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Animal Welfare Draft Action Plan
Department of Economic Development, Jobs, Transport and Resources
475 Mickleham Rd
ATTWOOD VICTORIA 3049

Sent via email to: animal.welfare@ecodev.vic.gov.au

17 October 2016

Dear Minister for Agriculture, Minister's Ambassador for Animal Welfare and relevant officers within the Department of Economic Development, Jobs, Transport and Resources ("**DEDJTR**"),

Submission regarding 'The Draft Action Plan – Improving the Welfare of Animals in Victoria 2016 – 2021'

Thank you for this opportunity to contribute towards 'The Draft Action Plan – Improving the Welfare of Animals in Victoria 2016 – 2021' ("**the Draft Plan**"). Lawyers for Animals commends both the initiative and general approach taken by the Draft Plan, and aims to assist in both its development and implementation over the years to come.

REG NO A0047100G
ABN 74 557 651 569

Who we are

Formed in 2005, Lawyers for Animals ("**LFA**") is a not-for-profit incorporated association based in Victoria, run by an executive committee of lawyers and with members in various Australian States and Territories.

LFA's objectives include:

1. alleviating the suffering of animals by engaging with those who create or administer laws in Australia to strengthen legal protections for animals;
2. promoting better animal welfare practices amongst animal-related industries in Australia; and
3. undertaking educational activities in an effort to dispel myths and increase awareness relating to animals and the law.

LFA also works in partnership with the Fitzroy Legal Service to run the Animal Law Clinic: a free legal advice service with the primary objective of improving animal welfare. The Animal Law Clinic has been operating since April 2013.

LFA's approach to the Draft Plan & the structure of this submission

LFA supports the normative rule (adopted worldwide) that, to the extent animals are under human control or influence, humans are obligated to uphold 'The Five Freedoms'.[1] The Five Freedoms – or basic rights – of animals are:

1. freedom from hunger, thirst and malnutrition;
2. freedom from fear and distress;
3. freedom from physical and thermal discomfort;
4. freedom from pain, injury and disease; and
5. freedom to express normal patterns of behaviour.[2]

LFA is committed to the ideal of alleviating animal suffering, but it is also an incrementalist organisation working to achieve practical benefits for animals. LFA supports initiatives that will, on bal-

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[1] An early version of 'The Five Freedoms' was enunciated by the UK Government body: the Farm Animal Welfare Council, shortly after its formation in 1979. It drew on conclusions in the 1965 'Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems', which was commissioned by the UK Government partly in response to concerns raised by Ruth Harrison's 1964 book 'Animal Machines'. The Five Freedoms are now recognised by animal organisations worldwide, including the World Organisation for Animal Health (better known by its historical acronym: OIE); various Societies for the Prevention of Cruelty to Animals (SPCAs); and various veterinary organisations including the Australian Veterinary Association and the Federation of Veterinarians of Europe.

[2] This version of The Five Freedoms is taken from OIE, Terrestrial Animal Health Code, Ch.7.1 Introduction to the Recommendations for Animal Welfare, viewed 9/10/2016: http://web.oie.int/eng/normes/mcode/en_chapitre_1.7.1.htm

ance, improve animal welfare in both the short and long term. It is this principled yet pragmatic approach that guides LFA in its response to the Draft Plan.

LFA commends the broad scope of the Draft Plan and confines this submission to proposing ideas for inclusion within its substantive content and timeframe, with the exception of certain 'big-picture' reforms for longer-term implementation (beyond 2021). Given the overlapping Actions within the Draft Plan, to avoid substantial repetition, LFA does not adopt the structure of the Draft Plan in this submission, but instead identifies for each proposed legal and/or structural reform, the Action Areas and Actions to which it relates. LFA also identifies – with some degree of optimism – whether it perceives each proposal to be achievable:

- in the short term, between 2016 and 2018;
- in the medium term, between 2018 and 2021; or
- in the long term, after 2021.

Otherwise, LFA has listed the proposals that follow in (approximate) order of desirability, with those that are potentially achievable in the short and medium term listed ahead of 'big-picture' reforms, which may not be achievable until after 2021.

Proposals for legislative and/or structural reform

During 11 years of operation, LFA has accreted knowledge and practical experience of the animal welfare system, particularly in Victoria. In line with its goal to alleviate animal suffering, one of LFA's principal functions has been to utilise its pool of legal skills to identify the main causes of animal suffering in Australia, and to propose practical, legal solutions. LFA submits that the following proposals ought be included within DEDJTR's forthcoming discussion paper on legislative reforms to improve animal welfare, to encourage focused discussion, debate and response from the general public; State and municipal government; welfare groups; and animal industry stakeholders.

1. Phase-out factory farming by mandating both lower intensity and (genuine) free-range systems for meat, dairy and egg production and by ensuring truth in product labelling

POTENTIALLY ACHIEVABLE IN THE SHORT & MEDIUM TERM: 2016 – 2021

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*

- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*

These reforms may be achieved via amendments to:

- the *Prevention of Cruelty to Animals Act 1986 (Vic)* ("**the *POCTAA***");
- the *Prevention of Cruelty to Animals Regulations 2008 (Vic)*;
- the *Livestock Management Act 2010* (Vic);
- the *Livestock Management Regulations 2010* (Vic); and
- the various *Codes of Practice* and *Animal Welfare Standards and Guidelines* applicable to farm animals in Victoria.

Forewarning may be given to farmers and initial legislative changes undertaken in the short-term, to provide for the full phase-out of battery cages; closed poultry barns; sow stalls; gestation crates; feedlots; and all other 'intensively confined' production systems, achievable in the medium term. Consumer faith in meat, egg and dairy labelling may be restored by implementing new minimum standards for 'free-range' production, whereby public expectations of space per animal and access to pasture – often achieved by rotational processes – are met. A secondary categorisation for 'unpastured and/or confined' production systems will be required for those currently mislabelled 'free-range' but which lack the space and/or pasture to produce optimal welfare and environmental outcomes.

Intensive animal production is most likely the primary cause of animal suffering in Victoria, by virtue of the fact that it directly harms the highest number of sentient animals over the longest period. It also causes far greater environmental damage than genuine free-range production systems – sometimes known as 'pastured' – due to the concentration of animal waste. Comparable jurisdictions, such as New Zealand, have already made significant progress in phasing-out intensive farming operations; most of Australia, especially Victoria, is lagging behind. By way of further explanation and justification for this proposal to convert Victorian intensive animal production to free-range farming systems, and improve truth in labelling, LFA refers to its past submissions, as follows:

- Submission re Layer Hens Regulatory Impact Statement, 30 August 2006
- Submission re Proposed Model Code of Practice for the Welfare of Pigs, 1 August 2006
- Submission to Food Labelling Review, 20 November 2009
- Submission to Senate Inquiry into Meat Marketing, 27 April 2009

2. Transfer animal cruelty law enforcement from RSPCA (Vic) to a dedicated Animal Cruelty Squad within Victoria Police

POTENTIALLY ACHIEVABLE IN THE SHORT & MEDIUM TERM: 2016 – 2021

- Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare
  - Action 2.1: Partnerships and collaborative approaches support a shared responsibility for improving the welfare of animals
  - Action 2.2 Important issues of animal welfare concern in Victoria are addressed
- Action area 3: Compliance and enforcement is efficient and effective
  - Action 3.1: Victoria has an effective and efficient compliance and enforcement system in place
  - Action 3.2: Victoria's compliance and enforcement system underpins sound animal welfare practices
  - Action 3.3: A collaborative approach drives more effective and efficient compliance and enforcement

On 8 July 2016, LFA made a submission to the Independent Review of RSPCA Victoria, recommending an alternative model based on the positive transformation of a similar organisation in New York City. Unfortunately, the Independent Review's final report suggests that the New York model was not considered and a key opportunity to examine a successful reform model was missed. LFA now reproduces its submission to the Independent Review in the hope that the Draft Action Plan consultation will include examination of an efficient, collaborative and potentially highly effective means of enforcing animal cruelty law in Victoria.

