

# Animal Welfare Legislation

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## Contents

1. Introduction.....	2
2. Objects .....	3
3. Key definitions.....	3
4. Animal Welfare Authority (the Authority) .....	4
5. Animal Welfare Advisory Committee (the Advisory Committee) .....	5
6. Duty of care.....	5
7. Animal cruelty .....	6
8. Aggravated Animal Cruelty .....	7
9. Other prohibited conduct .....	7
10. Penalties .....	8
11. Enforcement .....	8
12. Compliance monitoring programs.....	10
13. Offence to hinder or assault an inspector .....	10
14. Dealing with seized animals .....	10
15. Court orders .....	11
16. Moiety .....	12
17. National Animal Cruelty Offenders Register .....	12
18. Interstate recognition .....	12
19. Statutory presumption - person in charge .....	12
21 Liability of employers (including companies) and directors .....	12
22 Whistleblower protections .....	13
23 Animal Welfare Trust Fund .....	13
24 Recovery of costs .....	13
25 Immunity from civil liability .....	13
26 Subordinate legislation (regulations, standards, and codes) .....	13

## 1. Introduction

Animal welfare legislation has existed in Australia for almost two centuries and has played a crucial role in preventing acts of cruelty and educating the community about appropriate standards of animal care. Australian animal welfare legislation is primarily governed at a state and territory level, although the federal government has responsibility for animal welfare standards in international trade, including live animal exports, export abattoirs, and the international wildlife trade. Traditionally, animal welfare legislation was reactive in nature and focused simply on prohibiting acts of cruelty. Over time the legislation has expanded its remit to encompass the broader objective of promoting improved standards of welfare in all areas of animal use and interaction.

This expansion is reflected through the imposition of positive duties on animal owners to provide for the welfare of animals under their care, custody or control as well as in the formulation of national Standards and Codes of Practice for different animal use industries and sectors. In most states and territories this expansion is also reflected in changes to the title of the legislation, from the 'Prevention of Cruelty to Animals Act' to the 'Animal Welfare Act' or 'Animal Care and Protection Act'.

While this is a positive development, RSPCA Australia believes there are still many areas in which the legislation can be enhanced to ensure the continuous improvement of animal welfare standards to secure good animal welfare outcomes. Modern animal welfare legislation should be designed to achieve the following key outcomes:

- standards that reflect principles of good animal welfare, contemporary scientific knowledge and community expectations
- consistent animal welfare policies embedded within and across all tiers of government
- broad recognition of animal sentience and awareness of appropriate duties of care to animals within the community, business, government and industry
- a robust and proactive compliance and enforcement framework that deters cruel behaviour towards animals and encourages compliance.

RSPCA Australia supports a national approach to animal welfare legislation. This is because key outcomes and core components of a model Act are common to all Australian states and territories, and national consistency in education and enforcement are more likely to achieve these outcomes. This position paper is intended to inform the review of state and territory animal welfare legislation. Animal welfare legislation will continue to evolve. This position paper will be reviewed periodically to reflect changes in community expectations and developments in animal welfare science and technology.

This position paper should be read in conjunction with:

- Policy GP1 Good animal welfare
- Policy GP2 Animal welfare legislation
- Policy GP3 Standards and guidelines, and codes of practice
- Position Paper H2 Development of animal welfare standards

## 2. Objects

- 2.1. The objects of legislation outline the purpose of the law and the outcomes it is intended to achieve. In doing so, the objects provide the judiciary, lawyers, policy officers and enforcement personnel with guidance in the interpretation and application of the legislation, particularly in cases of ambiguity. In the case of animal welfare, the legislation should recognise not only the objectives of promoting good animal welfare and preventing animal cruelty but also the core basis for why these objectives are important.
- 2.2. Fundamentally, animal welfare is important because animals are sentient. The sentience of animals is the core reason for why their interests count and why it is wrong to treat animals cruelly. Such recognition reflects developments in community attitudes in moving beyond simply valuing animals for their instrumental worth. Accordingly, the objects of animal welfare legislation should be to:
- recognise that animals are sentient beings with intrinsic value
  - encourage and promote the welfare of animals, including positive states of welfare
  - prevent cruelty to animals
  - educate the community about such objects.

