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A NEW ANIMAL WELFARE ACT FOR VICTORIA: DIRECTIONS PAPER

Wildlife Victoria Submission

Submission prepared by Dr Megan Davidson, CEO

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Wildlife Victoria Inc.

About Wildlife Victoria

Wildlife Victoria has provided the Victorian community with a Wildlife Emergency Response service for over 30 years. Every year thousands of native animals in Victoria become sick, injured, or orphaned, often as a direct result of human activity. If left unassisted, these animals may suffer and die in pain or of starvation.

Our Wildlife Emergency Response Service receives notifications from members of the public via our emergency phone and online reporting system. We receive more than 80,000 requests for help and help approximately 50,000 animals a year. When a member of the public contacts us about a sick, injured, or orphaned animal, our Emergency Response Operators provide advice to help the caller manage the situation appropriately, and when necessary, arranges for a trained volunteer to attend. They also liaise with other organisations to ensure the best possible outcome for the animal.

The rescue service relies on an extensive state-wide network of rescue and transport volunteers, veterinarians who provide pro-bono services for wildlife, and the licenced carers and shelters who accept animals into their care for rehabilitation and release.

In addition to the rescue service, through our education programs and activities we help wildlife by providing people with the knowledge and skills they need for peaceful and positive co-existence with wildlife, and by facilitating positive community attitudes toward wildlife.

We advocate for wildlife whenever their welfare is under threat or compromised. We support efforts by government, community groups and individuals to ameliorate threats to wildlife, particularly those that are caused by humans.

Our Submission

Thank you for the opportunity to provide a submission to the directions for the new Animal Welfare Act.

As a wildlife rescue organisation, we see the impact of human activities on wildlife every day. We also see the impacts of government policy on wildlife and on the lives of people who appreciate and care for wildlife.

We frequently receive reports from the public about cruelty to wildlife and refer cases to, or coordinate a response with, Victoria Police, DELWP Wildlife Officers and sometimes the RSPCA depending on the circumstances and availability of authorised officers. Our volunteer rescuers often attend these cases to deal with the animal, which may involve euthanasia *in situ*, or containment and transport of the animal to a veterinary clinic.

Our submission will focus on aspects that relate specifically to the welfare of native wildlife in Victoria.

Theme 1 Safeguarding animal welfare

1.1 Animal Sentience

We support the proposal to recognise the sentience of animals in the new Act and therefore the recognition of the capacity of animals to suffer, and to feel both negative and positive emotions. The move to a “welfare” focus that includes the physical, social, and emotional needs of animals is welcome.

This legal recognition lays the foundation for future improvements in our treatment of native wildlife, including animals such as kangaroos that are currently killed for commercial purposes, or because of perceived “nuisance” or consuming pasture grass.

With regard to the options, we support including reference to sentience in the Objects, Principles and Definition of animals in the Act.

1.2 Minimum standards of care

We support the introduction of “a requirement for people to provide a minimum standard of care for animals”.

This affects captive wildlife and wildlife undergoing rehabilitation, with overlap with the Wildlife Act 1975 under which this authorised activity occurs. The Minister for Environment announced in 2020 an intention to review the Wildlife Act 1975.

We support the proposals to introduce a requirement to provide a minimum standard of care for animals. This should include an obligation to provide, to an appropriate standard for each species:

- Food and water
- Treatment for illness, disease, or injury
- Shelter or accommodation with dimensions that allow for sufficient exercise and normal movement and that is kept clean, hygienic, and free of hazards
- Enrichment of the enclosure or environment to maintain wellbeing
- Social needs: Co-housed with other members of their species as appropriate
- Avoid stress and fear: e.g. not co-housed or within sight/smell of a predator species

Animal welfare problem #1 Hello Cockies: Australian native birds, such as sulphur crested cockatoos, live for many decades. We frequently see these highly social birds kept in small “cocky cages”. The introduction of a duty of care would necessarily mean the removal of native birds from cages that do not permit significant flight opportunities. Considerations should be given for people who are unable to meet their duty of care responsibilities, to surrender these birds to a facility where appropriate care can be provided.

