

16/10/2022

**Re: Plan for Victoria's new animal care and protection laws**

The Canary and Cage Bird Federation of Australia Inc. (CCBFA) is a national federation of over 240 affiliated clubs and representative bodies. Our affiliates include most avicultural clubs and bodies operating within Victoria. We acknowledge contributions to this submission from the Victoria Avicultural Council (VAC), the Budgerigar Council of Victoria (BCV), the Mornington Peninsula Avicultural Society (MPAS) and the National Finch and Softbill Association (NFSA), amongst others.

This submission has been shared and informed the submission by Animal Care Australia (ACA). CCBFA is a founding member of ACA and supports their submission.

CCBFA has contributed to this process on a number of occasions previously - the following documents remain pertinent.

13/12/2020 - CCBFA submission to the directions paper -

<https://www.ccbfa.org.au/wp-content/uploads/2020/12/CCBFA-Vic-Directions-Paper-Submission.pdf>

20/4/2020 – Meeting synopsis with department staff -

<https://www.ccbfa.org.au/wp-content/uploads/2020/04/Vic-Animal-Welfare-200420-Meeting-Synopsis.pdf>

Some critical points deserve to be highlighted.

- Why the name change? Please revert to the name “Animal Welfare Act”.
- CCBFA recommends a minimum duty of care based on simple clear understandable and readily enforceable measures - stick to the basics such as food, water, shelter, disease or similar.
- Aviculture has a range of codes of practice, standards, etc. that specify welfare and have been developed over decades, sometimes centuries. We oppose the notion that such codes should be enforceable. Such codes should be acknowledged in the regulations so they can be used as a defence or as guides for judges during court proceedings.
- Oversight and accountability of Authorised Officers, including those in the employ of charitable organisations such as the RSPCA must be included in the Act and the complaints system must be readily available to all.

Please consider the submission and recommendations that follow. We welcome and look forward to further consultation.



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## CCBFA Submission

The following submission is in the form of comments referencing sections within the “Plan for Victoria's new animal care and protection laws” (Plan). Readers should read the submission alongside the Plan which can be accessed here...

<https://engage.vic.gov.au/new-animal-welfare-act-victoria>

### 0. Animal Welfare Act NOT Animal Care and Protection Act

- 0.1. CCBFA does not understand why the proposed name of the new Act has been changed from the “Animal Welfare Act” to the “Animal Care and Protection Act”. CCBFA opposes this change.
- 0.2. The Act is striving to improve animal welfare outcomes throughout Victoria. Animal welfare science is the internationally recognised term.
- 0.3. The word “care” is a limiting substitute for the word “welfare” and the term “animal protection” has in recent years been adopted by extreme animal rights organisations. Animal rights has no place in legislation.
- 0.4. CCBFA recommends a measure of the level of achievement of animal welfare outcomes is developed. The level of animal welfare can then be monitored over time to ensure the new act improves animal welfare outcomes.

### 1. Recognising Sentience

- 1.1. CCBFA continues to strongly oppose the use of the word “sentience”. We support the meaning being included as a purpose but will strongly oppose any offence which make it illegal for animals to feel negative emotions.
- 1.2. We agree animals are sentient, however the word “sentience” has been hijacked and is now owned by the extreme animal rights movement, therefore it is inappropriate in legislation.
- 1.3. Measuring the emotions implied by sentience to a level of evidence required for compliance and enforcement is not possible.

### 2. Animals covered by the new laws

- 2.1. For birds, we question the “midpoint of incubation” being a universal point where a bird becomes an animal for legal purposes.
- 2.2. For many bird species it is common for hatchlings, nestlings and fledglings to perish for a range of reasons unrelated to the care they receive. It is very species specific.
- 2.3. Note there is in excess of 400 species present in Australian aviculture presently. Determining the time when each becomes sentient such that the law should apply is no simple task.
- 2.4. We are aware of zoos routinely destroying eggs and nests to prevent breeding and to prevent the need to dispose of excess stock.

- 2.5. Birds, particularly in larger aviaries, do harm each other at times. The implication of the following quote is that when such harm occurs in aviaries an offence may have been committed. Such a notion is opposed.