## 3. Key definitions

### 3.1. *Animal*

As the object of the Act is to protect all sentient animals, the definition of ‘animal’ should be broad and include any live non-human sentient creature. In the interests of certainty, the Act should provide a non-exhaustive list of established categories of sentient animals, but without limiting the generality of the general definition so that additional species may still come within the definition as evidence of their sentience becomes available. This list should include all live vertebrate species and certain invertebrate species of Cephalopoda and Malacostraca such as octopi, squid, crabs, crayfish, and lobsters.

### 3.2. *Person in charge*

The concept of the ‘person in charge’ is utilised in animal welfare legislation to attribute legal responsibility for fulfilling duties of care to animals that are under a person’s care, custody or control. The definition of this term should be inclusive and cover the following:

- the legal owner of the animal
- any person who has custody or control of the animal
- the employer of a person with custody or control of the animal if the employment is connected with such custody or control
- the occupier of a place or vehicle where the animal was at the relevant time.

### 3.3. *Harm*

- 3.3.1. The terms ‘harm’, ‘pain’, or ‘suffering’ are generally used in offence provisions to refer to the effect of a particular act or omission on an animal.

3.3.2. RSPCA Australia supports use of the term ‘harm’ as opposed to ‘pain’ or ‘suffering’ as the ordinary meaning of ‘harm’ has a broader meaning, which can include both pain and suffering, along with a range of other mental and physical experiences such as distress, injury, and unconsciousness.

#### 3.4. **Sentience**

As the scope of the term ‘animal’ is determined by the quality of sentience, it is necessary for the legislation to provide a definition of the term. The definition should be clear and concise but broad in application and include the ability to feel and perceive things.

#### 3.5. **Severe harm**

The term ‘severe harm’ can be used to distinguish categories of animal cruelty offences and is generally an element of an offence of aggravated animal cruelty, or equivalent. ‘Severe harm’ should be defined as harm that:

- endangers the life of an animal
- results in the animal being so severely injured or diseased, or in such other physical or mental condition, that it would be cruel not to euthanase the animal, or
- results in serious and protracted impairment of a physical or mental function.

### 4. **Animal Welfare Authority (the Authority)**

4.1. Animal welfare regulation is a complex and specialised field involving a diverse range of factors and competing interests. The administration of such legislation requires a diverse range of skills, expertise and independence.

4.2. Animal welfare legislation should be administered by a dedicated, independent statutory authority established under the Act. It is critical that the Authority is provided with adequate funding, resources, and skills to enable it to perform its functions competently and effectively.

4.3. The Authority should be accountable to an appropriate Minister and be covered by the relevant state or territory Ombudsman, Freedom of Information, whistleblower and other legislation dealing with the accountability of the public sector.

4.4. The Authority should have the following functions:

- overseeing the enforcement of the Act, including the process of referring inspectors for appointment from relevant state and territory government agencies, local authorities, RSPCA Inspectorates, and other authorised non-government organisations
- administering animal welfare compliance monitoring programs with respect to commercial industries and scientific establishments
- determining applications for the transfer of title for seized animals and the imposition of orders restricting or prohibiting individuals from having custody of animals
- formulating and reviewing animal welfare policy and regulations under the Act
- providing advice to the Minister in relation to the administration and enforcement of the Act

- publicly reporting on key administration and enforcement performance indicators
- representing the relevant state or territory government in national animal welfare advisory, policy, and standards development processes.

## **5. Animal Welfare Advisory Committee (the Advisory Committee)**

The Act should establish an Animal Welfare Advisory Committee for the purpose of advising the responsible Minister on animal welfare matters, including the development of regulations, standards and codes made under the Act. The constitution of the Advisory Committee should be established by the Act with balanced membership including individuals with expertise in the areas of law and regulation, ethics, public policy, veterinary and animal welfare science, animal husbandry and production, and animal welfare advocacy.

