropriate safeguards can be built into the process to ensure the provisions are only used for appropriate and legitimate purposes. For example, civil proceedings may be taken under the Victorian *Environment Protection Act 2017* only by:

- persons whose interests are affected by a contravention of the legislation, or
- a person who otherwise has the leave of the Court to bring an application, which will only be granted if the court is satisfied that:
    - the application would be in the public interest, and
    - the person had requested in writing that the EPA take enforcement or compliance action, but the EPA failed to take enforcement or compliance action within a reasonable time.

Together with the general risks associated with adverse costs orders, these provisions provide appropriate safeguards to ensure that such proceedings could only be undertaken by those with a legitimate purpose.

The Victorian Government should enable rights of civil proceedings under the Bill, equivalent in nature to those under the *Environment Protection Act 2017*.

Recommendation 11

Amend the Bill to include a process for civil proceedings to be brought under the legislation with appropriate safeguards, to supplement state enforcement efforts and increase compliance with the legislation.

10. Expert Advisory Committee

Independent expert advice is a critical component of developing informed animal welfare policy and standards. We therefore support the proposed establishment of an Expert Advisory Committee (EAC) under the Bill. However, as currently drafted, the EAC appears to be more of an afterthought than essential component of the legislative framework. The Victorian Government should be signalling to the community that evidence-based, expert advice underpins Victoria's approach to animal welfare policy and law. We make a number of recommendations for how the role of the EAC can be strengthened.

First, the EAC's advice should be better integrated into key regulatory and policy decision under the Bill. Currently, the Bill only specifies two areas (emergency declarations and compliance inspection programs) where the Minister must obtain the advice of the EAC. The Bill should expand this out to include other key regulatory processes, including in particular, the making of regulations under the Act (see recommendation 5). The integration of the EAC's advice would also benefit from moving the EAC provisions from the miscellaneous section of the Bill to the beginning of the legislation alongside the principle of sentience and ministerial guidelines. This will better reflect its role as a cornerstone feature of the new Act and Victoria's evidence-based approach to animal welfare policy.

Second, cl.309 should be expanded to empower the EAC to inquire into animal welfare issues on its own initiative, rather than only on the request of the Minister.

Finally, to enhance transparency and the EAC's role in policy development, the Bill should make allowances for the EAC to publish some aspects of its advice and reports. While certain components of the EAC's advice will need to remain confidential to ensure frank and fearless advice to the Minister on key regulatory decisions, other aspects of the EAC's advice can and should be made public for the benefit of the community and the public debate. The EAC should provide a public-facing service to the community and share its expert advice and research to help inform policy debates.

Recommendation 12

Amend the Bill to strengthen the role of the Expert Advisory Committee (EAC) by:

a) relocating the EAC provisions from the miscellaneous section to the beginning of the Bill alongside the principle of sentience and ministerial guidelines

b) integrating the advice of the EAC into other key regulatory processes, including but not limited to, the making of regulations under the Act

c) empowering the EAC to inquire into animal welfare issues on its own initiative

d) allowing the EAC to publish some aspects of its advice and reports to help educate the community and inform public debate.

11. Phase out of mulesing

Finally, to ensure the new Animal Care and Protection Act reflects modern and contemporary animal welfare legislation, we recommend the Bill introduce provisions to progressively phase out painful and unnecessary husbandry practices such as mulesing in favour of more humane alternatives. Considering that alternatives to mulesing already exist, as evidenced by the increasing number of farms that have ceased mulesing by adopting new genetic traits and management practices, we recommend a phase out date of 1 January 2030. This should be

implemented by prescribing mulesing as a controlled procedure under cl.37 with a commencement date delayed accordingly.

As an interim measure, we recommend the regulations are amended to require best practice pain management including a combination of an analgesic prior to the procedure and a local anaesthetic immediately after.

Recommendation 13

Amend cl.37 to include mulesing as a controlled procedure with a delayed commencement of 1 January 2030, and as an interim measure, amend the regulations to require best practice pain management including a combination of an analgesic prior to the procedure and a local anaesthetic immediately after.