



Monday 17 November 2008

POCTA Regulation Review  
Bureau of Animal Welfare  
475 Mickleham Rd  
ATTWOOD VIC 3049

Dear Review Members

Re: **Proposed Prevention of Cruelty to Animals Regulations 2008** ('the Regulations')

Lawyers for Animals ('LFA') makes this submission with respect to the Regulations. LFA is a not-for-profit incorporated association run by a management committee of lawyers. The organisation's objectives include: alleviation of the suffering of animals by engaging with those who create or administer laws in Australia in order to strengthen legal protection for animals; and promotion of better animal welfare practices among animal-related industries in Australia. For more information, please refer to our website: [www.lawyersforanimals.org.au](http://www.lawyersforanimals.org.au).

## A GENERAL COMMENTS

1. At the highest level, LFA notes that the humane treatment of animals is increasingly viewed as an issue of significance and opportunity in a range of jurisdictions – for example electronic collars and rodeos are already banned in other comparative jurisdictions (see p 28 of the RIS for the Regulations and rodeos are banned in the Australian Capital Territory), and a number of commentators suggest animal welfare is *the* emerging issue in rights discourse.<sup>1</sup> LFA urges the Government of Victoria to continue to perform as a leader both within Australia and beyond by viewing its suite of animal protection legislation as an opportunity to set new standards and directions.
2. The penalties provided by the Regulations are too low when they are provided and, in the case of some proscribed acts (see below), do not exist at all. Those penalties that do exist are too low in terms of both (i) an appropriate infringement for the nature of the act/s committed, and (ii) the value of a penalty to act as a deterrent. In terms of those proscribed acts which lack penalty, LFA queries the value of the proscription in the first instance.

LFA strenuously urges an increase to all of the penalties provided by the Regulations and the insertion of a penalty for those proscribed acts which do not currently attract one.

## B SUBSTANTIVE COMMENTS

### PT 2 – PROTECTION OF ANIMALS

#### Div 1 General requirements

3. New Regulation 6 – prohibiting placement or transport of an animal in a confined boot. LFA supports this new provision.
4. New Regulation 7(3) – prohibiting possession of 'an animal' with intention to cause the animal to fight. LFA supports this new provision and suggests the words 'an animal' be replaced by the words 'any animal'. This is for the avoidance of doubt because sub-regulations (1) and (2) are restricted to dogs and cocks only.
5. New Regulation 8 – prohibiting the use of twisted or corrugated mouthpieces for horses. LFA supports this new provision.

<sup>1</sup> See, eg, comments by Professor David Weisbrot AM, President of the Australian Law Reform Commission: <http://www.alrc.gov.au/media/2008/mr0303.html>

6. Regulation 9 – prohibition on pronged collars on any animal. LFA supports this new provision and further submits that it should also ban electronic collars (see comments below).

#### **Div 2 Electronic devices sold or used on animals**

7. LFA submits that any use of electronic devices on animals is inhumane and ought to be banned. The organisation's submissions on this Division are made in that context.
8. Regulations 12, 13 – electric fences and prodders. LFA submits that a maximum voltage ought to be specified for these devices and that it ought to be the lowest level possible.
9. Regulation 15 – electronic ejaculators. LFA queries the differentiation between cattle, buffalo, sheep and other species. If there is potential for pain to be caused by this interventionist technology, all animals upon which it is imposed ought to be protected by the use of an anaesthetic.
10. Regulation 16 – use of electronic collars. LFA submits there ought to be a **total ban on the use of electronic collars**. The RIS details that this technology is controversial and is already banned in many other jurisdictions. Also, while the humane use of electronic collars requires a 'highly skilled user', these collars are freely available to the general public and are sold with minimum instruction (p 28). LFA submits that if electronic collars are not totally banned, they should only be made available to highly skilled users.
11. Regulation 16(1)(b)(c) permits an electronic collar to be used on a dog as young as 6 months and that such a collar may be left on for 12 hours in any 24 hour period. LFA submits 6 months is too young and the permitted duration is excessive.
12. Regulation 19 (3) – prohibition against selling an electronic collar other than one manufactured for the use on dogs. Subject to its comment at paragraph 9 above, LFA submits this provision ought to include importation – ie: to become '[a] person must not *import* or sell an electronic collar other than one manufactured for use on dogs.'