## **6. Duty of care**

6.1. Animal welfare legislation should impose a positive duty of care upon all persons who have animals under their care, custody or control. This is an essential feature of contemporary animal welfare legislation that facilitates proactive responses to cases of neglect and early intervention to prevent suffering. The duties imposed should reflect the physical and mental needs of animals as informed by contemporary animal welfare science.

6.2. Offences for breaching the duty of care provisions should be separate from the animal cruelty offences within the Act. This distinction will enhance the educative effect of the duty of care provisions. However, there should still be parity between the maximum penalties available for duty of care offences and those provided for the standard cruelty offences. This will reflect the fact that duty of care offences are no less serious than animal cruelty offences.

### **6.3. Appropriate food and drink**

The duty of care must include an obligation to provide appropriate and adequate food and drink for the animal. Appropriate and adequate food and drink will be that which is necessary to meet the nutritional needs of the particular animal at the particular time in the animal's growth or reproduction and taking into account prevailing environmental conditions.

### **6.4. Appropriate living conditions**

The duty of care must include an obligation to provide the animal with appropriate living conditions. RSPCA Australia supports the use of the term 'living conditions' in place of 'shelter' as it has a broader meaning and application. The obligation should also be made to apply equally to temporary and permanent living conditions. Appropriate living conditions will be conditions that provide the animal with a clean, secure, and enriched environment in which the animal can express their behavioural needs, and be afforded appropriate protection from the weather and predation.

### **6.5. Prevention and mitigation of harm**

The duty of care must include a two-fold obligation to take all reasonable steps to prevent the animal from suffering harm, and to take all reasonable steps to mitigate any harm that is suffered by the animal. In many cases this will require the provision of veterinary treatment. Framing the obligation as simply one of 'providing

treatment for disease or injury' is reactive in nature and does not have as broad an application as one of taking reasonable steps to prevent and mitigate harm.

#### 6.6. Expression of behavioural needs

The duty of care must include an obligation to ensure that animals are provided with appropriate opportunities to express behaviours that are necessary for maintaining their welfare. This obligation can be satisfied through the provision of living conditions that enable animals to express such behaviour or, if appropriate, by taking them to a suitable location in which they can express such behaviour. Depending on the species, it may also require opportunities for socialisation with conspecifics. Framing the obligation as simply one of providing 'exercise' does not adequately cover the range of behaviours an animal may need to express in order to avoid poor welfare outcomes.

#### 6.7. Appropriate handling

The duty of care must include an obligation to ensure that any handling of the animal is appropriate and causes no, or minimal, stress to the animal.

#### 6.8. Competency

The duty of care must include an obligation to ensure that persons in charge of animals have the required competency, including relevant knowledge, experience, and skill, to fulfil their duty of care to the relevant animal in the circumstances.

### 7. Animal cruelty

7.1. The Act must contain an absolute prohibition on acts of animal cruelty. Animal cruelty is a malleable concept that can be interpreted in a variety of ways depending upon the context in which it is applied. Traditionally, animal welfare legislation has defined the concept broadly as the infliction of unnecessary harm upon an animal. Defining the concept in this way allows the law to cover an infinite array of different factual scenarios that may constitute acts of cruelty. However, broad definitions also leave a lot of room for judicial discretion, which can create inconsistencies in the law's application. Therefore, it is important that the legislation provide guidance to the judiciary in determining when harm to an animal can be deemed unnecessary and what kinds of acts or omissions amount to animal cruelty.

