

13 August 2019

Ms Sally Fensling
Acting Chief Executive, Agriculture Victoria
Department of Jobs, Precincts and Regions
Level 26,1 Spring St
MELBOURNE VIC 3000

Dear Ms Fensling

REGULATORY IMPACT STATEMENT FOR THE PREVENTION OF CRUELTY TO ANIMALS REGULATIONS 2019

I would like to thank your staff at the Department of Jobs, Precincts and Regions (the Department) for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed *Prevention of Cruelty to Animals Regulations 2019*, which are proposed to replace the current Regulations which sunset on 15 December 2019.

The *Subordinate Legislation Act 1994* (SLA) requires the Commissioner for Better Regulation to provide independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to clearly be written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 13 August 2019 meets the adequacy requirements set out in the SLA.

Background

The *Prevention of Cruelty to Animals Regulations 2019* (the proposed Regulations) are made under the *Prevention of Cruelty to Animals Act 1986* (The Act). In the RIS, the Department notes that the primary objective of the proposed Regulations is to uphold and further the purpose of the POCTA Act, which is to prevent cruelty to animals, encourage the considerate treatment of animals and improve community awareness about the prevention of cruelty to animals. The Department also notes that the proposed Regulations aim to promote community accepted values and behaviours towards animals and recover some of the costs of regulating animal welfare.

The Regulations prescribe a range of matters, including conditions and methods for using electronic devices and traps, conditions for the transport of animals, and the use of animals in rodeos and scientific procedures. The Regulations also allow for penalties and enforcement action to be taken. There are other regulations covering the treatment of animals. For example, domestic fowls (primarily chickens) are regulated separately under the *Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2016*. In addition, several

Codes of Practice regulate specific activities, such as the use of animals for scientific procedures.

Analytical approach

In the RIS, the Department structures its analysis around five key issues (grouped according to the structure of the proposed Regulations):

- Offences designed to prevent cruelty and harm to animals;
- Conditions for using electronic devices including electronic collars, electronic stunning devices, electric prodders and electric fences;
- Conditions for using animal traps;
- Requirements for rodeos and rodeo schools; and
- Conditions for using animals in scientific procedures.

The Department explores options for each of these five issues in the RIS. It analyses options in detail for each issue including an option similar to the current Regulations and options that improve animal welfare relative to the current Regulations. For each issue, the Department assesses its options against the following three criteria to determine its preferred option:

1. Animal welfare outcomes;
2. Regulatory burden on businesses and individuals; and
3. Other economic, social and/or environmental impacts.

The Department uses a mix of qualitative and quantitative analysis to determine its preferred option. In the RIS, the Department notes that quantification of costs and benefits was undertaken where possible. Quantification was attempted for regulatory burdens and other economic impacts but not for animal welfare and social impacts. A range of approaches were used to identify data sources to enable quantification, including drawing on stakeholder consultations.

The key quantified impacts of the preferred option noted in the RIS are:

- an estimated additional cost of \$2.5 million per year for farmers due to the requirement to use pain relief while mulesing sheep;
- an estimated additional cost of up to \$3.1 million for the Victorian Wild Dog Program (based on current costs of delivering the same outcomes with 24-hour checking of traps rather than 72-hour checking); and
- an estimated additional cost of mandating Animal Ethics Committee (AEC) training in Victoria of between \$1,500 and \$3,700 per year (based on 30 to 50 members of AECs in Victoria requiring training each year).

Offences

The Department analyses three options for offences in the RIS:

1. The same offences as in the POCTA Regulations 2008;
2. A broader range of offences than the POCTA Regulations 2008; and
3. A broader range of offences than the POCTA Regulations 2008 plus a ban on the use of Oxy-LPG devices, which are primarily used to destroy warrens and burrows of pests, such as rabbits.

Option 2 is the Department's preferred option. According to the Department, it will deliver higher animal welfare benefits relative to option 1. While option 2 has slightly lower animal welfare outcomes than option 3, it has other benefits related to the use of Oxy-LPG devices.

Electronic devices

The Department notes in the RIS that there are circumstances where the use of electronic devices on animals may provide benefits that justify negative animal welfare impacts. It explains that while a person who uses an electronic device to cause pain and suffering to animals could potentially be prosecuted under the POCTA Act, the Act does not specifically regulate the use of electronic devices. The Department explores three options for regulating the use for electronic devices including options to increase restrictions on the use of electronic devices.

1. Regulating and allowing the use of electronic devices under certain conditions similar to the current Regulations;
2. Restricted use of remote-training and anti-bark collars on dogs and further conditions around the use of containment collars; and
3. Prohibit public use of remote-training and anti-bark collars and further conditions around the use of containment collars

The Department's preferred option is option 3. It explains that this option improves animal welfare as it eliminates much of the residual risk that electronic collars are used inappropriately and cause unnecessary harm to animals who do not respond to these training methods.

In the RIS, the Department explains that improved animal welfare outcomes under option 3 outweigh an increase in regulatory burden. In consultation, the Department states that stakeholders indicated that alternative training methods are likely to require more time and effort. However, the Department explains that alternative training methods are likely to be as effective in the long run, citing evidence which has led to the prohibition of the public use of electronic collars in other states.