LFA recognises the enormous and unenviable burden borne by RSPCA – a charity – in attempting to fulfil a government function: law enforcement. LFA submits that as a non-government, charitable body, RSPCA is fundamentally incapable of ongoing animal cruelty law enforcement, whereas Victoria Police is. There are three main reasons for this:

a) Perpetual resource deficiencies. RSPCA receives about one third of its annual Inspectorate budget from government. Their total Inspectorate budget allows employment of ten full-time inspectors on average – with only one rostered on weekends. Based on there having been 10,740 cruelty reports received in 2014-15, that means an average of four cruelty reports per day for each Inspector to thoroughly investigate, prosecute or otherwise resolve, as well as to organise care of vulnerable animals. That is simply impossible. Hence, large numbers of cruelty reports are necessarily ignored or not properly investigated or prosecuted. Little wonder that despite 10,740 cruelty reports, only 69 cruelty prosecutions were finalised by RSPCA in 2014-15 (0.64%). RSPCA relies on charitable donations and bequests to cover the two-thirds shortfall in what is already a totally inadequate Inspectorate budget. To attract

donations/bequests and ongoing government funding, RSPCA attempts to maintain public confidence by projecting strength and stability. Underneath, the stresses of financial deficit and being inherently unsuited to law enforcement erodes its integrity and morale. Staff and animals suffer the consequences. The Government is not directly blamed for the failures to enforce animal cruelty laws, so they do not feel the full force of public fury when animals suffer unnecessarily over prolonged periods – such as under Bruce Akers' and Heather Healey's care.[3] Without such public pressure, the Government is less inclined to prioritise resources appropriately. The city of New York faced a very similar situation before the ASPCA and NYPD devised a joint-solution, now also endorsed by the Animal Legal Defense Fund, see:

- http://www.aspca.org/about-us/press-releases/nypd-aspca-partnership-reports-record-breaking-number-animal-cruelty-arrests
- http://www.aspca.org/animal-protection/nypd-partnership
- https://www.policeone.com/police-jobs-and-careers/articles/6719145-NYPD-takes-over-after-ASPCA-closes-enforcement-unit/

b) Lack of power and public attitudinal change. Animal cruelty reporting is expanding commensurate with increased public awareness of animals' right not to suffer and society's growing intolerance of animal cruelty. Animal cruelty is regarded by offenders and (to a decreasing extent) the general public, as child abuse and domestic violence once were: private matters between a person and their 'property'. Unless responsibility for animal cruelty law enforcement is transferred to a dedicated, adequately resourced squad within Victoria Police, examples of failure to protect animals will increase. In contrast to Victoria Police, RSPCA Inspectors have extremely limited powers of entry to residences and/or arrest; no weapons or other training to equip them to deal with situations of violence; and no public imprimatur for strong law enforcement.

c) Lack of financial indemnity. No law enforcement agency – police or otherwise – can operate effectively when it is not indemnified for debts resulting from civil proceedings, occasioned by its enforcement work. On 10 September 2015, RSPCA was refused leave to appeal against a judgment ordering it pay $1.167m compensation for what His Honour Judge Bowman of the County Court had determined was a negligent destruction of cattle undertaken in May 2003 [RSPCA v Holdsworth [2015] VSCA 243]. This one case has substantially impacted on RSPCA's budget – which was already in deficit, requiring it to obtain a bank loan which must now be repaid. It is likely to have undermined RSPCA's confidence in enforcing animal cruelty laws, especially following

[3] See: http://www.heraldsun.com.au/news/victoria/starving-bulla-horses-highlight-rspca-failure-writes-justin-smith/news-story/e28a40a866601098b8c51517367c1940 and http://vetpracticemag.com.au/dogs-rescued-puppy-farm/

its unsuccessful prosecution of the parties in the Ballarat Magistrates' Court in 2005. The financial risks are simply too great and (apparently) uninsurable, at least by RSPCA. All law enforcement agencies should be indemnified by the governments to which they are responsible.

With our last few words, we outline a constructive alternative for the Review's consideration:

- creation of a dedicated Animal Cruelty Investigation Squad ("ACIS") within Victoria Police;
- creation of an Office of Animal Welfare within the Department of Justice to oversee ACIS and fulfil many functions of the former Bureau of Animal Welfare, keeping it independent from the Department of Agriculture; and
- removal of RSPCA's Inspectorate powers and funding, permitting it to refocus on animal care.

Victorians don't expect human welfare charities to enforce our criminal laws, so it's high time we stopped expecting the RSPCA to enforce our animal cruelty laws.

3. End the unjustifiable killing of dogs and other serious injustices under the Domestic Animals Act 1994 (Vic)

POTENTIALLY ACHIEVABLE IN THE SHORT TERM: 2016 – 2018

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*
- Action area 3: Compliance and enforcement is efficient and effective
  - *Action 3.1: Victoria has an effective and efficient compliance and enforcement system in place*

These reforms may be achieved by amendment to various sections of the *Domestic Animals Act 1994 (Vic)* (the "**DAA**"), as detailed below.

Particularly since partnering with the Fitzroy Legal Service in early 2013 to operate the Animal Law Clinic – a free legal advice service for clients whose interests are likely to coincide with those of the animal(s) concerned – LFA has observed repeated instances of serious injustice in what may collectively be called 'dog offence' matters. LFA wishes to highlight what it deems to be the five most serious examples of such injustice and the sections of the DAA which facilitate them, and to suggest amendments to enable these defects in the Act to be remedied with optimum efficiency:

a) There is currently no legal right to appeal to the Victorian Civil and Administrative Tribunal ("**VCAT**") against an order issued by a Council for a dog to be destroyed under ss.84P(e) and (f) of the DAA – even when a Council does not request an order from the Magistrate under s.29(12) to authorise it to destroy the dog at the conclusion of criminal proceedings. The only appeal mechanism against a decision by Council under s.84P (e) and (f) involves invoking the original jurisdiction of the Supreme Court of Victoria. This is so cost prohibitive, even to initiate through Counsel; incurs the further the risk of high adverse costs; and is so restrictive in its grounds of legal appeal, as to be virtually inaccessible to most dog owners. However, were an order for destruction issued by a Magistrates' Court under s.29(12) – or under different provisions, by a member of VCAT – it would be appellable. This apparent defect in the DAA gives Council officers excessive power and is prone to abuse. Similarly, excessive power is given to Council officers under s.84TA(1) to destroy a dog where they reasonably believe it may (in the future) cause an offence to be committed under any provision of s.29 – this includes relatively minor offences including where no injury or only a very minor injury (leaving no mark) is inflicted.