7.2. RSPCA Australia supports a definition of animal cruelty that gives rise to a strict legal test of necessity framed as an act or omission that causes, or is likely to cause, harm to an animal, unless such harm is necessary in the circumstances. The Act should then provide the court with guidance on how to determine whether the harm was necessary in the circumstances by codifying certain considerations that are well established under the common law, including:

- the necessity of the intended purpose of the act or omission, which caused, or was likely to cause, the harm
- the necessity of the severity and duration of the harm caused
- the availability and accessibility of less or non-harm-causing alternatives
- whether in all the circumstances the degree of harm caused was proportionate to the purpose of the act or omission concerned.

7.3. While further delineation of the prohibition is not as a matter of law necessary, in the interests of certainty, the Act should provide for a list of established categories of acts or omissions that constitute animal cruelty, but without limiting the

generality of the general prohibition as framed above. This list may include the following:

- beating, abusing, terrifying, or tormenting an animal
- overriding, overworking, overdriving an animal, or otherwise pushing an animal beyond its usual mental and physical capabilities
- confining, tethering or transporting an animal in a way that is inappropriate for the animal's welfare
- killing an animal without a reasonable justification, in a way that does not cause death to occur as rapidly as possible, or otherwise in a way that causes unnecessary pain, suffering or distress.

## **8. Aggravated Animal Cruelty**

- 8.1. The Act should establish a separate category of animal cruelty for particularly serious offences that result in severe harm or death to the animal.
- 8.2. This category of offending should be titled 'aggravated animal cruelty' (or similar) and should attract higher penalties than those provided for under the breach of duty of care or animal cruelty offence sections above. Aggravated animal cruelty offences should also be classified as 'indictable offences' under the relevant state or territory criminal procedure legislation.
- 8.3. The Act should also include a statutory alternative that provides the court with the power to find a person guilty of the standard animal cruelty offence, if the aggravating features of severe harm or death cannot be satisfied.

## **9. Other prohibited conduct**

After the general offences listed above, the Act should then go on to address a number of specific activities that are prohibited. Many of these prohibitions may also be addressed in regulations under the Act. This position paper does not intend to provide an exhaustive list of prohibited conduct but recommends that the following be addressed with appropriate definitions:

- abandoning or unreasonably releasing an animal
- organising, attending or otherwise participating in animal fighting events
- possession of animal fighting paraphernalia
- organising, attending or otherwise participating in horse jumps racing events
- organising, attending or otherwise participating in the hunting of animals for sport, including with the use of bows, or the operation of a game park within which animals are confined for the purposes of hunting
- organising, attending or otherwise participating in rodeo events
- surgical procedures performed by a person other than a registered veterinary practitioner
- surgical procedures or mutilations designed to impair, disable or otherwise alter the natural physical form of an animal for aesthetic purposes
- breeding an animal with known and avoidable genetic problems that cause harm to the progeny
- use and possession of steel-jawed and other leg-hold traps and snares
- use and possession of glue traps



- use and possession of certain electrical devices (i.e. shock collars, prodders etc)
- use and possession of pronged collars
- use of animals in circus life where their physiological, social or behavioural needs cannot be met
- failing to take reasonable steps to mitigate harm caused to an animal after hitting the animal with a vehicle
- using an animal as a bait or lure for other animals
- administering a harmful substance to an animal.

## 10. Penalties

- 10.1. Penalties available under the Act should be sufficient to act as a deterrent to individuals or companies who may otherwise be inclined to neglect or harm animals. The penalties must reflect the community's views and the fact that animal cruelty is a serious crime. RSPCA Australia supports a combination of fines and terms of imprisonment. These penalties should be imposed in conjunction with appropriate court orders addressed below.
- 10.2. The Act should also empower inspectors to issue infringement notices that impose 'on the spot' fines, but only for offences that are administrative in nature or not of the requisite level of seriousness to warrant criminal prosecution.

