

REVISION OF POCTA LEGISLATION - SUBMISSION FROM DRAV 14 DECEMBER 2020

This submission is provided on behalf of the Dog Rescue Association of Victoria Inc (DRAV), the peak body for rescue groups which rehome dogs, some cats and other companion animals. DRAV requires member groups to meet appropriate standards to maintain animal welfare and to behave ethically in the way in which they rescue and rehome animals.

We recognise the scope of POCTA and the many areas it covers but have specifically focused on domestic pets as our area of expertise.

We make the comment that although an academic approach to the definition of cruelty and changes in other areas are all to be commended, the revised legislation will not be effective if it does not promote effective enforcement, an area in which the provisions of the current Act are not being exercised adequately.

The rescue sector trusts that there will be further consultation with them before this legislation is enacted, with its specific impact on the welfare of animals that are in pounds/shelters, in rescue, in puppy farms, in scientific situations such as laboratory animals, and in industries that create pets such as greyhound and horse racing. We point out that although the Memorandum of Understanding (MOU) refers to the RSPCA as a community-based charity we take exception to that description given that it is an institution deeply embedded with the management of POCTA. The rescue groups we speak for are indeed genuine community-based bodies that are dealing with individuals and their expectations – and complaints about the current system – on a daily basis.

While we appreciate the survey is only an initial step, it is an inadequate way of tapping into the deep and extensive knowledge of rescue (bleeding into associated issues of animal husbandry, pounds, animal experimentation) and many groups have declined to participate because it is not possible to give simple answers to such complex questions. This does not indicate lack of interest or awareness but rather a feeling of futility, based on our past dealings with the government.

Of the specific points raised in the directions statement we comment as follows.

Theme 1 – safeguarding animal welfare

Proposals 1.1 To achieve maximum clarity we believe sentience should be mentioned in the Objects, Principles and Definitions. There should be no scope to avoid the intention of the Act to recognise the sentience of animals. Any summary of the Act should also specifically mention sentience.

Proposal 1.2 There must be an increased minimum standard of care for all animals, but the standard for companion animals, of whatever species, should also vary from that of other animals. That is there must be an obligation to provide a higher standard of care for a family pet (of whatever species) than for an animal that is not in that role. This is an acknowledgement that a dog or cat, with a particular attachment to a family

or of a species that takes the role of a family pet, will feel more pain or stress when deprived of appropriate living conditions.

We believe the term 'duty of care' will apply more appropriately to all circumstances than a reference to an obligation.

Proposal 1.3 We support the shift to prohibiting specific actions or behaviours, but where an action is not explicitly addressed it leaves too much scope to dismiss it. Each category should also supply specific examples while making it clear they do not prevent the falling of other actions into this category. It must be noted that causing an animal, especially a companion animal, unnecessary mental stress and suffering should also be clearly indicated as an offence. It is not coincidental that so many dogs, in particular, are now on either natural or vet prescribed medication because of anxiety and stress brought about by inappropriate breeding and lack of socialisation in rearing, prior to adoption.

For the nature of the offences to be taken seriously by the public and by magistrates there must be increased maximum financial penalties and prison sentences. Research has shown that where lengthy prison sentences are imposed magistrates regard the offence more seriously, as its seriousness is reflected in the Act. The sentence, say for a Category 3 offence, for a companion animal or pet should be regarded as the high end, as that is causing harm or death to an animal in a dependent or familial relationship, or one with the capacity to be. We do not diminish the responsibility to all sentient species from crayfish on, but one where over thousands of years a dependency/co-relationship exists or has the capacity to exist, the responsibility factor should be higher.

Proposal 1.4 We support a single regulatory framework to simplify and provide clarity as we do in all areas, but we wait with interest to see how this will be enforced and monitored. We make the point with scientific procedures, that making use of dogs, cats, rabbits or other pet species that have had a familial relationship with humans should not be permitted in scientific experiments. It must be the responsibility of the bodies concerned to check the background of any animal they accept. The concept of a formerly loved pet being used for experiments is even more horrifying than having to accept that animals are being bred for this purpose. It is an anathema to the community.

At the very least with restricted procedures, a vet should supervise any individual responsible for castration or tail docking. There should be a certificate of competency attached with performance prohibited to anyone that does not hold this.