   By way of example, LFA has been alerted to a case in which the defendants were induced to plead guilty to charges under s.29 of the DAA by Council's agreement not to seek an order in Court for destruction of their two dogs (under s.29(12)). However, Council then issued a separate decision to destroy both dogs, which could not be appealed, and despite extensive legal efforts and public complaint, both dogs were ultimately destroyed by Council.[4] In worse case scenarios, a dog that has caused only a minor injury to another animal (such as a bruise or scratch), or rushed at or chased a person (without making any contact), may be killed by a Council without any right of appeal to VCAT by its owner, even where the owner was not in charge of the dog when the incident occurred.

   Such injustices may be prevented by:

   i. the repeal of ss.98P(e) and (f) which deny natural justice and procedural fairness, and do not meet community expectations;

[4] Unreported judgment: Frankston City Council v Evan Jeremiejczyk and Shannon Holt, Frankston Magistrates' Court, 27 February 2014 . Discussed in 'Decision dogs council' Bayside News, 7 July 2014, available here: http://baysidenews.com.au/2014/07/07/decision-dogs-council/

ii. amending s.29(12) to permit a Court to order the destruction of a dog only if its owner has been found guilty of an offence under s.29(1) – (4), rather than under s.29(1) – (8);

iii. creation of a new power of review by VCAT in s.98 relating to decisions made by Council officers to destroy dogs pursuant to s.84TA;

iv. amendment to 84TA(1)(c) to reduce its scope of application to ss.29(1) – (4) rather than to the whole of s.29, so that a dog in respect of whom a Council officer reasonably believes a relatively minor offence may be committed (in future) under s.29 (5) - (8) will no longer be subject to imminent and arbitrary risk of destruction, without any right of appeal; and

v. creation of a new subsection 84TA(1)(aa) to enable the remaining provisions of s.84TA(1) to apply to a dog in respect of whom a person has been found guilty of an offence under ss.28 and/or 28A, namely: when a dog has been urged to attack another animal or has been trained to attack and a Council officer reasonably believes it poses a serious risk of future harm if not destroyed.

These amendments would either require Council to obtain an order from a Court under s.29(12) before destroying a dog in respect of whom a person has been found guilty of an offence under s.29(1) – (4) – any such order being appellable, along with any finding of guilt – or would require Council to make a decision to destroy the dog under s.84TA if they reasonably believed its behaviour was likely to result in commission of an offence under s.29(1) – (4) – any such decision being reviewable by VCAT. These amendments would also prevent Council from destroying a dog in respect of whom a person has been found guilty of an offence under ss.28 or 28A – when a dog has been urged to attack another animal or been trained to attack – unless the Council reasonably believes that the behaviour of the dog is likely to result in the commission of an offence under ss.29(1) – (4), namely: causing the death of or serious injury to a person or animal. Any such decision to destroy a dog would also be reviewable by VCAT.

b) Under s.84Q of the DAA, once it has sufficient information about the person it proposes to prosecute to commence prosecution, a Council lacks lawful authority to release any dog it has seized prior to the conclusion of that prosecution. The only exception to this is when the dog was seized under s.84B – namely: for a second offence concerning a dog found at large pursuant to ss.24(1) or (2), or for a dog found on private property after a notice was issued under section 23(4). S.84Q effectively denies Council officers the flexibility they need, in practice, to determine whether a dog and/or its owner pose any ongoing threat to public safety. This occasionally results in some particularly ethical Council officers

potentially breaching s.84Q in order to release dogs that pose very little if any such risk, pending (relatively minor) criminal proceeding against their owners.

In the vast majority of cases, however, s.84Q results in extended periods of impoundment and suffering by dogs – as well as owners and sympathetic pound staff; accumulation of extremely high pound costs payable upon the dogs' release, after the conclusion of a criminal prosecution (which can take many months); and effective duress on owners to surrender their dogs – rather than retain ownership throughout prosecution – or to plead guilty, even despite a viable defence, in order to reduce the duration of the dogs' impoundment. In LFA's experience, Council officers frequently mention the dog's likely suffering in the pound to encourage or induce the owner to surrender it, sometimes with an offer not to prosecute if the dog is surrendered – and once surrendered, then kill it – ostensibly because the dog represents some minor threat pursuant to s.84TA, but possibly because it will cost Council more money to impound and rehome the dog. S.84Q thus facilitates the killing of dogs which may not have caused harm – for instance, when a false allegation is made – or may not have caused such a level of harm as to warrant their destruction. LFA is aware of at least one case in which a prosecution had not been commenced more than four months after a dog had been seized by Council; where the dog had been seized for causing a minor abrasion to another dog (suffering more serious wounds, itself) after the two dogs fought each other while a metal barred gate stood between them. This highlights that enforcement of s.84Q(1)(a) is also problematic.

These common injustices caused by s.84Q(1)(a), (b) and (c) may be remedied by amending subsection (1) in order to grant a discretionary power to both Council officers and Magistrates to release dogs from pounds, pending the commencement or outcome of any prosecution, where circumstances exist making it unlikely that the dog will pose a substantial threat of significant injury.

c) Councils are currently prevented from applying 'menacing dog' provisions – as opposed to 'dangerous dog' provisions – when a 'serious injury' offence is alleged and/or proven, even when the nature of any 'serious injury' is relatively minor, as may be the case. For instance, a 'serious injury' may be inflicted by two bites from a dog to another animal resulting in puncture wounds which permeate only the outer layers of skin and may heal without veterinary treatment. Since the requirements for keeping a menacing dog are less onerous and thus far more likely to be met than the requirements for keeping a dangerous dog; and since menacing dog provisions allow the decision-maker discretion to determine whether or not a muzzle will be required in all public places (where a leash is required); LFA submits that dangerous dog declarations should be reserved for more serious classes of injury

requiring significant human medical treatment or urgent and extensive veterinary treatment or causing death to an animal.

This reform may be achieved by amending s.41A(1)(ab) of the DAA to remove the words: 'that is not in the nature of a serious injury'.

d) LFA is extremely concerned that restricted breed dogs may continue to be killed, in the future, merely on account of their owners' and/or breeders' failure to abide by the law, rather than because the dog, itself, has caused or is likely to cause any substantial risk to the public. Such laws are not evidence-based nor do they meet community expectations relating to animal welfare standards. LFA does not oppose laws which seek to curtail the breeding of certain types of large dog with significant muscle mass; jaw size and strength; and statistically significant rates of attack – provided these laws do not facilitate lethal outcomes for animals that have not caused any significant harm. LFA supports such laws in order to prevent people from training and using such dogs as weapons.