*The laws would not cover outcomes for animals that don't involve interactions with humans. For example, animals in the wild may harm each other, but where this doesn't involve any interactions with humans, the laws would not apply.*

### **3. Legislative framework**

- 3.1. There are over 400 avian species present in aviculture, obviously we cannot hope to have specific regulation for each species or even for significant species groups.
- 3.2. CCBFA opposes mandatory enforceable codes, or standards for birds. Aviculture has an enviable record in terms of animal welfare via our club network and its existing voluntary suite of codes and standards.
- 3.3. Although not related to captive birds, we raise concern with regard to regulations for "animals in the wild" – care is needed regarding the half gestation and half incubation period matters from the previous section. There may be significant implications for those clearing land, pest controllers, etc. who remove or destroy nests.
- 3.4. CCBFA supports codes of practice for bird keeping that can be used as a defence to a charge and can be used by a judge as reference to reasonable actions.
- 3.5. CCBFA supports education prior to infringement notices being issued except for severe cases.
- 3.6. CCBFA opposes the notion that contesting an infringement notice in court can result in significant higher penalties. This notion discourages people from having their case heard due entirely to economic factors. CCBFA recommends this area is reworked so that those issued an infringement notice have a right of appeal to the court.
- 3.7. We support the following for aviculture, with groups such as CCBFA (and other representative bodies) developing the guidance codes with endorsement by government.

*Good-practice guidance can also be developed to support the Act and the mandatory regulations. This guidance could come from government or from reputable industry, veterinary or scientific bodies. The guidance may be able to be used to show that standards of care of animals have been met. Prosecutions may use guidance on care requirements to determine what constitutes good practice.*

- 3.8. CCBFA notes that our avicultural codes and standards far exceed what is appropriate as enforceable codes. Our codes educate and encourage higher animal welfare outcomes. Our enviable history in this space is clear evidence current self-regulation of aviculture is effective.
- 3.9. CCBFA opposes the need for any licensing of aviculture, and we understand from the review team at the webinar on 3/10/22 this is not proposed.
- 3.10. CCBFA agrees our existing code of practice under POCTA could or will be reviewed. CCBFA is currently considering reviewing such codes in a number of states with some

thought to a single non-enforceable code (refer 3.4) ratified in principle in a number of jurisdictions.

- 3.11. We welcome the intent to categorise the regulations under broad activities. Anything that improves the readability of the regulations is surely good thing.
- 3.12. It appears there will be much more in the regulations than is currently the case. This will make it difficult to assess the Bill without at least draft regulations.
- 3.13. CCBFA does not support enforceable codes or standards for aviculture. In our view this would be a retrograde step. Education over regulation should be the focus.
- 3.14. We support the following continuing for aviculture.

*In Victoria (and other jurisdictions), a person charged with a cruelty or aggravated cruelty offence can defend the charge if they conducted the activity in accordance with a code of practice.*

- 3.15. To enhance “proper consultation” consideration should be given to forming expert groups of significant stakeholders. Such groups do not have to meet regularly and now that most of us are familiar with teleconferencing, engaging with such groups can be timely and cost effective. In our experience, it would be wise to legislate such consultative expert groups as they tend to fall by the wayside as time goes by.
- 3.16. With regard to the boxed text “How would it work in practice”. To “prevent a dog from suffering” or “prevent cattle from suffering” are both worthy purposes. However, the offence must NOT be that the dog or cow is likely to suffer (or even is suffering), rather it must be the action (or lack thereof) that the person performs and that has been determined to result in suffering that is the offence.

#### **4. Decision-making principles**

- 4.1. We agree that these decision-making principles are inappropriate for decisions made by Authorised Officers.
- 4.2. In theory requiring other authorities to consider animal welfare when making decisions appears to be reasonable. In our experience this is not always so, for instance it often leads to all sorts of anomalies, bias and results in skewed outcomes. For example, the Victorian Wildlife Act 1975 in terms of birds is essentially about protecting wild populations of native birds. The licences cover a small proportion of the total captive bird population and aviculturists generally keep mixed collections of native licenced and unlicensed species together with non-native species. CCBFA has been in numerous meetings where all sorts of proposals that would alter the way native licensed birds are kept in welfare terms. If implemented such measures would certainly result in confusion.
- 4.3. Sadly there are animal rights extremists who purport to be animal welfare advocates but who’s aim is to end the keeping of all animals in captivity. Such individuals and organisations are entitled to their view in our democracy and are stakeholders when the consultation is about keeping or not keeping animals. However, they are not stakeholders when the consultation is addressing the detail of how animals should be kept in captivity.
- 4.4. The following is understood and supported in principle, however the same is also true for animal welfare legislation having unintended impacts/consequences for other acts.

*As a result, decisions can be made under other Acts or policy areas which have different priorities which may not adequately consider the need to minimise impacts on animals, and which may have unintended consequences.*

## **5. Application of the new laws**

- 5.1. CCBFA recommends the following should be amplified by including as a purpose or object of the new Act.

