

**Submission  
No 265**

## **INQUIRY INTO PIG WELFARE IN VICTORIA**

**Organisation:** Animal Defenders Office

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**Animal Defenders Office**  
*Using the law to protect animals*

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The Chair  
Economy and Infrastructure Committee  
Parliament House  
Spring Street  
East Melbourne VIC 3002

12 January 2024

Dear Sir/Madam

**Re: Inquiry into Pig Welfare in Victoria**

Thank you for the opportunity to provide a submission to the Inquiry into Pig Welfare in Victoria by the Economy and Infrastructure Committee (**the Inquiry**).

Our comments on the Inquiry's terms of reference are set out below.

**About the Animal Defenders Office**

The Animal Defenders Office (**ADO**) is a not-for-profit community legal centre that specialises in animal law. The ADO is run entirely by volunteers and provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres Australia Inc., the national peak body representing community legal centres across Australia.

Further information about the ADO can be found at [www.ado.org.au](http://www.ado.org.au).

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## THE ADO'S SUBMISSIONS AND RECOMMENDATIONS IN RESPECT OF THE INQUIRY INTO PIG WELFARE IN VICTORIA

### Recommendations

The ADO makes the following recommendations regarding the welfare of pigs in Victoria:

#### ***The Victorian Pig Welfare Standards (TOR (1))***

**Recommendation 1.1:** That the Victorian Government undertake a complete review of the Victorian Pig Welfare Standards to ensure that they incorporate the latest available information in relation to pig welfare.

**Recommendation 1.2:** That the Victorian Government mandates that surgical procedures on pigs of any age are carried out with pain relief.

**Recommendation 1.3:** That the Victorian Government mandates that environmental enrichment be provided to farmed pigs of any age.

#### ***Methods of stunning and slaughtering pigs (TOR (2))***

**Recommendation 2.1:** That the use of gas to stun pigs in Victorian abattoirs be stopped and its welfare impacts fully investigated.

**Recommendation 2.2:** That the Victorian Government ensure that the Victorian Pig Welfare Standards or other relevant farmed animal standards include pig-specific standards in relation to all relevant methods of killing, stunning and slaughter, and that they are independently reviewed and regularly updated.

#### ***Current industry breeding and housing practices including forms of confinement (TOR (4))***

**Recommendation 3.1:** That the Victorian Government follows the ACT and New Zealand and mandates in legislation that individual housing such as crates and stalls for pigs used for breeding in the commercial pig industry be phased out, with no exceptions, by a specified date.

**Recommendation 3.2:** That the Victorian Government follows New Zealand and ensures that delegated legislation or standards cannot permit husbandry practices that would not comply with welfare requirements in the principal Act.

## Terms of reference and the scope of these submissions

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1. The Committee's Terms of Reference for the Inquiry (**TOR**) include the proposal to examine "*the scope, application, compliance with and enforcement of relevant existing regulatory frameworks and their ability to promote pig welfare outcomes*" (TOR (1)). The ADO's submissions for the purpose of the Inquiry are principally directed towards TOR (1), but also deal with matters relevant to other terms of reference.

## Overview of the current regulatory framework for pig welfare in Victoria

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2. By way of a preliminary general comment, the ADO notes the convoluted and complex nature of the regulatory framework covering pig welfare in Victoria. It is characterised by overlapping legislative and administrative instruments, ill-defined relationships between the instruments, and unacceptable gaps and loopholes.
3. The legislation that deals with the welfare of pigs confined in intensive facilities includes the *Prevention of Cruelty to Animals Act 1986 (Vic)*, the *Livestock Management Act 2010 (Vic)*, and the *Meat Industry Act 1993 (Vic)*. The main set of welfare standards is the *Victorian Standards and Guidelines for the Welfare of Pigs (Victorian Pig Welfare Standards)*. The following submissions canvass the (limited) contributions that these instruments make to promoting the welfare of farmed pigs.