LFA has come to regret its assistance to then Ministerial advisor Graham Ilhein, in or about 2007, when he attended a meeting with members of LFA's Executive Committee and LFA's (then) Legal Projects Officer at our office in Fitzroy. During that meeting, Mr. Ilhein expressed his disappointment over several Tribunal and/or Court decisions ruling dog DNA evidence unreliable in relation to the identification of restricted breed dogs, namely Staffordshire Pit Bull Terriers. At that time, the Government was not, to LFA's knowledge, seeking to kill dogs merely on account of their breed, but to penalise owners and breeders of restricted breed dogs who failed to comply with mandatory registration and/or de-sexing provisions. Responding to Mr. Ilhein's concerns, LFA made the suggestion that the Government might choose to adopt a physical breed standard to identify Staffordshire Pit Bull Terriers, akin to that used by various kennel clubs to identify specific pure breeds. Unfortunately, the restricted breed laws the Government subsequently enacted, using a breed standard to identify animals, provided for the destruction of all restricted breed dogs not covered by a pre-existing amnesty, on account of their owners' actions, and regardless of whether the dogs, themselves, had ever caused or were likely to cause significant harm. LFA strongly opposes such 'lethal' breed-specific legislation.

LFA suggests that all relevant sections of the DAA permitting the killing of restricted breed dogs on account of their breed be repealed and non-lethal provisions enacted. Such provisions might permit the seizure and re-homing of dogs, but only as a last resort, if owner compliance (with desexing, for instance) is not forthcoming.

e) LFA submits that the DAA is overly heavy-handed in its approach towards dogs with behavioural issues that do not pose a significant risk to people or other animals. For instance: LFA submits that allowing a dog to be declared menacing under s.41A or to be ordered to be destroyed under s.29(12) merely for having 'rushed at or chased a person' (without making contact); is disproportionately harsh and unwarranted. Dogs are generally much faster than people and if they wish to attack, can easily do so, hence a dog that rushes at or chases a person without making contact is effectively choosing not to attack. While such behaviour ought be strongly discouraged – even when it is undertaken in 'play' and merely misinterpreted by a complainant – LFA suggests it is at the very minor end of offending and hence ought be dealt with by means of warnings and infringements, if necessary, to encourage owners to undertake better training and perhaps improve fencing.

For further detail and explanation of LFA's long-term concerns relating to the DAA, please refer to our submission here:

- Submission to Members of the Victorian Legislative Assembly re Domestic Animals Amendment (Dangerous Dogs) Bill 2010, 24 May 2010

4. End existing conflicts of interest by establishing an independent office of animal welfare within the Department of Justice to oversee and administer animal welfare law

POTENTIALLY ACHIEVABLE IN THE MEDIUM TO LONG TERM: 2016 – 2021 AND BEYOND

- Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare
  - Action 2.1: Partnerships and collaborative approaches support a shared responsibility for improving the welfare of animals
  - Action 2.2 Important issues of animal welfare concern in Victoria are addressed

LFA understands that community expectations relating to animal welfare are unlikely to be met, nor is adequate financial security likely to be provided to animal inspectorates, while the sole voices for animals in both Federal and State Cabinets are the repective Ministers for Agriculture – who, as their title suggests, are simultaneously responsible for representing the interests of animal industries and the welfare of the animals from which they profit. While the present Victorian Minister has undoubtedly adopted a more balanced approach to her portfolio than her recent predecessors and Federal counterpart; nevertheless, with the exception of the Draft Action Plan, recent animal welfare initiatives in Victoria have largely been confined to companion-animal welfare, while farm animal welfare continues to lag well behind international best practice and even behind national best practice, in which Tasmania leads the way.

The structural conflict of interest inherent in situating animal welfare within the agriculture portfolio remains a significant obstacle to democratic process at all levels of government, by forcing the Minister to effectively choose sides, and to deliberately underperform one side of her portfolio. The option that LFA and many others propose to overcome this structural flaw is the creation of an Independent Office of Animal Welfare, perhaps best situated within the Department of Justice, where it may also oversee the potential primary animal cruelty law enforcement agency: an animal cruelty investigation squad within Victoria Police. LFA proposes that such an independent office would undertake similar functionsn to the former Bureau of Animal Welfare, with some sharing of resources with the Department of Agriculture – at Attwood, for instance – until longer term division is feasible.

5. End duck-shooting and the recreational hunting of all native water-birds

POTENTIALLY ACHIEVABLE IN THE SHORT TERM: 2016 – 2018

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*

This reform may be immediately achieved by amending or rescinding the Order of the Governor in Council which declares native waterbirds to be Game under the *Wildlife Act 1975 (Vic)*; and may be permanently achieved (in due course) via amendments to the *Wildlife Act 1975 (Vic);* the *Wildlife Regulations 2013 (Vic)*; the *Wildlife (Game) Regulations 2012 (Vic)*; the *Code of Practice for the Welfare of Animals in Hunting* and other relevant Order(s) of the Governor in Council.

The shooting of native water-birds for recreational purposes is cruel, threatens the viability of native species (including non-target, protected species), and likely perpetuates a culture of cruelty, gun access and associated human violence (including family violence, self-harm and suicide)[5]. The legality of duck-shooting is also highly undemocratic, as it prioritises the interests of fewer than 131,500 recreational hunters over the interests of around 5.83 million Victorians who do not hunt[6],

[5] For instance, between 1996 and 2005, the number of Australian households with firearms fell by around 57% following the introduction of tighter gun control laws; this correlated with a 62% decrease in the number of Australian gun deaths (by homicide, suicide or accident) during the same period: Alpers, Philip and Amélie Rossetti. 2016. 'Australia — Gun Facts, Figures and the Law' Sydney School of Public Health, The University of Sydney. GunPolicy.org, 31 August. Accessed 11 October 2016. at: http://www.gunpolicy.org/firearms/region/australia

the vast majority of whom support a ban on duck-shooting.[7] Duck-shooting also restricts the development of local and international eco-tourism in regional Victoria[8], while the claimed economic contribution of recreational hunting to Victoria's economy appears to be wildly exaggerated. By way of further explanation, LFA refers to the Common Position Paper published in 2005, to which it was a signatory, and to a recent submission which canvases the merits of recreational hunting:

- Common Position Statement re Waterbirds, 4 December 2005
- Submission re hunting of invasive animals on Crown land, 13 September 2016.