Prohibited procedures such as ear-cropping or declawing should not be carried out by a vet except for legitimate reasons pertaining to the animal's health and any vet that carries this out should have to submit a report as to why this procedure was carried out. This should be held on a data base as a reporting mechanism. By keeping more records, much easier in these times than before, it will be easier to see what vets' name keep reoccurring.

Theme 2 - a simplified and flexible legislative framework

Proposal 2.1 POCTA should be the definer of animal cruelty. This Act should apply to all animal activities – with exemptions if needed. Whether it is to wildlife, the meat industry, or pounds and shelters, the general public recognise cruelty. It should be clearly defined in the new Act that, wherever it takes place, it remains cruelty. So for example if a pound or shelter decide to kill an animal, they must seek an exception and

the reasons for that killing, the ultimate harm, must be clearly set out and reported. This clearly ties in with the recent petition to Parliament to prevent convenience killing in pounds and shelters. Rather ironically, this is based on a dog unnecessarily killed by the RSPCA. Again, if there are vets that too blithely sign off for pounds, their authorisation of deaths should also be noted in the data base.

There should never be an exemption given to harm (and kill) an animal where there is a viable option. A pet in a pound or shelter is still a pet, and the tendency of some pounds and shelters to kill an animal even when there is an adopter waiting, or a rescue group willing to take that animal on for rehoming, is abhorrent to the public, clearly a cruelty, and should never be excused in a civilised society.

Proposal 2.2 This is too complex to put in a limited response. It would depend on the quality of the Regulations and of the Codes of Practice. Our past experience is that whatever line is followed it must be geared to the best positive outcome for the animal, and to harm or kill an animal must be presented in such a way that it is easier not to follow that path.

We know from experience that Codes of Practice are not necessarily comprehensive, and the recently redrafted Code for Keeping Greyhounds did not address the adverse welfare outcomes from a number of problem practices, including the use of barking muzzles, the use of elderly females for breeding, the incidence of surgical insemination and caesarian whelping (resulting in multiple major abdominal surgeries to female greyhounds that are certainly not for their benefit) and greyhounds not being required to be released for rehoming. It is too easy for industries to expect that Codes of Practice will mandate or prohibit certain practices, and for the drafters of the Codes to omit matters which they consider are best left to the industry regulators, leaving genuine welfare problems to fall through the cracks.

The aim must be to be able to identify and enforce a law easily, and to have easily accessible data on all outcomes. And there must be a body to which disputes can be referred, an animal welfare ombudsman or similar. Pet Welfare under DEDJTR is not such a body.

Proposal 2.3 Accepting national standards would seem appropriate as long as there was a mechanism that would prevent no lowering of Victoria's standard. But who would decide this? And would changes be presented to interested parties?

Proposal 2.4 We support co-regulation as long as one of the criteria is that it is written that any co-regulation must not be lower than the minimum legislated standards. We further suggest that the government working with the rescue sector to achieve a co-regulation outcome would place the rescue sector within the animal welfare framework, which at present the government struggles to do. We further point out that the review undertaken some years ago is still conspicuous in its absence.

Proposal 2.5 We would like to know more about the proposed scientific and expert opinion. At a time sentience is being recognised, we are unsure that we regard the above as compatible, however this is from the viewpoint of an organisation that deals with companion pets.

Theme 3 – a better compliance and enforcement model

Proposal 3.1 We totally support enhancing powers of intervention rather than the following example of a situation currently occurring: Report made to the RSPCA of a dog

being left for weeks without food and the neighbor feeding the starving dog through the fence. The neighbor is told they can do nothing while she is feeding the dog, to stop feeding the dog, and when he is sufficiently emaciated to come back to them.

Either the police or a Council officer should visit and in the above case leave a note. If there is no response in a relatively short time (i.e. within hours or days) there is certainly the right to check who is looking after the animal while they are away. Entering the property to see the situation in the back yard if there is no response. Giving a warning, the right to fine, offering that they surrender the dog for rehoming. The owner's name is recorded.