### ***Livestock Management Act 2010 (Vic)***

4. The *Livestock Management Act 2010 (Vic)* (**LM Act**) regulates dealings with farmed animals in Victoria. The LM Act refers to dealings with farmed animals as a 'livestock management activity'. This term is defined to mean 'any activity that relates to the health, husbandry or biosecurity of livestock during any stage of the livestock's life, from birth to slaughter...' (s 3). 'Livestock' is defined to mean 'any animal kept for the purposes of primary production, including cattle, sheep, pigs, ...' (s 3). The confinement and slaughter of pigs are therefore 'livestock management activities' regulated under the LM Act.
5. Under section 6 of the LM Act, a livestock operator must comply with all applicable prescribed livestock management standards when engaging in a 'regulated' livestock management activity, which means any livestock management activity to which a 'prescribed livestock management standard relates' (s 3).
6. Relevantly, the Victorian Pig Welfare Standards are a prescribed livestock management standard under section 7(b) of the *Livestock Management Regulations 2021 (Vic)*.

7. The ADO notes, however, that the requirement under section 6 of the LM Act to comply with livestock management standards, such as the Victorian Pig Welfare Standards, is essentially toothless as it is not an offence provision, providing no meaningful way to enforce it.

### **Victorian Pig Welfare Standards**

8. The Victorian Pig Welfare Standards are based on the *Australian Model Code of Practice for the Welfare of Animals – Pigs (3rd edition)* that was prepared by the national Animal Welfare Committee and subsequently endorsed by the Primary Industries Ministerial Council on 20 April 2007 (**National Model Code**).
9. The stated purpose of the Victorian Pig Welfare Standards is ‘to describe the standards and guidelines that ensure the welfare of pigs in all Australian production systems’.<sup>1</sup> The Victorian Pig Welfare Standards state that the specific needs of pigs are:
- readily accessible appropriate and sufficient food and water
  - adequate shelter to protect them from climatic extremes
  - opportunity to display appropriate patterns of behaviour
  - physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress
  - protection from, and/or rapid diagnosis and correct treatment of, injury or disease
  - freedom for necessary movement including to stand, stretch, and lie down
  - visual and social contact with other pigs.<sup>2</sup>

### **Prevention of Cruelty to Animals Act 1986 (Vic)**

10. The *Prevention of Cruelty to Animals Act 1986 (Vic)* (**POCTA Act**) is the principal animal welfare statute in Victoria. Section 9(1) defines the following acts (among others) as cruelty against an animal:
- a. wounding, mutilating, torturing, overriding, overdriving, overworking, abusing, beating, worrying, tormenting or terrifying an animal<sup>3</sup>

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<sup>1</sup> Victorian Pig Welfare Standards p 1. Available at <https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/pocta-act-1986/pig-welfare-standards-and-guidelines>.

<sup>2</sup> Victorian Pig Welfare Standards p 1.

<sup>3</sup> POCTA Act s 9(1)(a).

- b. loading, crowding or confining an animal where the loading, crowding or confinement of the animal causes, or is likely to cause, unreasonable pain or suffering to the animal<sup>4</sup>
- c. an act or omission with the result that unreasonable pain or suffering is caused, or is likely to be caused, to an animal.<sup>5</sup>

11. However, the cruelty offences in the POCTA Act have limited application to pig welfare in Australia because of exemptions outlined in the POCTA Act and other relevant Victorian statutes. The POCTA Act itself provides that the Act does not apply to (among other things):

- a. the slaughter of animals in accordance with the *Meat Industry Act 1993* (Vic) or any Commonwealth Act;<sup>6</sup> or
- b. any act or practice with respect to the farming, transport, sale or killing of any farm animal which is carried out in accordance with a Code of Practice.<sup>7</sup>

12. 'Code of Practice' is defined in section 3 of the POCTA Act to mean a code 'made and published and as varied from time to time under section 7'. Section 7(1)(a) of the POCTA Act provides that the Governor in Council, on the recommendation of the Minister, may make Codes of Practice specifying procedures for the keeping, treatment, handling, transportation, sale, killing, hunting, shooting, catching, trapping, netting, marking, care, use, husbandry or management of any animal or class of animals.