6. Phase out Greyhound racing and immediately end Greyhound exports

POTENTIALLY ACHIEVABLE IN THE SHORT & MEDIUM TERM: 2016 – 2021

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*

These reforms may be achieved by amendments to the POCTAA, the *Racing Act 1958* (Vic); the DAA; and relevant Codes of Practice including *The Code of Practice for the Operation of Greyhound Establishments.*

LFA submits that subjecting any animal to life in a cage is inherently cruel because it undermines the animal's freedom to express normal patterns of behaviour. This concern is further amplified if the cage is too small to allow the animal to run or fly within it and to directly socialise with others of its species. Yet for Greyhounds, life in a single cage is routine and any 'life-cycle management'

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6 These figures are based on the 131,400 Victorian firearm licence holders who nominated recreational hunting as their primary reason for owning a gun in 2013 (plus a small number of bow hunters – allow 100 - who do not also hold a firearm licence)[figure from: Department of Environment and Primary Industries (Vic), 'Estimating the economic impact of hunting in Victoria in 2013', 2014, available here: http://ssaa.org.au/assets/news-resources/hunting/estimating-the-economic-impact-of-hunting-in-victoria-2013.pdf accessed 8 September 2016 – page 6] being subtracted from Victoria's population estimate of 5.962 million in 2016 [figure drawn from: http://australiapopulation2016.com/population-of-victoria-in-2016.html accessed 11 September 2016]

7 For instance, see November 2007 poll by Roy Morgan Research reporting up to 87% opposition to duck-shooting in Victoria, available here: http://www.roymorgan.com/findings/finding-4239-201302262309

8 For evidence of the deterrent effect on tourism of duck-shooting, for instance, see: Rod Campbell, Richard Denniss and David Baker, 'Out for a duck - An analysis of the economics of duck hunting in Victoria', Australia Institute, Policy Brief No. 44 December 2012, available here: http://www.rspcavic.org/documents/Campaigns/duck/RSPCA-Out-for-a-duck-Dec-2012.pdf pages 6-7

proposals from industry will either rely upon such caged kennels, or take more decent rescue homes from other unwanted dogs and puppies in pounds or shelters.

After the culture of cruelty and cover-up within the Greyhound racing industry was exposed by the 4Corners television program on live-baiting that aired on 16 February 2015[9], the public expressed their revulsion and inquiries were undertaken in the eastern states most strongly implicated. In Victoria, a review of Greyhound racing was undertaken by Victoria's Chief Veterinarian, Charles Milne, who works within DEDJTR. Perhaps underestimating the strength of the fundamental profit motive in Greyhound racing, Dr. Milne advised:

> *My view is that animal welfare can only be assured if there is a paradigm shift, that is embraced by all members of the greyhound industry, to ensure animal welfare is at the core of all that they do. This will require a fundamental change in culture and will be essential for the greyhound industry to rebuild public confidence and to maintain the social licence to operate in the future.*

A second inquiry was undertaken by the Victorian Racing Integrity Commissioner, Sal Perna, into live-baiting, alone. As someone in a role that relies, to some extent, on maintaining co-operative relations with the broader racing industry; Mr. Perna's report was understandably more focused on weighing the allegations of corruption made against members of Greyhound Racing Victoria, than on animal welfare issues. These were instead highlighted by the Special Commission of Inquiry in NSW, led by former High Court Justice Michael McHugh AC QC. The NSW Inquiry report:

> *… found that between 48,000 and 68,000 greyhounds – or at least half of all greyhounds bred to race [in NSW] – were killed in the past 12 years because they were deemed uncompetitive... [U]p to 20 per cent of trainers engage in live baiting and 180 greyhounds a year sustain "catastrophic injuries" during races, such as skull fractures and broken backs that resulted in their immediate deaths.*[10]
>
> *[It] concluded that the NSW Greyhound Racing Industry has fundamental animal welfare issues, integrity and governance failings that can not be remedied.*[11]

In the wake of this report and the NSW Government's introduction of a Bill to ban Greyhound racing from 1 July 2017, the industry subsequently offered to: undertake Greyhound life-cycle management; limit breeding to 2,000 new Greyhounds per year; and impose life-time bans for those caught live-baiting. This offer was initially rejected. Unfortunately, the NSW Government's failure to effectively communicate rebuttal of the industry's compromise proposals, appears to have allowed a concerted campaign by commercially motivated (and linked) media, racing and gambling

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[9] Program available for viewing here; http://www.abc.net.au/4corners/stories/2015/02/16/4178920.htm

[10] From media release of Premier Mike Baird, 'Greyhound racing to be shut down in NSW', issued 7 July 2016 – available here: http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2016/Greyhound-Racing-to-be-Shut-Down-in-NSW.aspx (viewed 12 October 2016)

[11] From NSW Government webpage, 'Transitioning the NSW Greyhound racing industry to closure', available here: https://www.greyhoundracinginquiry.justice.nsw.gov.au/ (viewed 12 October 2016)

industries[12] to succeed in undermining public support for the ban in regional NSW, and public support for the Premier, himself, causing the Government to accept the industry compromise and withdraw the ban. In light of this NSW experience; in Victoria, LFA advocates a more gradual and sophisticated approach involving detailed and honest communication with the public. LFA suggests this might commence with a broad-based fact-finding investigation by an independent commission of inquiry into the local Greyhound racing industry, perhaps led by a retired judge. Such an inquiry would be accompanied by continuous efforts to generate and sustain bi-partisan political support throughout the process, based on the truth as it emerges; and by more effective and targeted public communications and rebuttal of misleading or incorrect information.

LFA also expresses its concern that hundreds (perhaps thousands) of Australian-born Greyhounds are exported to Asian countries where they face further deplorable cruelty and violent deaths (including by intravenous insecticide poisoning in Vietnam), as ABC's 7.30 program revealed in its report aired on 9 December 2015.[13] LFA calls for an immediate ban on the international export of Greyhounds, other than rescued companion-animals travelling with their adoptive guardians.

By way of further explanation of our concerns surrounding Greyhound racing, LFA refers to its letter of October 2006, concerning the commodification of dogs, the problems of wasteage and of live-baiting, which were evident, even at that time:

- Letter to Pepsi Max re 'Dollars or the Dog' competition, 5 October 2006.

7. Phase out jumps racing

POTENTIALLY ACHIEVABLE IN SHORT TERM: 2016 – 2018

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*

This reform could be achieved through amendment to the POCTAA.[14]

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[12] For instance, see: Bernard Keane, 'The real reason for Murdoch's war on Greyhounds', Crikey (online) 10 October 2016, free extract available here: https://www.crikey.com.au/2016/10/10/the-latest-news-corp-buy-behind-its-war-on-greyhounds/ (viewed 12 October 2016)

[13] Caro Meldrum-Hannah, 'Death Trade'. ABC Television 7.30 program, aired 9 December 2015, available here: http://www.animalsaustralia.org/features/730-ABC-exposes-greyhound-racing-export-cruelty.php

[14] In or around 2011, the Law Society of South Australia provided an opinion on the merits of the *Animal Welfare (Jumps Racing) Amendment Bill 2011 (SA)*, which offers useful advice on how best a ban of jumps racing might be undertaken. See: Law Society of South Australia, 'Submission in relation to *Animal Welfare (Jumps Racing) Amendment Bill 2011'* undated, available here: https://www.lawsocietysa.asn.au/submissions/110919_Animal_Welfare_(Jumps_Racing)_Amendment_Bill_2011.pdf

With horses forced to jump metre-high hurdles at speed, frequently leading to catastrophic injury, jumps racing is a highly dangerous sport. In fact, it is estimated to be between 10-20 times more dangerous to horses (alone) than flat racing.[15] Relatively few horses forced to enter the field of jumps racing last more than one season, and fewer still are entered in more than four races per season. The earnings from jumps racing are slender and suggest trainers are largely unable to make a living from the sport and may merely consider it a hobby[16], which begs the question: why does Racing Victoria and the Victorian Government continue to prop up such a cruel sport? As with Greyhound racing, it may be that wider animal racing and gambling interests consider jumps racing to be a convenient buffer, drawing attention away from issues of animal welfare within their other animal sports, which they would otherwise be forced to address. Yet jumps racing is already banned in all Australian States except Victoria and South Australia, suggesting there is no justification – commercial or otherwise – for its continuation in Victoria. Indeed, in 2009, Racing Victoria itself declared its willingness to ban the sport, before withdrawing that decision. LFA urges the Victorian Government to be proactive in bringing Victorian animal welfare laws into the modern era, by immediately acting to phase out jumps racing.