Animal welfare problem #1 Private zoos: Some private zoos do not have infrastructure that allows them to meet their duty of care for some wildlife species. For example, some zoos keep grey-headed flying foxes or other megabat species that are highly social, long-distance travellers.

Other animal welfare situations

While minimum standards of care relate to animals that are in a person's care, there are other animal welfare situations where an animal welfare response is needed.

#1 Road Trauma

It is estimated that 4 million animals are hit by vehicles in Australia every year (Englefield, Starling & McGreevy, 2018). Animals that are hit by vehicles are always injured if not killed outright. Some people stop and call us for assistance for the animal, while many do not and simply leave the animal to die a slow and painful death.

The Road Safety Act 1986, Section 61 (1) requires drivers to stop and render assistance in an accident where persons are injured or property, including animals, is damaged or destroyed. So, while there is an obligation to stop and render assistance when an animal that is property is affected, there is currently no such obligation relating to other animals, including wildlife.

We suggest that there should be an obligation under the Animal Welfare Act for people involved in an animal collision to stop and render assistance by calling a wildlife rescue service.

#2 Sick or injured and orphaned wildlife and feral animals

We suggest it be considered that the Animal Welfare Act includes an obligation to seek assistance for sick, injured and orphaned animals

While there are a number of wildlife rescue organisations that can respond to native wildlife, there is currently no response available for feral animals. When people see sick, injured or orphaned feral animals it can be difficult or impossible to find help to end the animal's suffering, unless the animal is small enough to be safely contained and transported to a vet clinic for euthanasia.

1.3 Offences for Prohibited acts

We support the introduction of "a set of general escalating offence categories covering things a person must not do to animals". We agree that the proposed escalating cruelty offences should apply to all animals in all circumstances.

The four proposed categories are appropriate, and category 3 ensures that omissions and actions under the first two categories are escalated in severity where serious harm results.

We recommend that maximum penalties in Victoria be increased in line with the community's views and the impact on the willingness of the courts to impose significant penalties, including custodial sentences, for the most serious cases of aggravated cruelty. In South Australia, the penalties imposed by the courts doubled after the maximum penalties in the legislation were increased (Morton, Hebart & Whittaker, 2018).

The recent failure to bring charges, under the Wildlife Act 1975 or POCTA 1986, against a landowner who was responsible for the poisoning of over 400 wedge-tailed eagles in Tubbut, East Gippsland,¹ highlights the current serious limitations of legislation to prevent cruelty or achieve justice for cruelty crimes against wildlife.

¹ <https://www.abc.net.au/news/2020-05-04/wedge-tailed-eagle-deaths-prompt-review-of-wildlife-act/12210956>

1.4 Controlled procedures

We support the inclusion of controlled procedures on animals in the new Act. In the wildlife rehabilitation and care sector, it is important that animals continue to be protected by restricting invasive procedures to competent veterinarians. However, a suitably trained person, such as a vet nurse or authorised wildlife rehabilitator should be able to undertake some minor procedures. An example is Intra Peritoneal (IP) injection of fluids for the purpose of treating severe dehydration, where delay would not be in the best interests of animal welfare, for example, in the field dealing with a heat event affecting dozens of animals, and where a veterinarian was not on site.

THEME 2 A simplified and flexible legislative framework

2.1 Consistency of the framework

We support Option2: *Apply the requirements of the new animal welfare Act to all animals and activities, with appropriate exceptions for lawful activities.*

This seems to have greater clarity and less likelihood of unintended outcomes compared to the first option (broad exemptions).

2.2 Clarity of the framework

We support the first option “A limited set of regulations supported by mandatory Codes of Practice that would demonstrate compliance with the Act, complemented by best practice Guidelines.” This seems to us to provide protections along with flexibility to rapidly adopt better practices as new evidence becomes available. However, the second option would appear to provide a greater level of protection and more clarity for interpretation, but with more limited flexibility to adopt new approaches.

We are concerned that recently added protections in the Prevention of Cruelty to Animals Regulations 2019 are not weakened or lost in the changed framework. Of particular relevance to wildlife, the regulation of the sale and use of glue traps and fruit-tree netting will reduce suffering and death of small birds and lizards, microbats on glue traps, and flying foxes, birds and larger reptiles in netting.