## 11. Enforcement

- 11.1. It is crucial that adequate funding and resources are provided by government to ensure that the provisions of the Act can be effectively enforced. A cooperative approach should be adopted by government whereby all relevant agencies are encouraged to accept their responsibility for responding to and addressing animal welfare complaints and incidents.
- 11.2. **Inspector appointment**
- 11.2.1. Inspectors should be appointed by the Minister or delegated public official after referral from the Authority. Sufficient numbers of inspectors must be appointed with adequate resourcing to ensure all animal cruelty reports can be attended to within a reasonable time period and fully investigated, necessary follow up checks can be undertaken, and pro-active compliance monitoring inspections and audits can be carried out with respect to commercial animal businesses and industries.
- 11.2.2. Inspectors should only be appointed once they have satisfactorily completed an appropriate course of training on the enforcement of the Act and other key operational requirements.
- 11.2.3. Once appointed, inspectors should be classified as 'public officials' under relevant state or territory public sector legislation and be subject to the provisions of the relevant Ombudsman and Freedom of Information legislation, and other public sector accountability legislation.
- 11.2.4. The inspectorate should be composed of:
- officers from RSPCA Inspectorates and other authorised non-government organisations
  - officers from relevant state and territory government agencies, and Animal Welfare and Local Government Authorities.



11.2.5. State and territory police officers must also be afforded the powers of an inspector under the Act.

### 11.3. Powers of inspectors

11.3.1. Inspectors must be provided with sufficient powers to enable them to effectively investigate suspected offences and enforce the Act.

11.3.2. Inspectors must be afforded powers to enter property for the purposes of administering the Act. Entry to dwellings should only be permitted by authority of a warrant from a Justice of the Peace or Magistrate, unless the inspector reasonably believes an animal is in imminent risk of death or severe harm, or evidence of an offence within the dwelling may be concealed or destroyed if entry is not immediately effected.

11.3.3. Inspectors must be afforded a power to take custody of animals if the inspector reasonably believes it is required for the welfare of the animal. An inspector should also be empowered to seize animals or property if the inspector reasonably believes the animal or property is the subject of an offence or may provide evidence of an offence, whether or not the animal's welfare is at risk at the time.

11.3.4. Inspectors should be empowered to do all things reasonably necessary to effect seizure and provide appropriate care for seized animals, including the provision of veterinary treatment.

11.3.5. The Act should also provide inspectors with a power to issue formal written directions to persons in charge of animals, which direct the person to take certain action in relation to the animal.

11.3.6. To further facilitate the effective enforcement of the Act, inspectors should also have the power to:

- enter property for the purposes of ensuring compliance with an animal welfare direction or court order
- carry out examinations of animals and take samples including with the assistance of a veterinary practitioner
- apply to a Court or the Authority for an order restricting or prohibiting a person from having custody of animals in the absence of prosecution proceedings
- take reasonable steps to permanently identify a seized animal
- require people at the property to assist the inspector in exercising the inspector's powers
- require people suspected of an offence to provide their name, date of birth and address, and to show proof of identifying documents when requested
- require people and companies, including those not suspected or accused of having committed an offence, to provide information in relation to an offence
- euthanase animals the inspector reasonably believes are so physically or mentally unwell, injured, or otherwise in such pain, that it would be cruel to keep the animal alive.

### 11.4. Access to government information

Inspectors may require access to certain information held by various government agencies to facilitate enforcement of the Act, including under legislation pertaining

to surveillance devices, telecommunications, criminal antecedents, and assumed identities. This information will usually be in relation to the identity or contact details of persons suspected of committing offences under the Act. It is critical that the legislative and administrative arrangements in the relevant state or territory recognise inspectors as law enforcement officers under the Act and provide for the authorised release of such information for enforcement purposes.

## **12. Compliance monitoring programs**

- 13.1 The Act should establish a power for the Authority to create and administer programs for monitoring compliance with relevant regulations, standards and codes within animal industries and businesses, including livestock facilities, pet stores, breeding and training establishments, zoos, aquaria, scientific facilities, and other facilities where animals are kept for commercial purposes.
- 13.2 The compliance monitoring program should include a power for inspectors to conduct unannounced inspections of properties carrying out activities prescribed in the monitoring programs.
- 13.3 The Authority should be required to publicly report on compliance monitoring program performance including the number of inspections and other compliance actions carried out each year.