#### **Div 3 Leghold traps**

13. LFA submits that any use of leghold traps on animals is inhumane and **ought to be banned**. The organisation's submissions on this Division are made in that context.
14. Regulations 20, 23, 26, 27 proscribe certain acts with respect to the use of leghold traps but each lacks a penalty for breach. LFA submits each of these provisions ought to be subject to a penalty.
15. Regulation 27(2) – duration of live trapped animal is 24 hours. LFA submits that the length of time that a trapped animal that is likely to be severely wounded and in pain is too high and ought to be reduced significantly. At a minimum, LFA submits that the time should be reduced to 8 hours (so that if the trap is set in the morning it can be checked at the end of the day, and if it is set at night it can be checked first thing in the morning).

#### **Div 4 Confinement traps**

16. Regulations 28, 30, and 31 proscribe certain acts with respect to the use of confinement traps, and r 29 prescribes certain features for traps, but each lacks a penalty for breach. LFA submits each of these provisions ought to be subject to a penalty.
17. Regulation 29 – prescribed features of confinement traps. Sub-regulation (a) provides that a trap must not cause unreasonable pain or suffering to the trapped animal. LFA submits the word 'unreasonable' ought to be deleted, as it is vague and inherently subjective.
18. Regulation 31(2) and (3) – duration of confinement of a trapped animal under different conditions. LFA submits these permissible periods of confinement are too long and represent inhumane treatment for an animal that is trapped, stressed and has no sense of when it will be released. The periods should be reduced to 24 hours and 8 hours respectively (for instance, in heat conditions it is inhumane to leave an animal without water for 24 hours as currently permitted by r 31(3)).

#### **Div 5 Net traps**

19. Regulations 32, 34 and 35 proscribe certain acts with respect to the use of confinement traps and r 33 prescribes certain features for net traps, but each lacks a penalty for breach. LFA submits each of these provisions ought to be subject to a penalty.

20. Regulation 35(2) – duration time in a net trap. LFA makes a comment similar to that at paragraph 17 above and, in the context of an animal caught in a net, submits the permissible period ought to be reduced to 2 hours.

#### **Div 6 Non-kill snare traps**

21. Regulation 36 proscribes certain acts but lacks a penalty for breach. LFA submits this provision ought to attract a penalty for breach.
22. Regulation 37(a) provides that the trap must not cut or strangle the animal. LFA submits that, consistently with other types of traps, the provision should additionally include that it 'must not cause pain or suffering'.

#### **Div 7 Rodent kill traps**

23. Regulation 40 proscribes certain acts but lacks a penalty for breach. LFA submits that this provision ought to attract a penalty for breach.
24. Regulation 41 permits up to 180 seconds for an animal to become unconscious or insensible. LFA submits that, in this context, 3 minutes is too long.

#### **Div 8 Kill traps**

25. Regulation 44 proscribes certain acts but lacks a penalty for breach. LFA submits this provision ought to attract a penalty for breach.
26. Regulation 45 permits up to 180 seconds for an animal to become unconscious or insensible. LFA submits that, in this context, 3 minutes is too long.

### **PT 3 – RODEOS AND RODEO SCHOOLS**

27. LFA submits that rodeos represent and encourage an attitude to animals that belongs to eras past. For instance, if rodeos did not yet exist and there was an attempt to introduce them today, it is unlikely contemporary standards would countenance such animal abuse. LFA submits that, consistently with the Australian Capital Territory and a number of countries, **rodeos should be banned** (RIS, p 78). The organisation's submissions on this Part are made in that context.
28. Regulation 51 – application for a rodeo or rodeo school permit. LFA submits the application should include that the applicant is aware of the Regulations and that he/she is bound by law to comply with them. This requirement would assist in the enforcement of the Regulations.  
  