Proposal 3.2 Problems with pets in Victoria cost a huge amount of money. With Category One low risk why should there not be a proper pet licence, and a certificate of competency, that at the least makes the new owner aware of what they should be doing. It would be an extension of what the councils currently do with registration. A form of pet licence via test has recently been suggested by Frankston Council and we believe the Municipal Association of Victoria. Again a data base should record the owner and when they purchased/adopted the pet, any charges against the owner, lifetime banning and similar.

Apart from companion animals we are unsure what would be needed in these Categories. What for example would hunting dogs be classified under? With a rodeo that clearly causes harm and distress to the animal who would be required to get a licence – those running the event? Does a vet do health checks? But in principle we would support such a framework.

Proposal 3.3 Not enough information has been provided as it covers such a range of possibilities.

However, if a dog has been seized for an incident with another dog or person, and the owner can prove that they can house the animal safely until the matter is settled, that is the most desirable outcome. If a dog has been seized because of ill treatment by the owner, it is the responsibility of the enforcing body to find as first choice a foster carer for that animal, with kennels being a less desirable option for a possibly traumatised animal. Kennelling a pet for up to a year with court proceedings can have an extremely detrimental effect on that animal. If the dog has been removed for ill treatment it should be passed on to a new owner, whether an individual or an animal welfare organisation.

If non-domestic animals have been removed for lack of basic care they should be immediately on-sold to a situation that ensures their welfare.

Alternative C, putting forward to destroy the animals on animal welfare grounds or for other humane reasons, gives Councils and shelters too easy an out. There must be an independent arbitrator of this.

We speak to the way that Boorondara Council operates as an example. A dog gets out of a family's partly open front gate as a small dog is walking by. Family dog rushes at the small dog. Minor injuries result. Council gets involved and threatens the owner that unless they surrender the dog immediately to be killed they will face up to \$40k in costs for the dog being held while there is a court case. Dog is killed. This should not be happening, and it by no means is happening in Boorondara alone.

OTHER TOPICS

We recognise that much of what we now write below does not directly pertain to the Act or the questions asked in the survey, but they are the outcomes from an Act that is not working. Will the questions you have posed assist with the new legislation? We are not certain.

Community expectations Attitudes to domestic pets have changed so much over the last decade. More dogs and cats now sleep on human beds than in a kennel outside. They are regarded as part of the family. They must be recognised as sentient beings with a need for more than food, water and shelter.

From our community-based perspective we quote from a few incidents of the many with which we have been involved or approached.

- Being given the run around with a neglected dog. Council says not their problem, go to RSPCA. Report is made and nothing happens. Council and police approached again and referred back to RSPCA.
- Complaints of cruelty and unnecessary death in pounds and shelters ignored.
- Totally inadequate responses from the Victorian Ombudsman in relation to outcomes of animal cruelty/death.

Transparency and outcomes The poor outcomes to reported animal cruelty would be more obvious if there was greater transparency and outcomes more readily available. For example, the six-monthly report received from the RSPCA should be easily accessible to the public in an easy to follow format. The government's current reliance on the RSPCA and the failure to achieve acceptable outcomes should not be a reason to avoid transparency.

Spread the load The RSPCA currently are seen as chosen by the government to pursue animal cruelty cases, rather than the police or authorised Council officers. Generally, the public feel that a report to the RSPCA will never go anywhere, nothing will be achieved, and they have no other recourse. There needs to be a follow up mechanism, ideally by the police or a council officer, where a physical check of the incident being reported can be pursued, rather than it disappearing into the maw of the RSPCA.

The current Act does not limit pursuing animal cruelty to the RSPCA, yet the MOU with the RSPCA seems to give sole power for companion animals to that organisation, and that is currently the public perception as well the source of their dissatisfaction. It should be very clear in the Act who has power to pursue cruelty complaints, and it should be as expansive as is necessary to ensure animal welfare, and not so restrictive that animal welfare is jeopardised, as it is currently the case.

Can a council officer act on a dog left in a hot car? Or do they have to ring the police as they do not have any powers to act.

Independent ombudsman Where there is no satisfactory resolution or follow up, there must be an appointed body, an independent animal welfare officer or ombudsman, to whom a complaint can be made. We suggest this body should be also one that produces outcomes and readily digestible information to the public, rather than the current miasma surrounding outcomes and who is responsible.