8. Reduce the risk of cruelty and abandonment of common companion animals – horses, dogs, cats and rabbits – through improved regulation of breeders and guardians, including greater incentives for fertility control

POTENTIALLY ACHIEVABLE IN THE SHORT & MEDIUM TERM: 2016 – 2021

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.1: Partnerships and collaborative approaches support a shared responsibility for improving the welfare of animals*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*
- *Action area 3: Compliance and enforcement is efficient and effective*
  - *Action 3.1: Victoria has an effective and efficient compliance and enforcement system in place*
  - *Action 3.2: Victoria's compliance and enforcement system underpins sound animal welfare practices*

LFA commends the current Government's efforts to eliminate the factory farming of dogs through dedicated enforcement funding and legal reforms, including ending the sale of farmed puppies

[15] Animals Australia, see: http://www.animalsaustralia.org/take_action/jumps-racing-tragedy/

[16] Ban Jumps Racing: Presenting the facts & figures behind jumps racing in Australia (webpage) see: http://banjumpsracing.com/facts/

through pet shops and the adoption of LFA's 2010 proposal to define acceptable practice among breeding establishments by limiting the number of fertile animals available for breeding at any one time. LFA hopes that this reform may also include prescribed rest cycles for breeding mothers between litters. These reforms should make higher standards of individualised care more achievable and realistic and improve the health and well-being of animals. They should also discourage rogue operators by undermining their scale of production and thus their profitability, forcing them to compete on a more even playing field with less unethical breeders.

LFA's key recommendations to address the continued over-supply of companion animals; the under-supply of caring homes; and other pressures to abandon or relinquish animals, are as follows:

a) Mandatory microchipping and registration (with microchip) before three months of age or at point of sale/transfer (whichever comes first); transfer of any existing registration at point of sale (not unlike vehicle registration); and expansion of mandatory microchip and Council registration systems to include horses and (perhaps) rabbits.[17]

   LFA notes that horse abandonment, including via nominal 'sale' at saleyards – effectively placing the animal at high risk of purchase for meat value by pet food knackeries or South Australia's export slaughterhorse – is currently an enormous problem in Victoria. The oversupply of aged, neglected horses or easily replaceable horses (in part due to thoroughbred 'wasteage' from the racing industry), demands compassion. Mandatory registration, incentives to geld male horses and further regulation of the racing industry to ensure genuine life-cycle management of horses – as recently raised by the industry itself – should ease this fundamental oversupply and help reduce the suffering of horses in Victoria.

b) LFA advocates a two-stage registration system for companion animals: the first stage will allow probationary registration for a short period beyond the Australian Veterinary Association's recommended age for de-sexing (which will vary by species, gender and in some cases, breed). The second stage will provide for full registration of animals – thereafter on an annual basis and on a nominal date for ease of processing.

c) Should the registering guardian wish to keep their animal un-desexed, then LFA recommends they be required to pay a significant premium for full registration and re-registration, except in relation to female horses. LFA suggests this additional amount be made available to authenticated not-for-profit animal rescue and re-homing groups.

[17] In this regard, LFA applauds Recommendation 20 of the recently released 'Independent Review of the RSPCA Victoria Inspectorate' Final Report, dated 1 September 2016, which provides; 'That the RSPCA further explore with DEDJTR the viability of licensing the keeping of horses as an aid to better management of animal welfare and cruelty reports.' LFA suggests that a preliminary step to licensing of owners is the mandatory microchipping and registration of horses, to ensure owners are traceable and have an incentive to geld their colts and stallions, thus reducing pressure for homes and wasteage.

d) LFA also requests that the State Government investigate means to import or develop the onshore manufacture of immunocontraceptives (such as SpayVac) used successfully as a means of fertility control in wild horse (and deer) populations in the United States, Canada and the United Kingdom. At present immunocontraceptives are difficult to source in Australia, but could likely be used to good effect on Australia's brumby populations, which contribute to Victoria's over-supply of horses.

e) LFA has been alerted to the fact that V-Line rail services currently permit only animals under 15kg, to travel in crates. While this is an improvement on the previous ban on all (non-assistance) animals, LFA suggests that the size limit might be increased to accommodate medium-size dogs, between 15 – 25kg, in crates of suitable dimension which fit within allocated luggage spaces. It is anticipated that such a change would not impact significantly on V-Line services, but would make a substantial difference to rural animal dog rescue groups as well as private guardians of medium-size dogs.

Photo 1: *30 brumby weanlings (no parents) sold at Echuca Saleyards on 26 August 2016, possibly from Santa Teresa Aboriginal Community, south of Alice Springs, NT (well over 24 hours drive by truck). The same day's auction included 41 Clydesdale and Clydesdale-cross horses, impounded from an alleged hoarder near Geelong and nearly 100 other horses. Horse sales at Echuca Saleyards are held once a week.*

f) LFA suggests that the *Code of practice for the operation of breeding and rearing businesses* should be revised to address the following (non-exhaustive) inadequacies:

i. The Code currently allows for continuous and routine isolation of dogs in small pens, restricting or preventing their physical engagement with dogs other than their pups for extended periods. Dogs are sociable, pack animals. In familiar pairings or groups, they

naturally engage in physical interaction, including play and grooming, on a routine basis. With the exception of periods immediately following whelping, all dogs should be able to regularly physically interact with other dogs in order to meet their basic need to express normal behaviour, and to free them from loneliness or distress.

ii. While Section 6(5)(d)(i) of the Code provides that for indoor housing enclosures the "... temperature must be maintained in the range of 10-32°C", there is no similar temperature range applicable to outdoor enclosures, nor to the bedding areas within them, except for puppies in their first four weeks after whelping. Noting that extremes of cold and heat will cause severe physical distress to dogs, LFA submits that breeding establishments should be required to protect all their dogs from extremes of temperature, even if that requires moving the dogs to an indoor enclosure where appropriate heating or cooling is provided, when outdoor enclosures are incapable of maintaining a temperature range of 10-32°C.

iii. The spatial requirements for housing dogs contained within Section 6(5)(d)(i) of the Code are also very poor. For instance, they allow an adult female dog measuring under 40cm and her litter of pups aged between 8 and 16 weeks to be kept in a pen measuring just 7.5 square metres (perhaps 3m long x 2.5m wide). If each of 6 pups at 4 months of age occupies approximately 0.6 square metres of space, and their mother occupies a further 0.9 square metres, then such an enclosure would provide only 3 square metres of clear space in which all seven dogs might move around — even less if space for food, water and bed structures is deducted. Combine this with the fact that Section 6(4)(a) provides a minimum period of 20 minutes exercise per day for puppies aged between 8 and 16 weeks (outside their pens), and the immense distress caused by such extremely confined housing becomes more obvious. LFA submits that space requirements should, at a minimum, be doubled and group housing of compatible dogs (with associated gains in shared space) should be mandated, along with a doubling of time spent outside pens in larger, more mentally stimulating, outdoor exercise yards.