13. The ADO is unaware of the existence of any Codes of Practice made under section 7 of the POCTA Act relevant to pig welfare.<sup>8</sup> While this may *prima facie* imply that the cruelty offences under the POCTA Act would apply to the keeping of pigs in intensive facilities, section 4(3) of the LM Act provides that for the purposes of the POCTA Act, it is a defence to an offence under that Act (POCTA) if the person was carrying out a regulated livestock management activity and acting in compliance with a prescribed livestock management

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<sup>4</sup> POCTA Act s 9(1)(b).

<sup>5</sup> POCTA Act s 9(1)(c).

<sup>6</sup> POCTA Act s 6(1)(a).

<sup>7</sup> POCTA Act s 6(1)(c). Under s 3 *farm animal* is defined to include pigs. The Act also does not apply to pigs slaughtered on farms: s 6(1)(f). In addition, under s 11(2) of the Act '[i]t is a defence to a prosecution for an offence under section 9 or 10 in relation to an activity if the person charged was carrying out the activity in accordance with a code of practice prescribed for the purposes of this subsection (other than a Code of Practice made under section 7) that regulates that activity.' However, we have been unable to locate any relevant code of practice prescribed for the purposes of this subsection.

<sup>8</sup> Animal Welfare Victoria (part of Agriculture Victoria) lists the Victorian Pig Welfare Standards on its page headed 'Prevention of Cruelty to Animals Act 1986', implying the Standards are created under the POCTA Act: <https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/pocta-act-1986>. However, the Victorian Pig Welfare Standards itself states that its standards 'will be adopted (prescribed) into regulations under the *Livestock Management Act 2010*. The Act and regulations provide for enforcement of those standards' (p 1), with no mention of the POCTA Act.

standard. Ultimately this means that a person acting in compliance with the Victorian Pig Welfare Standards has a defence to any potential animal cruelty offence under the POCTA Act, even if, *but for the Standards*, the conduct would be a breach of the POCTA Act.

14. It is noted that the POCTA Act could apply to conduct carried out in an intensive piggery, if it could be proven that the conduct was not in accordance with a prescribed standard.

### ***Animal Care and Protection Bill***

15. The recently released draft Animal Care and Protection Bill (Vic) (**draft Bill**) would replace the POCTA Act.<sup>9</sup> While the draft Bill does not directly address pig welfare, the ADO notes that:

- a. the draft Bill's proposed recognition of animal sentience<sup>10</sup>, introduction of animal care requirements<sup>11</sup>, and regulation of keeping animals in intensive environments<sup>12</sup>, may impact pig welfare obligations in Victoria; and
- b. the effectiveness of the draft Bill in promoting pig welfare outcomes would be heavily dependent on the making of regulations which is scheduled to happen after the passing of the Bill.<sup>13</sup>

16. Thus while the draft Bill may not follow the POCTA Act in explicitly excluding from its scope activities related to farmed pigs, the same result may be achieved in practice depending on the content of the regulations.

### ***Meat Industry Act 1993 (Vic)***

17. The *Meat Industry Act 1993* (Vic) (**MI Act**) sets the standards for meat production for human consumption and pet food in Victoria, including the slaughtering of pigs in abattoirs. The MI Act establishes a licensing and inspection system for meat processing facilities. According to the industry regulator, PrimeSafe, licence conditions require all abattoirs to comply with relevant Australian and Victorian standards and guidelines.<sup>14</sup> The relevant standard for pigs is the *Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption (AS 4696:2007)*. It is an offence under the MI Act to fail to comply with a licence condition or restriction (s 41). The maximum

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<sup>9</sup> 'Animal Care and Protection Bill. Exposure Draft', available at: <https://engage.vic.gov.au/project/new-animal-welfare-act-victoria/page/make-a-submission-on-the-draft-bill>.

<sup>10</sup> The draft Bill s 6.

<sup>11</sup> The draft Bill Part 3.

<sup>12</sup> The draft Bill Part 5.

<sup>13</sup> For example the draft Bill s 31(1)(a) 'Exceptions for conduct regulated by Part 5', would provide that 'A person who kills, wounds or captures an animal for a specified reason in contravention, but for this subsection, of a Part 3 offence provision, does not contravene the provision if...regulations under this Act apply to that killing, wounding or capturing of the animal'.