When a complaint is made, an individual should be able to approach this ombudsman/appointed person/body with the power to look into inappropriate and inadequate outcomes, and to trigger an investigation.

The role of police The police refer the public to the RSPCA and generally the community accept this as they are not aware that each member of the police is an authorised POCTA officer. Are the police themselves educated as to their role in this regard? They should not automatically send that person on to the RSPCA. Each general area at least, so for example the south-eastern suburbs, if not each station, should have an allocated animal welfare officer. As an example look at an area like Mildura where we believe the closest POCTA officer, leaving out the police, is at Warracknabeal. A policeman turning up on your doorstep is likely to have more effect with the average person than an RSPCA inspector.

The maltreatment of pets often carries over to that of humans – yet another reason for police to be more involved. In domestic violence cases, harm or death of a pet is often used to discourage a person from leaving or getting an apprehended violence order. Rescue groups deal with a number of dogs and cats who have been cruelly treated in domestic violence situations. Sometimes the partner surrenders the dog or cat without the partner's knowledge so they cannot be used as a weapon.

Just as police had great difficulty in accepting the role they should play in domestic violence situations until quite recently, the same seems to apply with cruelty to animals, whether in domestic violence situations or not, where police refer on and do not see it as their role to intervene, even though all police officers are POCTA-enabled. Yet as a comparison the New York police have a special department set up to deal with animal cruelty because of the proven link with other forms of violence.

The role of authorised council officers We understand that any Council can apply to have an authorised officer. Most do not, as then the onus is on them to follow up cases. Why is it not mandatory for each Council to have an authorised officer, and one that is fully resourced at that? Cases of neglect -- a high number of cases -- could be dealt with locally and monitored more easily, plus of course allowing the complainant /public to be more aware of the outcome. Who gets the fines in a successful case pursued by Council? Is it the Council or the State Revenue? There needs to be a financial incentive for the Councils to take on this role. The RSPCA already receive funding from the government, and who gets the fines in their case?

Appointment of new independent Inspectors The Act gives the Minister power to appoint new inspectors but these inspectors must not only come from groups and organisations such as the RSPCA, Greyhound Racing and Harness Racing. It is completely inappropriate that these inspectors are from bodies that have a vested interest in expansion and profitability, and not with the interests of the animals as their *raison d'être*. Why are there not independent inspectors appointed even if only in specific cases? GRV may have their own general inspectors for the care of dogs but why does not another body pursue live baiting cases, for example, where there is a conflict of interest. What happened in the Tooraddin case that harks back to 2015? Outcomes are not publicly stated or available.

There must be independent inspectors not related to entrenched organisations. These could be drawn from bodies such as Animals Australia for example. Or an Animal Welfare Ombudsman's office could have specially appointed independent inspectors.

Monitoring of offenders Rather than fines, more than half of which are not paid, it should be mandatory for the RSPCA or other authorised party to monitor the cases it has pursued. Control orders should be asked for by the prosecutors rather than fines, but these are no use without a monitoring mechanism.

The current system does not protect companion animals. The grief of the member of the public witnessing a cruelty case, reporting to the RSPCA, not having any feedback, going to the council and police, being ignored, or sent back to the RSPCA, reaching out to those powerless to help like rescue groups: the Act is not serving its purpose. The new legislation should protect all companion animals, wherever they may find themselves, and supersede existing Codes.

Fines are useless It is concerning that, even when someone is found guilty, that fines are the principal sentence imposed. For a puppy farmer, reaping a huge profit, it is a slap on the wrist, and they walk away with a smile and repeat the offence. At the current time, defenseless animals are often left in the hands of those who have been fined by magistrates, but without control orders or monitoring, with the same people who have abused them in the past. There was a recent report of a case where the RSPCA removed neglected and dying animals from a property, as they had done years ago, and will no doubt have to do again. The animals must not only be removed but there must be a banning order, or at the very least a monitoring system in place, so the same situation will be repeated. If you neglect children badly enough they are taken away from you, but not so animals.

Longer prison sentences The new legislation must impose longer maximum sentences for animal cruelty. Research has shown if the Act gives a long prison sentence as an option, magistrates will then take the offence more seriously, and look beyond a fine. The sentences imposed on animal cruelty cases are similar to those in domestic violence issues a decade ago. The legislation has not yet caught up with changed community attitude and perceptions, and this is reflected in the sentencing/dismissal of animal cruelty cases. Where there are multiple charges they must be treated as cumulative not concurrent.