LFA has made numerous similar suggestions, in more detail, over the years concerning ways to reduce cruelty and improve the lives of companion animals, predominantly dogs but also cats and rabbits. These are listed here with relevant links:

- Letter to the Hon Dr Denis Napthine MLA re Puppy Farms,19 March 2013
- Submission re the Draft Codes of Practice for the Private Keeping of Dogs and Cats, 22 December 2006
- LFA Response to RSPCA re Puppy Farm Factory paper, 22 October 2010
- First submission to Bureau of Animal Welfare re the Code of Practice for the Operation of Breeding and Rearing Businesses, 12 May 2013

- Second submission to Bureau of Animal Welfare re the Code of Practice for the Operation of Breeding and Rearing Businesses,13 August 2013

9. Protect all dingoes – both genetically pure and substantially pure – on public land, where they perform an important ecological function

POTENTIALLY ACHIEVABLE IN SHORT TERM: 2016 – 2018

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*

This reform could be achieved by redefining 'dingo-dog hybrids' under the *Catchment and Land Protection Act 1994* (Vic) – where they are currently listed as pest animals – to specifically exclude dingo-dog hybrids with, say, 90% or above genetic variance from domestic dogs; and/or which meet a physical and behavioural standard created for the dingo (akin to the physical breed standard used to identify Staffordshire Pit Bull Terriers in Victoria). This will, in turn, necessitate some revision of Action Statement No. 248 Dingo Canis lupus subsp. dingo[18] prepared under the *Flora and Fauna Guarantee Act 1988* (Vic).

Since their 2013 listing as a threatened native taxon under the *Flora and Fauna Guarantee Act 1988* (Vic), remnant wild dingo populations in Victoria – including dingo-dog hybrids that perform an identical ecological function to their genetically pure ancestors (suppressing meso-predators such as foxes, feral cats and other non-native wild animals such as deer) – have been targeted for destruction on substantial areas of Crown land, particularly in Alpine areas. LFA submits that this targeting of the dingo and dingo-dog hybrid in Victoria must cease both for the welfare of dingoes and the ecological benefit of other native species. Graziers who choose to locate close to the boundary of such Crown lands and experience stock loss on account of dingo or dingo-dog hybrids – rather than wild dogs – may utilise exclusion fencing; consider other forms of primary production more compatible with their chosen location, or consider relocation. LFA refers to its previous support for dingo conservation and notes that scientific awareness of the benefits of maintaining Australia's apex predator (of at least 3500 years) has increased substantially since this time:

- Letter nominating dingo as threatened taxon, 7 June 2007.

[18] Available here: http://www.depi.vic.gov.au/__data/assets/pdf_file/0009/246483/Dingo_Canis_lupus-dingo.pdf

10(a) End all scientific procedures on non-human primates undertaken primarily for human gain;

POTENTIALLY ACHIEVABLE IN SHORT TO MEDIUM TERM: 2016 – 2021

and

10(b) End scientific procedures on other animals undertaken primarily for human gain, except as an absolute last resort and with significantly improved welfare standards

POTENTIALLY ACHIEVABLE IN LONG TERM: BEYOND 2021

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*

These reforms may be achieved via amendments to Part 3 of the *POCTAA*, with 10(a) likely requiring less education and adaptation than 10(b), and thus being more achievable, more quickly.

Unnecessary animal experimentation – that which cannot be justified by evidence-based assessment – appears rife in Victoria, where the three-R's supposedly guiding its use: replace, reduce, and refine; are, in practice, often overlooked for want of evidence-based decision-making. During 2014 in Victoria, around 673,000 animals were used in experiments that caused them harm and at least 200,000 were killed – almost 10,000 of whom suffered death as an end point of the experiment; which means analgesia or anaesthesia were not provided.[19] This was done despite such animal experiments having very little (if any) perceived benefit to humans, and possibly delaying real medical advances.[20] Vast numbers of animals are born to endure an unnatural life in research facilities, often without sunlight or socialisation; and can be subjected to intense and prolonged suffering, before dying or being prematurely killed. In Victoria, non-human primates such as macaques, marmosets and baboons are used in scientific procedures. However, great-apes – gorillas, orang-utans, chimpanzees and bonobos – are more protected under the National Health and Medical Research Council's policy, which states that these primates should not be exposed to scientific research unless it "will not have any appreciable negative impact on the animals involved"

[19] Humane Research Australia, 2014 statistics accessible here: http://www.humaneresearch.org.au/statistics/statistics_2014

[20] See: http://www.humaneresearch.org.au/replacing-animals

and "will potentially benefit the individual animal and/or their species".[21] By way of further explanation, LFA refers to the following submissions it has made regarding this subject:

- Submission to NHRMC re Research Animals, 5 April 2006
- Submission re: Principles and guidelines for the care and use of non-human primates for scientific purposes, 8 May 2015.

11. Eliminate the use of animals in circuses and phase out rodeos

POTENTIALLY ACHIEVABLE IN THE SHORT & MEDIUMS TERM (RESPECTIVELY): 2016 – 2018 & 2018 – 2021

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*

These two separate reforms may be achieved by amendments to the *POCTAA*.

Circuses do not require animals to generate human entertainment – Cirque du Soleil is a shining example of this – and relatively few Australian circuses now rely on exotic or other animal performance. By way of further explanation, LFA refers to its past letters to two Councils, highlighting the cruelty involved in the use of animals in circuses, and growing public opposition to such practices:

- Letter to Mornington Peninsula Shire Council regarding circus animals, 10 January 2010
- Letter to Brisbane Council regarding circus animals, 10 January 2010.

Rodeos rely on shock-value and high risk activities involving domination of animals to generate entertainment. As a relatively recent import from America – competing with Australian outback traditions such as agricultural fairs, equestrian carnivals and corroborees – rodeos remain on the margins of Australian culture, much like rap music, so should not be too difficult to displace. While some positive steps have been taken in Victoria to reduce the levels of cruelty inherent in rodeos – such as the ban on calf-roping – LFA submits that the nature of rodeo is such that cruelty cannot be overcome without a complete phase-out. The economic impacts of such a ban may be alleviated by the re-generation of more ethical social traditions, perhaps through targeted Government sponsorship of events. LFA has been advocating a ban on rodeos since 2008 when it

[21] Principles and guidelines for the care and use of non-human primates for scientific purposes (2016) at p.5, available here: https://www.nhmrc.gov.au/_files_nhmrc/file/health_ethics/animal/guidelines-non-human-primates-sept16_0.pdf

raised concerns in relation to Prevention of Cruelty to Animals Regulations, in the following submission:

- Submission re proposed POCTA Regulations,17 November 2008

12. Restrict equine dentistry practices utilising powered tools to qualified veterinarians

POTENTIALLY ACHIEVABLE IN THE SHORT TERM: 2016 – 2018

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
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This reform may be accomplished by insertion of a relevant prohibition within the POCTAA.

