

The Hon Jaala Pulford MP

Minister for Agriculture
Department of Economic Development, Jobs, Transport and Resources
1 Spring Street
Melbourne Victoria 3000

By email: animal.welfare@ecodev.vic.gov.au

Dear Minister,

Improving the Welfare of Animals in Victoria – Draft Action Plan 2016-2021

The Law Institute of Victoria (LIV) welcomes the Department of Economic Development, Jobs, Transport and Resources' development of a Draft Action Plan (the Action Plan) for improving the welfare of animals in Victoria. The LIV recently established an Animal Welfare Working Group, in recognition of the growing number of lawyers interested in animal welfare issues. Members of that Working Group have contributed to this submission.

The LIV hopes that this Action Plan will lead to significant reform of the laws relating to animals in Victoria, and that it can assist in creating an oversight and regulatory model that could be used as a basis for other States and Territories in Australia. The LIV will continue to monitor the implementation of the final action plan and hopes to play an active role in assisting to develop laws to improve animal welfare across a wide range of areas.

Action area 1: Victoria has contemporary animal welfare laws

The LIV welcomes the review of animal welfare laws discussed in the first action area. However, we recommend that the ambit of this action area be expanded to include consideration of an independent body for animal welfare in Victoria.

The recent Draft Report by the Productivity Commission on the *Regulation of Agriculture* (the Draft Report) highlights the importance of independent oversight on animal welfare issues. While the Draft Report focuses on animals in agriculture, the recommendations are relevant to animal welfare concerns for animals in other contexts, such as domestic animals or wild animals. The Draft Report recommends the establishment of an independent, national animal welfare body with responsibility for developing national standards and guidelines.¹ The Commission deemed that such a body would be the best way to address the three main concerns with the way in which animal welfare is currently regulated at the national level: the need to clarify the objectives of national standards and guidelines; the need for such standards to be evidence-based; and the importance of ensuring independence in the development of standards.²

While that report focuses on regulation at the Commonwealth level, there is potential for Victoria to consider establishing a similar body to oversee the development of animal welfare legislation, codes, and guidelines for all animals in Victoria.

¹ Productivity Commission, *Regulation of Australian Agriculture*, Draft Report (2016), 203.

² *Ibid*, 196.

The Productivity Commission particularly notes the importance of such a body being independent and 'not overly influenced by the views of any one group, such as industry or animal welfare or rights groups'.³ The body's decisions should be based on 'rigorous scientific principles'⁴ and should also take into account community expectations about adequate protection of animal welfare.⁵

The Animal Welfare Advisory Committee (AWAC) already fulfils some of these roles, including reviewing legislation and participating in the development of animal welfare codes and standards. However, an independent body, as recommended by the Productivity Commission, would also have the responsibility for developing standards and guidelines and would provide additional benefits by: ensuring greater independence in the development of standards; addressing concerns about potential conflicts of interest; and enabling decisions about competing interests to be made more independently.⁶

The LIV also submits that transparency and accuracy should be key aspects of the action plan. While transparency is included as a deliverable for the compliance and monitoring process and reporting on animal welfare complaints in action 3.1, we suggest that it should also be included in action 1.2, in relation to animal welfare regulation. The development and review process for codes, standards and guidelines should be transparent and should include broad public consultation. Changes to codes are not subject to the same oversight and decision making processes of legislative amendment through Parliament, however, they can have far reaching effects. Therefore it is crucial that they are scrutinised through broad consultation processes.

The Draft Report emphasises the need for transparency in establishing a successful regulatory and legal framework, which applies in both state and federal contexts.⁷ All major stakeholders, including, representatives from the Victorian Government, animal industry groups, animal welfare groups and the community, should be consulted on any regulatory or standard-setting body to ensure a variety of perspectives are captured by the standards; that they are reflective of community attitudes and do not unfairly favour industry interests at the cost of animal welfare.⁸ At the Commonwealth level, the Draft Report notes an overrepresentation of industry interests in standard-setting,⁹ which could undermine public confidence in the regulatory processes. The LIV acknowledges the Victorian Government's commitment to a wide representation of interests on the composition of the AWAC, but supports the development of an independent oversight body to assist with implementation, monitoring and enforcement of regulations.

The appropriate model for an independent body in Victoria should be the subject of further consultation.

³ Ibid, 196.

⁴ Ibid, 203.

⁵ Ibid, 196.

⁶ Ibid, 201.

⁷ Ibid, 191.

⁸ See, for instance, *ibid*, 191.

⁹ Above n 1, 194.