Also, as a matter of clear and plain drafting, the wording of sub-regulation (k) ought to be amended to 'the name of the approved organisation with which the applicant is accredited'.
29. Regulation 52 prescribes certain conditions for the care of animals but provides no penalty for a breach. LFA submits that this provision ought to attract a penalty for breach.
30. Regulation 60 prescribes a minimum weight for animals. It is not clear how this provision works with Regulation 61. LFA submits that Regulation 61 ought to prevail in all circumstances.
31. Regulation 61 – age of horse for bucking events. LFA submits that 3 years is too young and ought to be amended to a minimum of 4 years.
32. Regulation 77 – use of electric prodders at a rodeo. LFA submits that the use of electronic prodders at rodeo events should be banned because the risk of misuse and the adverse message to the general public is high.
33. Finally, given the commercial nature of these enterprises, LFA submits the level of the penalties in this Part are especially insufficient.

### **PT 4 – SCIENTIFIC PROCEDURES**

#### **Div 1 Scientific procedures premises licence**

34. Regulation 86(g) requires that an application for the issue or renewal of a scientific procedures premises licence includes that the person nominated for the purposes of s 26(2) of the Act consents to that nomination. LFA submits this declaration ought to include that the nominee understands the obligations of the Act and the Regulations which, in the case of a breach, would assist in prosecution.
35. Regulation 87 prescribes the conditions for the purposes of the Act. LFA notes that if penalties are not provided in the Act then they ought to be inserted in either the Act or the Regulations.
36. Regulation 87(20)(a) permits an animal which has been the subject of a scientific intervention to be left to die without being killed humanely before death occurs. LFA submits this provision is inhumane and ought to be deleted.
37. Regulation 87(23)(d)(iv) requires a declaration from the nominated person that he/she consents to the nomination. LFA submits the declaration ought also to include that the nominee understands the obligations under the Regulations. This would assist in the event of prosecution for a breach.

#### **Div 2 Scientific procedures field work licence**

38. Regulation 89(f) – the same declaration and LFA comment as paragraph 37 above.
39. Regulation 90 prescribes compliance with a Code of Practice for the purposes of the Act (including animal care and welfare). LFA notes that if penalties are not provided in the Act then they ought to be inserted in either the Act or the Regulations.
40. Regulation 90(16) permits an animal which has been the subject of a scientific intervention to be left to die without being killed humanely before death occurs. LFA submits this provision is inhumane and ought to be deleted.
41. Regulation 90(20)(d)(iv) – the same declaration and LFA comment as paragraph 37 above.

#### **Div 3 Specified animals breeding licence**

42. Regulation 92(g) – the same declaration and LFA comment as paragraph 37 above.
43. Regulation 93 prescribes compliance with a Code of Practice for the purposes of the Act (including animal care and welfare). LFA notes that if penalties are not provided in the Act then they ought to be inserted in either the Act or the Regulations.
44. Regulation 93(17)(d)(iv) – the same declaration and LFA comment as paragraph 37 above.
45. Finally, given the frequently commercial nature of these enterprises, LFA submits the level of the penalties in this Part are especially insufficient.

Finally, and as a matter of process, LFA notes the Regulatory Impact Statement prepared for the Regulations details a list of relevant stakeholders (p 119). LFA does not appear on this list and kindly requests that it be added to DPI's animal welfare/protection stakeholder list.

LFA thanks the POCTA Regulation Review for the opportunity to comment on the Regulations and, if invited, would be pleased to discuss the above matters with the Review group. If you have any queries, please contact Nichola Donovan via email: [nichola@lawyersforanimals.org.au](mailto:nichola@lawyersforanimals.org.au)

Yours sincerely



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