<sup>14</sup> <https://www.primesafe.vic.gov.au/licensing/>. PrimeSafe is established under Part 6 of the MI Act.

penalty is currently approximately \$9,600 for a first offence, or double the amount or 12 months imprisonment or both for a subsequent offence.

18. AS 4696:2007 has a short section on animal welfare in the part of the Standard dealing with the slaughter and dressing of animals (pp 21-22). The animal welfare standards do not distinguish between species of animals so there is no specific guidance for pigs. The main (generic) stipulations regarding slaughter are:

7.9 Animals are slaughtered in a way that prevents unnecessary injury, pain and suffering to them and causes them the least practicable disturbance.

7.10 Before sticking commences, animals are stunned in a way that ensures the animals are unconscious and insensible to pain before sticking occurs and do not regain consciousness or sensibility before dying.

7.11 Before stunning commences, animals are restrained in a way that ensures stunning is effective.

19. While there is a national model code of practice regarding farmed animals in abattoirs (the *2001 Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments*), it does not appear to be incorporated into Victorian law.

### **Issues with the current regulatory framework in promoting pig welfare outcomes and recommendations for reform**

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20. The ADO has identified several concerns regarding the current regulatory framework which inhibit the framework's ability to promote pig welfare. They are discussed below.

#### ***Currency of the Victorian Pig Welfare Standards***

21. As previously noted in these submissions, the Victorian Pig Welfare Standards is based on the **National Model Code**. These documents are referred to together in this part of the submissions as the 'pig welfare codes'.
22. The ADO submits that the pig welfare codes cannot guarantee good pig welfare outcomes because:
- a. The pig welfare codes recommend minimum standards, not best practice.
  - b. The pig welfare codes are now out of date. The Victorian Pig Welfare Standards were last revised in 2012, more than 10 years ago. The National Model Code, on which the Victorian Standards is based, was published in 2008.
    - i. The National Model Code explicitly acknowledges 'The Code is based on the knowledge and technology available at the time of publication' (1.2).

23. The pig welfare codes do not refer to more recent animal welfare literature, even material produced by the pig industry. This would include, for example, Australian Pork's *Review of the scientific literature and the international pig welfare codes and standards to underpin the future Standards and Guidelines for Pigs*, APL Project 2017/2217 (**APL Report**).<sup>15</sup>
24. As an example of the disparity between the pig welfare codes and the APL Report, the Victorian Pig Welfare Standards provide a minimum space allowance of 1.4 square metres per adult for female pigs kept indoors in group housing (4.1.2(3)). Yet this is now considered small even by industry standards. According to the APL Report, '[r]esearch on space allowance indicates that a space allowance for gilts and sows of 1.4 m<sup>2</sup>/animal is likely to be too small and that significant improvements in welfare, in terms of aggression and stress, are likely to be achieved with space allowances for gilts and sows in the range of 2.0 – 2.4 m<sup>2</sup>/animal'.<sup>16</sup>
25. The ADO submits that compliance with codes of practice that are more than 10 years old is no guarantee that contemporary minimum animal welfare standards will be met. For example, the Victorian Pig Welfare Standards recommends that male piglets be castrated between 2-7 days old but allows the surgical procedure to be performed without anaesthesia and not by a registered veterinary practitioner. The ADO submits that this is unacceptable by contemporary animal welfare standards.<sup>17</sup> In support of this submission it is noted that Coles Supermarkets Australia demands that surgical castration is not permitted on pigs used for pork products supplied to its supermarkets unless it is deemed necessary by a veterinarian for therapeutic reasons, and in that circumstance it must be carried out under anaesthesia by a veterinarian.<sup>18</sup>
26. The standards in the pig welfare codes do not address other matters that are now regarded as important welfare issues, such as environmental enrichment, or pain relief for other routine husbandry procedures such as tail docking, ear notching, nose ringing or teeth clipping.
27. The ADO submits that it is unacceptable to have the welfare of pigs regulated by out-of-date standards given:

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<sup>15</sup> <http://www.animalwelfarestandards.net.au/files/2019/01/APL-Project-2017-2217-review-of-pig-welfare.pdf>.