## **13. Offence to hinder or assault an inspector**

- 14.1 The Act should make it an offence to hinder or obstruct an inspector in the course of the inspector's duties. This offence should include the provision of false or misleading information to an inspector, and failure to comply with a lawful written direction given by an inspector.
- 14.2 The Act should also make it an offence to, or to attempt to, assault, threaten, abuse, harass, insult, or intimidate an inspector.

## **14. Dealing with seized animals**

- 14.1. Inspectors should be authorised to retain seized animals until the outcome of prosecution proceedings or otherwise until the animal's legal title is transferred to the seizing authority.
- 14.2. The Act should provide that legal title to a seized animal is transferred to the seizing authority after 14 days from the date of seizure, unless the owner of the animal makes an application to the Court or Authority opposing such transfer. In considering whether to grant the application, the Magistrate or Authority must be satisfied on the balance of probabilities that the animal's welfare will not be put at risk if returned to the owner. The owner's past conduct in failing to care for the animal in an appropriate manner should be made a relevant consideration for the Court or Authority to consider in determining the application.
- 14.3. If an owner opposes a title transfer application, the Court should be empowered to decide whether the owner must then pay a bond or security to account for the ongoing costs of treatment and care for the animal(s) pending the outcome of any prosecution proceedings and title transfer.
- 14.4. If an animal is transferred to the seizing authority, the proceeds of any subsequent sale of the animal(s) are to be used to pay for the costs associated with the seizure of the animal(s) and any subsequent care and treatment provided to the animals. The

balance of any proceeds should be directed to the Animal Welfare Trust Fund (see cl.21).

## **15. Court orders**

16.1 Courts should be afforded a range of powers for dealing with animal cruelty offenders. As there are many cases in which a defendant is found guilty of an offence but not convicted, the authority to make the orders below should not be subject to a conviction being recorded, but to a finding of guilt or mental impairment. RSPCA Australia also supports the development of judicial sentencing guidelines for animal welfare offences to promote greater consistency in sentencing outcomes.

### **16.2 Transfer of title to animal(s)**

The Act must require any animal(s) subject to the prosecution proceedings to be transferred to the seizing authority and empower the Court to order the transfer of legal title to any other animals connected with the proceedings which may be at risk.

### **16.3 Prohibition on having custody of animals**

The Court should be authorised to order that a defendant be prohibited from being the owner or person in charge of an animal for a specified, indefinite, or permanent period. Such orders should also be available before the conclusion of prosecution proceedings in circumstances where the Court is satisfied there is an unacceptable risk the defendant will commit an animal welfare offence before the completion of the proceedings. A mandatory indefinite prohibition order should apply to defendants found guilty of aggravated animal cruelty offences.

### **16.4 Care for animals in particular way**

The Court should be provided with a broad power to order a defendant to care for an animal in a particular way and to present an animal for inspection by an inspector or nominated veterinarian.

### **16.5 Psychological counselling**

The Court should be provided with a power to order a defendant who has committed animal cruelty or breached their duty of care to undergo psychological counselling. This sentencing avenue is very important in light of the confirmed connection between animal cruelty and human violence. Adequate state funding should be provided to ensure the defendant is able to comply with any such order.

### **16.6 Compensation**

16.6.1 The Court should be empowered to order compensation to be paid by the defendant for expenses associated with any seizure, treatment, and care of animals connected with the offence being prosecuted. Compensation should not be confined to expenses associated with the particular animals for which the charges relate. There should be no cap to the amount of compensation that can be ordered by the Court under this provision.

16.6.2 To facilitate consistency in the awarding of compensation, the Act may empower the making of regulations which provide for a costs scale for common items of expenditure associated with seizing, treating, and caring for animals.

**16. Moiety**

If the prosecution derives from an investigation conducted by an inspector employed by the RSPCA or other approved charitable organisation, a 50 per cent moiety of any fine imposed should be directed to the RSPCA or other approved charitable organisation.