*The new laws would apply to the actions of humans towards any animal in Victoria, while also recognising that animals can be owned and used for legitimate and necessary purposes.*

- 5.2. There are anomalies in the manner in which animals are kept for rehabilitation compared with how they are kept by bird keepers. We support the need to ensure birds in the care of wildlife carers receive the same level of care as those in captivity.
- 5.3. CCBFA is reluctant to extend any extra powers to Authorised Officers, in particular those not in the employ of the state such as RSPCA, without increased oversight and accountability.
- 5.4. It is critical that what people must or must not do is made clear in documents that are accessible to the public. In terms of how they are worded and designed and in terms of availability to end users. Regulations and even codes of practice are generally not accessible to the general public.
- 5.5. A focus on education including funding for education should be mandated and included within the Act. Education should be ongoing, not just during the Act's implementation.

## **6. Care**

- 6.1. It is unclear to CCBFA how the "minimum care" requirements will work given they are enforceable. Consider the following quote - this is vague and imprecise and could mean a code intended to improve welfare and act as a defence is now enforceable.

*Expectations of care would be informed by the current POCTA Codes of Practice and the Australian Animal Welfare Standards and Guidelines.*

- 6.2. The following quote indicates harm, pain or distress of animals may become an offence. CCBFA is adamant that it is the actions (or lack thereof) performed by a person that are the offence when such actions are shown to be the cause of the harm, pain or distress.

*Unreasonable harm, pain or distress of the animals would not need to occur before authorities could intervene.*

- 6.3. "Physical environment" and "Behavioural interactions" are open to interpretation for birds, particularly given the large and broad range of species with very different requirements. The physical environment and behavioural interactions for many species change significantly throughout the seasons and over the life of some species. No RSPCA or other Authorised Officer to our knowledge possesses the expertise to make such assessments for birds.
- 6.4. CCBFA is of the view that the "Care" offence as it is currently indicated is overreach both in terms of intent and certainly in terms of enforcement. We support and prefer education initiatives to improve these areas.

- 6.5. The following quote is too close to the borderline of making it a crime for an animal to have bad feelings – totally opposed and has no place in animal welfare legislation.

*Setting care requirements in the new laws gives practical effect to the recognition that animals are sentient – they have the capacity to feel, perceive their environment, and to have positive and negative experiences like pleasure and pain.*

- 6.6. It is people NOT appropriately caring for their animals that must be the focus and the offence, not that the animal's experience pleasure, pain, etc. The following quote is concerning in this regard.

*Setting enforceable care requirements would reassure Victorians that people who do not appropriately care for their animals could be prosecuted.*

- 6.7. The following quote makes the status of codes of practice unclear, particularly current codes under POCTA which were never intended to be enforceable and may now become enforceable via the basic care requirements. This is opposed in its current form.

*Regulations would set more detailed care requirements for different species and activities involving animals. The regulations would be informed by the current POCTA Codes of Practice, and the Australian Animal Welfare Standards and Guidelines.*

- 6.8. The following example regulation is problematic for most species who can socialise with other related species, and for some species who do not like to socialise even with their own species with the exception of their bonded partner. Please append the words “or compatible species as appropriate.”

*Contact with other animals of the same species.*

- 6.9. The following quote is rather too vague in terms of compliance and enforcement realities. Authorised Officers are not experts in all species – particularly given there are well over 400 species of captively held birds in our aviaries.

*The requirements are not static and not every requirement needs to be met at every point in time. The new laws would mean that where a person caring for animals has taken reasonable steps to meet the requirements in an appropriate way, they would not commit an offence.*

- 6.10. CCBFA recommends this area is reworked to specify minimum care more simply. Stick to the basics such as food, water, shelter, disease or similar.

## **7. Cruelty**

- 7.1. We wish to reinforce that it is the act or omission by a person that is the offence NOT the harm, pain or distress it causes. The exception being elevating a “General cruelty” offence to one of “Aggravated cruelty” due to “the death or serious physical or mental disablement or impairment of an animal.”

- 7.2. CCBFA is not sure why there is reference to human cruelty and using cruelty to control or dominate a person. These areas, as shocking and concerning as they are, are misplaced in this Act and should be addressed within the Victorian Crimes Act 1958.

- 7.3. CCBFA generally supports the offences of “General cruelty”, “Aggravated cruelty” and “Intentional or reckless cruelty” as described in this section of the plan.
- 7.4. CCBFA has concern regarding the following quote as again it is implying the offence is the animal experiencing harm, pain or distress rather than the offence being the act (or omission) on the part of the accused.