The performance of equine 'dentistry' using powered tools by non-veterinarians is currently legal in Victoria, but should be prohibited, because:

a) there is a significant risk of damage to horses, particularly due to thermal injury from the use of power grinding equipment, pulp exposure and associated tooth damage[22];

b) it requires the competent administration of restricted drugs for sedation by a veterinarian, necessitating knowledge of the effects and risks of a multitude of sedative agents and how they should be administered in different circumstances and depending on the reactions of the equine patient; and

c) it encourages the illegal distribution and administration of restricted drugs (if a veterinarian is not directly involved in treatment) which also poses a risk to human health.

[22] Guideline 14.4, Code of Practice for the Welfare of Horses (Revision 1) provides:

Use of power tools:

- *Due to the danger of tooth fracture and pulp exposure, the use of dental shears, molar cutters and inertia hammers should be avoided.*
- *Great care should be taken with the use of power tools due to the risks of thermal damage, pulp exposure and tooth damage.*

However, the Code also states that: "Under this Code, the minimum standards set the minimum level of conduct required to avoid cruelty to horses. The Guidelines provide information to improve awareness of good welfare practices and encourage the considerate treatment of horses." Thus levels of care stipulated in 'guidelines' are less likely to be legally enforceable as minimum standards of care under the POCTAA. An incompetent practitioner of equine dentistry (whether or not a qualified veterinarian) may potentially rely on a claim that they acted in accordance with the Code of Practice as a defence to a cruelty charge under POCTAA s.11(2), insofar as Guideline 14.4 recognises that the practitioner need not be qualified veterinarian.

LFA acknowledges the critical contribution of its member, Ms Karina Heikkila[23], both in drawing its attention to this important animal welfare issue and in permitting various extracts from her own submission to the Draft Plan consultation (dated 10 October 2016) to be utilised, above. LFA adopts the more detailed arguments and supporting information on the issue of equine dentistry provided by Ms Heikkila in her submission.

13. Phase-out the exhibition of exotic animals in zoos where in-country species conservation is possible and improve welfare standards for remaining exhibited animals

POTENTIALLY ACHIEVABLE IN SHORT TO MEDIUM TERM: 2016 – 2021

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - Action 1.2 *Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*

This reform may be achieved via amendments to the *POCTAA* and to the *Code of practice for the public display and exhibition of animals*.

The exhibition of animals primarily for human entertainment is an inherently problematic concept, unlikely to uphold The Five Freedoms of animals. However, where exotic or native animals are held captive for (genuine) species conservation purposes, their care should be subject to high welfare standards. By way of further explanation, LFA refers to its past submission to the federal Department of Agriculture, Fisheries and Forestry regarding the 'Australian Animal Welfare Standards and Guidelines: Exhibited Animals', detailing concerns regarding: animal health and well-being; animal enclosures; dietary and water requirements; reproductive management; training; interactive programs; zoo staffing responsibilities; zoo security; and animal transportation. Further, LFA refers to the article titled: 'The Regulation and Ethics of Zoos', written by LFA member, Mila Dragicevic, and published on LFA's website:

- Submission re Exhibited Animals, 13 August 2009
- The Regulation and Ethics of Zoos**,** May 2014.

[23] LLB (Hons), PhD Candidate (Animal Law), Sessional Lecturer and Tutor in Law at Victoria University Melbourne

14. Recognising the status of animals as 'sentient legal entitities' instead of 'property', developing guardianship laws and applying a duty of care

POTENTIALLY ACHIEVABLE IN THE LONG TERM: BEYOND 2021

- *Action area 1: Victoria has contemporary animal welfare laws*
  - *Action 1.1: Animal welfare legislation in Victoria is contemporary*
  - *Action 1.2 Animal welfare regulation is evidence-based and allows for continuous improvement*
- *Action area 2: Collaborative approaches underpin knowledge, commitment and investment in animal welfare*
  - *Action 2.1: Partnerships and collaborative approaches support a shared responsibility for improving the welfare of animals*
  - *Action 2.2 Important issues of animal welfare concern in Victoria are addressed*
- *Action area 3: Compliance and enforcement is efficient and effective*
  - *Action 3.1: Victoria has an effective and efficient compliance and enforcement system in place*
  - *Action 3.2: Victoria's compliance and enforcement system underpins sound animal welfare practices*

Examining the bigger picture and looking toward the long term development of an optimal system of animal protection through law, LFA considers the following proposals offer both a viable and positive vision:

a) LFA submits that sentience, or the capacity to experience pain and pleasure - rather than human-like intelligence or emotion – ought be the threshold criterion which determines which living beings are recognisable as legal entities or 'persons' under law, and in whom basic rights exist and may be protected. As explained above, LFA adheres to the principle that: to the extent animals are under human control or influence, humans are obligated to uphold 'The Five Freedoms', which enunciate the basic rights of all sentient beings. Animals are currently recognised (predominantly) as mere property, at law, yet this has been proven mythical, particularly in recent decades – but also dating back as far as the Enlightenment – by advancements in philosophical and scientific understanding. Society no longer considers animals to be property, yet they remain (largely) so described and treated under law, not unlike slaves, women and children once were.

b) LFA suggests that a legal statute be considered to recognise all legal entities, replacing the term 'legal personhood' with 'legal entity' to remove the conceptual and linguistic link to humans. Such legal entities might be divided into two classes: 'sentient' and 'non-sentient'; and the sentient class further divided into 'legally competent' and 'legally incompetent', with Homo Sapiens Sapiens being included in both subclasses, while sentient animals would only be included under the 'legally incompetent' subclass.

c) LFA further suggests consideration be given to recognising legally incompetent sentient legal entities under guardianship and administration laws, to enable legal guardians to be appointed to protect their legal interests. LFA notes that obtaining the status of 'legal entity' and being recognised under guardianship laws would not confer any particular rights on animals, other than the right to have a legal guardian appointed and, potentially, to be heard in Court, if legal standing were granted to animal's legal guardian.

d) The basic rights of animals and all legally incompetent, sentient entities would then either be left to the Courts to recognise and define, or might be set out in a statute to be interpreted by the Courts. Such a statute might list the basic rights (Five Freedoms) of legally incompetent, sentient legal entities such as animals, intellectually impaired or mentally ill humans and children. Such a statute might also note that humans are only responsible for ensuring that the Five Freedoms are afforded to entities to whom they owe a duty of care, and to the extent that that duty is owed.

Thank you for considering this submission. Should the reader have any queries concerning its content, please contact Lawyers for Animals via email: enquiries@lawyersforanimals.org.au

Yours faithfully,

Nichola Donovan
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