**17. National Animal Cruelty Offenders Register**

The Act should provide a mechanism for recording the personal details of individuals who have been found guilty of offences under the Act on a national register. The Register should be accessible to members of state, territory and Commonwealth police forces, relevant state and local government agencies, RSPCA Inspectorates and other authorised non-government organisations.

**18. Interstate recognition**

19.1 The Act should provide for the recognition of interstate court orders that prohibit persons from owning or being a person in charge of animals.

19.2 The Act should also provide for a mechanism to enable the recognition of equivalent interstate inspectors for the purposes of granting them authorisation to exercise powers under the Act in times of natural disaster or other emergencies.

**19. Statutory presumption - person in charge**

20.1 One of the most common grounds of dispute in animal cruelty prosecutions concerns the issue of whether the defendant was the 'person in charge' of the relevant animal(s) at the time of the alleged offence. Obtaining the evidence required to prosecute a person for animal cruelty can be difficult. Animals cannot tell investigators what occurred or provide testimony in court. In this regard animal cruelty investigators are presented with similar difficulties to those experienced in the investigation of offences concerning infant children. As a result of these evidentiary difficulties, some animal welfare offences are not prosecuted.

20.2 To address this, the Act should include a statutory presumption, which provides that if, at the relevant time, a person is in immediate possession of an animal, the person is presumed to be a person in charge of that animal in the absence of evidence rebutting the presumption.

**21 Liability of employers (including companies) and directors**

21.1 The Act should impose vicarious liability upon an employer for any breach of the Act by its employees. The concept of vicarious liability is necessary for encouraging a corporate culture of responsibility that promotes compliance with government regulation. Vicarious liability will encourage directors and officers of companies to take a greater interest in the way in which animals associated with the company's operations are managed and treated.

21.2 Where a company is found to have committed an offence, the Act should extend liability to the individual directors of the company unless the directors can demonstrate that the offence did not result from a failure to exercise reasonable diligence to avoid the commission of the offence.

## **22 Whistleblower protections**

The Act should include whistleblower protections for the disclosure of conduct amounting to an offence under the Act by making such disclosure ‘protected disclosure’ for the purposes of the state or territory’s whistleblower legislation.

## **23 Animal Welfare Trust Fund**

- 23.1 The Act should establish an Animal Welfare Trust Fund to be administered by the Authority. All money realised from fines (following moiety payments) or infringement notices under the Act should be paid into the Animal Welfare Trust Fund.
- 23.2 The proceeds of the Trust Fund should be used to fund animal welfare initiatives within the relevant state or territory. The Authority should be required to consult with the Advisory Committee regarding the disbursement of trust funds.

## **24 Recovery of costs**

The Act should provide grounds to recover all expenses incurred in the seizure, care and treatment of animals under the Act as a civil debt (if not recovered through prosecution proceedings).

## **25 Immunity from civil liability**

The Act should afford inspectors, and any persons assisting inspectors in the exercise of their duties, immunity from civil liability.

## **26 Subordinate legislation (regulations, standards, and codes)**

- 26.1 The Authority should be responsible for coordinating the development of regulations, standards and codes made under the Act. All subordinate legislation made under the Act should be mandatory.
- 26.2 The regulation-making power in the Act should include a condition that subordinate legislation cannot prescribe practices that are inconsistent with the objects and duties under the Act including the principles of the duty of care and the recognition of animal sentience.
- 26.3 The process for making subordinate legislation under the Act must provide for the following steps:
- consultation with the Advisory Committee
  - a robust public consultation process that provides the community with multiple avenues for expressing their views and includes requirements for the advertising of such consultation
  - review and consideration of relevant animal welfare science and best practice
  - review and consideration of community expectations
  - development of a regulation and animal welfare impact assessment
  - the tabling of the proposed new or amended regulations (including any adopted standards or codes) in parliament for debate
  - a review process after a period of no more than five years from the date of enactment.