We would also like to see, in line with many other countries, the sale of anticoagulant rodenticide poisons restricted to licenced pest controllers, as these impact on raptors and carnivorous reptiles via secondary poisoning. The regulation of the sale and use of products that result in substantial and avoidable animal suffering should be explicitly addressed in the Animal Welfare Act.

2.3 National Codes of Practice, Standards and Guidelines

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

There is an urgent need in Victoria for the *Code of Practice for the Welfare of Wildlife During Rehabilitation* (2000)² to be updated, or alternatively for the development of an Australian Animal Welfare Standard for wildlife in rehabilitation. Mandatory Codes of Practice should be developed for species groupings (e.g. microbats, megabats, macropods, possums and gliders, raptors, waterbirds, etc.).

The regulatory system for wildlife welfare in Australia has been described as a “fragmented, complex, contradictory, inconsistent system of regulatory management” (Englefield, Blackman, Starling & McGreevy, 2019).

2.4 The role of co-regulation in the framework

As this aspect of the proposed Act appears not to apply to wildlife rescue, rehabilitation, and care, we have not taken a position on the proposal.

2.5 The role of science in the new framework

We believe that a combination of the three options is needed to ensure that changing evidence and best practice can be used in a timely manner to inform decisions under the new Act. The interpretation of scientific research can be easily distorted as it requires a certain level of expertise to critically appraise original research reports and apply the findings appropriately. Poor research literacy, confirmation bias and vested interests can lead to misinterpretation of scientific reports and “cherry picking” of materials that support a certain position. It is also the case that often the evidence is equivocal, and decisions must be made despite that uncertainty.

With respect to the formalised role for an expert advisory committee (by reference in the new Act) we ask that a nominee from Wildlife Victoria be included on this committee, along with other major stakeholders in the animal welfare sector.

THEME 3 A better compliance and enforcement model

3.1 Monitoring compliance

We support the proposal to enhance power to proactively monitor compliance. This seems proportionate and likely to detect non-compliance at an early point in time.

We support the introduction of graduated responses as set out in the figure on page 43, that are aligned with Proposal 1.3.

² <https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/pocta-act-1986/victorian-codes-of-practice-for-animal-welfare/code-of-practice-for-the-welfare-of-wildlife-during-rehabilitation>

3.2 Permissions and restrictions

As this section lacks relevance to the wildlife rescue, rehabilitation, and care sector, we have not formulated a position.

3.3 Managing seized animals

Wildlife may be seized under Section 59 (1) (d) of the Wildlife Act 1975 “...which have been taken or are apparently being held or retained in contravention of this Act...”

And under section 70A (2) (b) “the Magistrates’ Court may, on the application of an authorised officer, order that any thing seized under this Act be destroyed or otherwise disposed of, if the Court is satisfied that – (b) in the case of wildlife, the person apparently in possession of the wildlife does not hold a licence, authorisation or permit under this Act to do so.”

Although the directions paper sets out as Alternative D (p.49) “Manage the animals as required by other legislation (for example the Wildlife Act 1975), neither the Wildlife Act 1975, nor the Wildlife Regulations 2013 set out in any detail the requirements of managing seized animals.

Where there are cases involving cruelty to wildlife, there should be a clear pathway for seized animals to be placed with an authorised wildlife shelter for rehabilitation and release, if that is in the best interests of the animal.

References

Englefield, B., Blackman, S.A., Starling M. & McGreevy, P.D. (2019). A review of Australian animal welfare legislation, regulation, codes of practice, and policy, and their influence on stakeholders caring for wildlife and the animals for whom they care. *Animals*. 9:335;

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Englefield, B., Starling M. & McGreevy, P. (2018). A review of roadkill rescue: who cares for the mental, physical and financial welfare of Australian wildlife carers? *Wildlife Research*, 45:103-118

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Morton, R., Hebart, M.L. & Whitaker, A.L. (2018). Increasing maximum penalties for animal welfare offences in South Australia – Has it caused penal change? *Animals* 8(12), 236;

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