Traps

The Department explains in the RIS that without regulations, the use and sale of any traps that capture animals would not be permitted in Victoria. It explores three regulatory options that allow trapping of animals under certain conditions:

1. Use of traps in the current Regulations;
2. The current Regulations plus a permit system for the use of glue traps and a phase out over five years of the Minister's power to approve a longer trap-check time-interval for the Victorian Wild Dog Program (72-hour checking rather than 24-hour checking); and
3. The same as option 2 but a prohibition on the use of glue traps for trapping an animal (glue traps may only be used for trapping insects).

The Department's preferred option is option 3. It states that improved animal welfare outcomes of this option relative to other options outweigh additional costs related to restricting the beneficial use of traps.

Rodeos and rodeo schools

The Department analyses two options for regulating rodeos and rodeo schools in the RIS.

1. The current Regulations plus a change to require rodeos to only be held by licence and permit holders; and
2. The same requirements as in option 1 but with additional conditions including a requirement for licence and permit holders to create an Animal Welfare Plan to demonstrate that they meet regulatory requirements, clearly specifying the responsibilities of different people involved in rodeos and requiring the use of an appropriately experienced veterinary practitioner at rodeo events.

The Department's preferred option is option 2. It explains that, relative to option 1, option 2 will lead to a small improvement in animal welfare which will more than offset a very small increase in regulatory burden. The Department explains that this increase in regulatory burden is very small because industry has confirmed that the requirement to prepare an Animal Welfare Plan will have benefits outweighing its costs and that having a vet at rodeos is already common practice.

Scientific procedures

The Department analyses three options in the RIS to regulate the use of animals in scientific procedures.

1. The current regulations plus amendments to the Pound Animals Code of Practice;
2. The same regulations as option 1 but with reduced reporting requirements on scientific procedures using animals and mandated Animal Ethics Committee (AEC) training; and
3. The same regulations as option 2 but greater restrictions on the use of pound animals in scientific procedures through revoking rather than amending the Pound Animals Code of Practice.

The Department explains that outcomes under option 1 would be similar to outcomes without Regulations as there are also requirements under the Act and codes of practice. The Department explains that, relative to option 1, option 2 improves animal welfare outcomes through mandating AEC training and promoting best practice as intended by the Australian Code for the Care and Use of Animals for Scientific Purposes. The Department also notes that there is strong support from stakeholders for more AEC training.

The Department's preferred option is option 3. The Department explains that revoking the Pound Animals Code of Practice would reduce the cost to Government of monitoring an element of regulation which is unnecessary (as animals from pounds are so rarely used). It also notes that Revoking the Code would provide clarity to industry.

Fees

The proposed Regulations include fees for electronic devices approvals, trap approvals, rodeos and scientific procedures.

In the RIS, the Department explains that its preferred option is to set fees at full cost recovery for most organisations and individuals, and set fees at zero where additional social value is delivered. The Department discusses independent research it commissioned in 2016 to identify its efficient cost base and estimate full cost recovery for its fees for scientific procedures licences. This research was used to set fees for scientific procedure licences in the current Regulations.

The proposed Regulations introduce three new fees.

- for approval of therapeutic electronic devices (30 fee units, equivalent to \$444.30 in 2019-20);
- for trap-related approvals (23 fee units); and
- for the approval of a rodeo organisation (63 fee units).

The proposed Regulations increase three existing fees for rodeos so that fees reflect full cost recovery.

- for the issue of a rodeo licence (from 45 to 48 fee units);
- for the issue of a rodeo permit (from 12 to 41 fee units); and
- for the issue of a rodeo school permit (from 6 to 34 fee units).

Other fees are for scientific procedures.

Under the proposed Regulations, fees for scientific procedures will be maintained at the same level as in the current Regulations. Fees will be set at zero for scientific procedures premises and field work licences obtained by registered schools, children's services and non-for-profit organisations consisting of five or fewer staff.

Implementation and evaluation

In the RIS, the Department notes that while the proposed Regulations include a number of changes, requirements are substantively the same as under the current Regulations. The Department notes that, as a result, activities associated with implementation will remain largely the same as the 'business as usual' approach under the current regulatory environment.

New activities to assist with implementation include a template Animal Welfare Plan for rodeo licence and permit holders, information provided on the Agriculture Victoria website on meeting regulatory requirements and developing annual reporting templates for reporting on specified trap approval use and other approvals.

The Department notes that it will also conduct a communications campaign to ensure awareness at the time of making the POCTA Regulations 2019.

Under the proposed Regulations, a transition period will apply for the phase out of the provision for the Minister to approve a longer trap-check time-interval for leghold traps for the Victorian Wild Dog Program. In the RIS, the Department notes that during the transition period, AWV and other enforcement organisations will work with industry to assist with implementation.

In the RIS, the Department notes that various mechanisms will be used to evaluate the effectiveness of the proposed Regulations. It notes that the primary indicators of the effectiveness of the Regulations are the number and type of animal welfare reports received. It also notes that the main gap in information relates to incidents not reported and that to address this gap, AWV consults with industry and the community on a regular basis to understand key concerns in relation to animal welfare.

The Department states in the RIS that the Victorian Government has committed to modernising Victoria's animal welfare laws which includes a review of the POCTA Act, and that as part of this work the appropriateness, efficiency and effectiveness of the proposed Regulations will be evaluated.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin
**Commissioner for Better Regulation
Regulation**