The current RSPCA reliance on assistance and education as avenues rather than regulatory compliance is not working. This is most obviously the case where profit from the pets is involved.

Centralised data base There must be a centralised intelligence data base accessible to any authorised officer where repeat offenders can be noted. Any complaint, whatever the outcome - that is, even when a defendant is fined - should be entered into this data base, the nature of the complaint, follow through and outcome. This is particularly relevant when there is now an accepted link between animal cruelty and crimes against people.

Training of POCTA officers The training needed by those gathering evidence, prosecuting, and also given the power to kill animals they deem necessary, must be specified. What training does a POCTA officer have to determine if a domestic animal should be killed because they are irretrievably incapacitated either through starvation or other means? Do the officers have the skills to make that decision on the spot? Are adequate records, photographs, kept so that their decision can be reviewed by an interested party?

The RSPCA enquiry states that police should be sent to work with RSPCA officers to understand more. Yet some years ago inspectors were sent to do the prosecutorial course at the police academy to learn from them. It seems bizarre that it is now the opposite. Are RSPCA officers that well trained? Or is it a learn on the job situation with a Certificate 4 that teaches you how to pole an animal adequately? Are more cases failing because they are not presented appropriately.

The MOU with DEDJTR/RSPCA sets out that inspectors will undertake continuous training and development in their role as inspectors. Surely the standards and continuous training can be expressed more clearly as a necessary compliance rather than in a separate MOU.

We note the Memorandum of Understanding with the RSPCA is to be reviewed in 2021 and we suggest it is time to take some of the burden of pursuing animal cruelty off the shoulders of the RSPCA, to enforce better and clearer practices, to ensure legislation is clear on the responsibility to ensure that an adequate outcome is reached, which at the very least involves providing an outcome for each complaint, and that there is a clear mechanism for follow through by the complainant when the initial complaint is not pursued or ignored. An animal welfare ombudsman would seem appropriate.

Pounds and shelters We are unclear as to where lies the responsibility of cruelty / unnecessary killing in pounds and shelters, despite several requests over the years. We understand that the Department takes more responsibility for some pounds than for others, whereas shelters seem to be untouchable. With the kitten shootings in Mildura at the back of the pound as a training exercise the RSPCA did send an officer to investigate, but he did not speak to the witness who had complained. In two other cases in Mildura, it seems the Department conducted a cursory investigation.

Do not ignore the cruelty and killing that is carried out in pounds or shelters by saying they will be covered later in the Domestic Animals Act or that the Code of Practice for the Management of Shelters and Pounds has an exemption from POCTA. This is not what the community expects and would be duly noted. Cruelty does not change its face because it is covered under a different Code or Act.

Responsibility of vets In this context also, vets employed or consulted by pounds and shelters, have a responsibility. If the criteria for killing a healthy cat or dog, or one with health issues that is adoptable, a vet should have to commit in writing to their decision and the reasons therefore, and a complaint should be able to be made outside the AVA. We are bewildered by vets who even though a health check should be done before an animal is vaccinated do not even know the sex of the dog/cat they are vaccinating because they do no such check.

Further points

- Uncontrolled scatter feeding of meals where pets are fighting for their share of the meal should be prohibited. It can produce pets who resource guard as a matter of course.
- Traps in National Parks. These are set to catch hunting dogs where owners have taken them to these areas inappropriately. These traps much be checked at daily and the animals not left to starve, or slowly die from their injuries.
- Laboratory animals. It should be prohibited that domestic pets handed on from a home, shelter or pound are handed on for research. It is bad enough that specially bred dogs and cats are used, rather than those that have in the past had a familial relationship with their people.

In summary the current POCTA legislation as it pertains to companion animals seem in its application to give the RSPCA an exclusivity that is not used to public satisfaction. While it is convenient for the government, it is detrimental to domestic animals.

Particularly in the case of domestic animals, with the increasing importance to the community of their treatment, the load should be more evenly spread between RSCPA, Councils, the police, and a new independent body with the powers to investigate, monitor and produce adequate outcomes in a transparent fashion.