As the Action Plan notes, '[c]ommunity expectations of animal welfare standards have increased in recent years'¹⁰ and the Draft Report highlights the importance of accurate information about animal welfare practices (in the context of farming) in informing community perceptions and expectations.¹¹ The Community needs to have confidence that research used to inform policy-makers is "unbiased, credible and conducted by qualified, independent researchers using robust research methods".¹²

Increased transparency and public consultation about the development of standards will assist in developing community legitimacy and trust in animal industries.

Action area 2 – collaborative approaches underpin knowledge, commitment and investment in animal welfare

The LIV, as the professional peak body for lawyers in Victoria, is willing to consult further on the review of Victoria's animal welfare laws and on the implementation or development stages of any code or regulation.

Action 2.2 is relevant to the LIV and under this section we can consider how to best educate lawyers to be aware of animal welfare issues in their work and to encourage them to bring animal welfare issues to the notice of Judges and tribunal Members when relevant. This is particularly important in some areas of law, for example, in family violence situations, as noted in the Action Plan.

Action area 3 - Compliance and enforcement is efficient and effective

Effective compliance and enforcement of animal welfare laws is crucial to ensure accountability. Currently, the Royal Society for the Prevention of Cruelty to Animals (Victoria) ('RSPCA Victoria') undertakes compliance and enforcement activities under the *Prevention of Cruelty to Animals Act 1986* (Vic) (the Act), however, commercially farmed animals are exempt from the legislative protections afforded to companion animals and some of the enforcement mechanisms in the Act are constrained by privacy considerations.

Commercially farmed animals are, in principle, protected by the various Victorian Codes of Practice for Animal Welfare (the Codes), but the LIV is concerned that many of these Codes, such as those relating to cattle, the welfare of horses and the welfare of animals in hunting, are voluntary. The voluntary Model Codes, previously utilised in Victoria and other states, have been ineffective at ensuring animal welfare obligations were met and were set to be replaced by mandatory requirements in the States and Territories.¹³ Some Codes have since been codified by legislative Regulations,¹⁴ which prescribe conditions in relation to rodeo animals and scientific procedures and breeding, yet compliance in other contexts remains voluntary. Should the Government retain the Codes as part of the Action Plan, the LIV recommends the Government considers a transition to mandatory codes of practice across all animal industries.

¹⁰ Victoria State Government Department of Economic Development, Jobs Transport and Resources, *Improving the Welfare of Animals in Victoria*, Draft Action Plan (2016), 2.

¹¹ Above n 1, 192.

¹² *Ibid*, 193.

¹³ *Ibid*, 179.

¹⁴ See, *Prevention of Cruelty to Animals Regulations 2008* (Vic).

Any co-regulatory arrangements need to be clear and consistent. The LIV supports greater consistency between the Codes and the Act. For example, the Code of Accepted Farming Practice for the Welfare of Cattle, Code 12, provides for the humane killing of cattle, yet the Act expressly states it does not apply in relation to the slaughter of animals in accordance with the *Meat Industry Act 1993* (Cth) or any Commonwealth Act.¹⁵ Enhancing consistency between the Codes and the Act would improve community and industry understanding of animal welfare issues, which could lead to increased compliance.

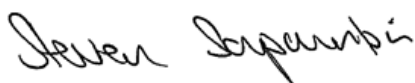
The LIV recommends the government consults further on enforcement options, taking into consideration the option of routine inspections by an independent oversight body (referred to above) and potential increased powers of inspection where animal welfare could be at risk. Further consideration to any expansion of investigative powers will inevitably involve balancing right-to-privacy considerations with potential risks to animal welfare.

The Draft Report identifies a potential need for harsher penalties, including enforceable undertakings, where animal welfare laws are breached.¹⁶ The Victorian Government could consider similar penalty options, which would incentivise compliance and foster greater consistency between State and Commonwealth laws. Following a recent independent review of the RSPCA Victoria, which cited its function as industry inspector as "unsustainable",¹⁷ the LIV submits that adequate funding of any inspectorate is required to ensure the legal framework is enforceable.

An independent body in Victoria, discussed above, could also play a role in the monitoring and enforcing of animal welfare laws and regulations. This body would require adequate funding to perform its functions.

The LIV welcomes the opportunity to consult further with the Victorian Government Department of Economic Development, Jobs, Transport and Resources on any further development and implementation stages of the Action Plan. If you have any questions about this submission please contact Kate Browne on (03) 9607 9489 or kbrowne@liv.asn.au.

Yours sincerely,



Steven Sapountsis

President

Law institute of Victoria

¹⁵ *Prevention of Cruelty to Animals Act 1986* (Vic) s 1(a).

¹⁶ Above n 1, 217.

¹⁷ Neil Comrie, *Independent Review of the RSPCA Victoria Inspectorate*, Final Report (1 September 2016), 54.