*The offences would more explicitly recognise that harm, pain or distress to an animal can be physical or mental.*

- 7.5. To agree CCBFA would need to see the guiding principles referred to in the following quote.

*Guiding principles would be provided to the Courts for considering the penalties to apply if a person was found guilty of an offence.*

## **8. Controlled conduct**

- 8.1. A comment – what is unreasonable harm, pain or distress varies widely from person to person, species to species and even animal to animal. Human medicine has difficulty determining such matters with accuracy and the problem is even more difficult for animals. Care is needed to prevent unintended consequences such as people not performing procedures that are painful yet have justifiable benefits for fear of prosecution.

## **9. Classes of conduct**

- 9.1. What is a commercial purpose? This has become a significant problem for hobby breeders in Victoria and other jurisdictions and requires careful thought and consideration as the Bill is drafted.
- 9.2. Cannot “Classes of conduct” be dealt with by different codes of practice or enforceable standards and guidelines?
- 9.3. Although we accept that licencing and licence conditions do need to change over time and we support consultation, we have some concern regarding overregulation that builds over time. Experience in other jurisdictions indicates some animal rights group aim to increase regulation, conditions, red tape with the aim of making it ever more difficult to keep animals – nothing to do with welfare.
- 9.4. The ability of any Authorised Officer to enter any dwelling or premises used for residential purposes without permission or warrant or it being an emergency is strongly opposed. CCBFA specifically opposes such right of entry to monitor compliance as described in the following quote.

*Where an activity was licensed, Authorised Officers could enter the property where that activity is undertaken to monitor compliance with licence conditions (with safeguards for what is reasonable.)*
- 9.5. The new Act needs to be mindful of the immense societal advantages of keeping animals. It must encourage animal keeping whilst aspiring to raise animal welfare outcomes.
- 9.6. There are vocal groups representing a minority of society who oppose animal keeping completely, such groups should be excluded from review processes indicated in the quote that follows.

*Regulations can be revised in response to new scientific understanding, changing industry practices or technology, administrative arrangements or community expectations. Revising a regulation still requires processes such as stakeholder and community consultation, and in most cases, an impact assessment to understand the costs and opportunities of any changes.*

- 9.7. References to specially trained officers in other jurisdictions does not include birds. Currently to our knowledge there is no avian welfare expertise Authorised Officers (or equivalent) nor are there any significant avian welfare issues.
- 9.8. Further to the following quote, please note that currently our bird sale, etc. events in Victoria are exempt from animal sale permits under the Domestic Animals Act 1994 sections 58T, 58U. It would not make sense for the new animal welfare act to require anything further.

*The new laws would allow for regulations to be made that require a licence for organising an event in which animals are used in sport, competition or recreation.*

## **10. Scientific procedures**

- 10.1. CCBFA is aware of the ethics committee system within NSW and its effectiveness, together with moves to deregulate low risk activities such as bird banding and observation. We recommend consideration is given to a similar system.

## **11. Authorised officers**

- 11.1. Oversight and accountability of RSPCA officers is required. Accountability and oversight measures in place for government employees do not extend to RSPCA currently.
- 11.2. To our knowledge no RSPCA, police, etc. have avicultural expertise sufficient to make assessments for all but the most obvious cruelty offences.
- 11.3. Whilst the following proposed change aims to enhance the outcome for animals in adverse conditions, this change indicates a lowering of expertise and standards for Authorised Officer appointment which is opposed. It is unclear why Authorised Officers would be an urgent need in emergencies – more likely it is volunteers who can be seconded to assist efforts to help animals rather than Authorised Officers to enforce compliance.

*The POCTA Act requires a ‘declaration of an emergency’ before Authorised Officers can be appointed quickly in an emergency. This requirement would not be included in the new laws.*

## **12. Authorised officer powers**

- 12.1. CCBFA recommends it should be a requirement for an Authorised Officer to obtain a warrant before entering any dwelling or premises used for residential purposes, not that they “could” apply for a warrant. There are two exceptions. One exception is when permission is expressly given, but only after the officer has explicitly made it clear the person is entitled to refuse entry with no negative repercussions and should entry consent be given it can be withdrawn at any time. The second exception is in emergencies where an animal is in imminent danger.



*An Authorised Officer could also apply to a Magistrate for a search warrant to enter a premises or a dwelling to investigate an offence and search for evidence.*

- 12.2. CCBFA strongly opposes the ability of an officer to enter residential premises to perform compliance inspections without consent. Such inspections do not occur and would not be accepted to monitor children, or good parenting, for example.
- 12.3. The ability to euthanise a bird because of harm, pain of distress based on the judgement of a single Authorised Officer is of concern. No Authorised Officers of which we are aware have the expertise to reliably make such assessments or to perform the euthanasia.
- 12.4. We recommend a list of species for each Authorised Officer is approved where that individual is determined to have suitable expertise to make such an assessment. Otherwise, a veterinarian must make the determination and perform the euthanasia.
- 12.5. CCBFA is aware of similar Compliance inspections in other jurisdiction that have raised significant concerns. We oppose all such inspections of any dwellings or premises used for residential purposes.
- 12.6. Entry to dwellings and premises without permission is a serious matter that certainly should not be permitted to monitor compliance. This is particularly the case for RSPCA officers who have limited accountability or oversight.

### **13. Seizure and disposal of animals**

- 13.1. For birds we have concerns that Authorised Officers and veterinarians at RSPCA have limited expertise with birds.
- 13.2. CCBFA supports the Minister having discretion to provide financial compensation to someone whose animal was forfeited or disposed of and they were later not convicted of the offence.
- 13.3. In general, CCBFA supports oversight approval by the Minister or Secretary prior to seizure. Could this be a role for the local court to consider? It is likely cases are time sensitive and obtaining Minister or Secretary approval will likely take time.

### **14. Enforcement toolkit**

- 14.1. CCBFA is opposed to any forced entry to dwellings or premises by Authorised Officers including as indicted in the following quote. We do not accept supervisor permission as being sufficient, particularly in the case of RSPCA who have minimal oversight and accountability.

*Following issue of the notice, regulators would be able to conduct inspections to assess compliance with the notice.*

*To safeguard against this power being used inappropriately, an Authorised Officer must get approval from a supervisor or more senior person in their organisation before returning to check compliance with a notice.*

- 14.2. CCBFA supports and agrees in principle with the idea of “Enforceable undertakings” but we reserve the right to change this view when the detail is known.

- 14.3. CCBFA suggests RSPCA is not an appropriate organisation to enforce court orders. We are of the view such orders are better enforced by police or other state employed officers.
- 14.4. CCBFA opposes the use of adverse publicity orders as described in the following quote. Such orders are not in place for other crimes such as robbery and armed robbery or even assault or murder. This is overreach.

*The new laws would also enable courts to make adverse publicity orders (where a court orders a person or body corporate to publish information about their non-compliance) in an expanded range of circumstances beyond just scientific procedures offences.*

- 14.5. The following quote indicates how complaints about Authorised Officers MAY be included. Oversight and accountability of RSPCA officers must be included in the Act and the complaints system must be readily available to all. Accountability and oversight measures in place for government employees should, but do not currently, extend to RSPCA.

*Regulations would also prescribe forms and information to be provided in notices to comply and notices of intent to seize and dispose of animals, which may include information about how to complain about the conduct of an Authorised Officer.*

## **15. Co-regulatory arrangements**

- 15.1. Not for aviculture. Our codes to be used as a defence and by judges when assessing offences/cases. Our network of clubs, although extensive is not in a position to enforce standards. We do strongly encourage compliance with our various codes and we enforce at sales and shows. We are about positive education in a social setting to improve welfare rather than enforcement.

## **16. Other administrative arrangements**

- 16.1. CCBFA specifically supports the review mechanisms.
- 16.2. Costs to maintain animals whilst court proceedings run their course should be charges to the crown. Otherwise, individuals plead guilty based on cost rather than the merits of the case. The kennelling/maintenance costs often far outweigh any penalty.
- 16.3. With regard to the "Animal care and protection fund" - which is supported - it must be renamed the "Animal welfare fund" (refer 1).
- 16.4. CCBFA recommends the level of animal welfare must be monitored as described in 1.4. Funding for initiatives can then be adjusted and allocated to maximise improvement in animal welfare based on evidence rather than based which extremist group is loudest.
- 16.5. The new act must improve animal welfare outcomes. To achieve this critical aim requires a valid measure to prove improvement is occurring and that funding is effective.
- 16.6. Education is central to the activities of bird clubs throughout Victoria and nationally – it is our routine business. Grants to expand this work would make a significant difference to avian animal welfare, likely a more significant difference than all other provisions within the Act.

- 16.7. The expert advisory group is supported with some provisos. It must recognise private expertise and long-term knowledge and skills.
- 16.8. We recommend an avian subcommittee is formed.
- 16.9. We recommend positions on the Expert advisory committee and subcommittees (like our proposed avian subcommittee) include representatives appointed by appropriate significant organisations rather than or in addition to individuals.