<sup>16</sup> APL Report p 4.

<sup>17</sup> In Canada, it is recommended that castration performed at any age should be done under analgesic. In New Zealand, castration of piglets is not performed in pigs under commercial conditions but if it is performed, the pig must be given pain relief at the time of the procedure. In the United Kingdom and the European Union, castration performed after 7 days should only be done under anaesthetics.

<sup>18</sup> APIQ Standards Manual (V5.2 12/2022), CSC 1.2, p43.

- a. the growing concern in the Australian community about the welfare standards for intensively confined farmed animals,<sup>19</sup>
- b. supermarkets moving away from the more inhumane aspects of intensive confinement of pigs,<sup>20</sup> and
- c. the international recognition of the ‘Five Domains’ rather than the ‘Five Freedoms’ as the better model of animal welfare to assess the impacts of human procedures on animals given its ‘strong focus on mental well-being and positive experiences’.<sup>21</sup>

28. In summary, Victoria’s welfare standards and guidelines for the intensive pig industry are based on knowledge and technology that are more than 15 years old and are therefore out of step with contemporary views on animal welfare. The ADO submits that this is unacceptable for any Australian jurisdiction, especially one that aims to be a leader in farmed animal welfare, and should be rectified by a comprehensive and independent review of the relevant standards.

**Recommendation 1.1:** That the Victorian Government undertakes a complete review of the Victorian Pig Welfare Standards to ensure that they incorporate the latest available information in relation to pig welfare.

**Recommendation 1.2:** That the Victorian Government mandates that surgical procedures on pigs of any age are done with pain relief.

**Recommendation 1.3:** That the Victorian Government mandates that environmental enrichment be provided to farmed pigs of any age.

<sup>19</sup> See Futureye (for the Cth Department of Agriculture), *Australia’s Shifting Mindset on Farm Animal Welfare* (2018). The report had been available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/animal/farm-animal-welfare.pdf> but does not appear to be currently available online. The national survey discussed in the report found that ‘many of the public now support the activist views that animal welfare isn’t being sufficiently delivered by the agricultural sector for today’s values’ (p20). It also found that:

- 95% of people view farm animal welfare to be a concern;
- 92-95% view farm animals as sentient; and
- 91% of people want to see some reform to address their concerns.

<sup>20</sup> See the separate section in the [APIQ Standards Manual \(V5.2 12/2022\)](#) for ‘Customer Specifications for supply to Coles Supermarkets Australia Pty Ltd (COLES) (CSC)’ at CSC 1.1-1.4 and relating to matters such as stocking density, husbandry practices, and bedding and enrichment (pp41-44).

<sup>21</sup> RSPCA Australia, ‘What are the Five Domains and how do they differ from the Five Freedoms?’, updated 17 August 2023, <https://kb.rspca.org.au/knowledge-base/what-are-the-five-domains-and-how-do-they-differ-from-the-five-freedoms/>.

### ***Lack of enforceable standards in relation to pig slaughter (cf. TOR (2))***

29. The ADO submits that there is a lack of enforceable welfare standards in relation to the slaughter of pigs in Victoria. No incorporated or adopted standards deal specifically with pigs or commercial slaughter methods involving gas stunning. The Victorian Pig Welfare Standards includes this method but only in relation to the emergency euthanasia of pigs. Within this context the Standards recommends that the method be used only on pigs less than 30 kg (p 27). In response to media exposés showing pigs suffering for prolonged periods while being subjected to this method of stunning in Victorian abattoirs, PrimeSafe defended the use of gas stunning as ‘an accepted method of stunning in Australia’.<sup>22</sup> The ADO submits that this is not an appropriate response to clear instances of animal suffering during a particular slaughter method. The ADO further submits that the gas stunning of pigs is occurring without any directly enforceable welfare standards in Victoria. Given the evidence that this method of stunning inflicts unacceptable levels of suffering on pigs, and the lack of directly enforceable welfare standards, the ADO submits that this method of stunning should not be used.
30. A further factor that should militate against the use of this method of stunning pigs is the lack of transparency regarding enforcement of the minimal welfare standards in Victoria. PrimeSafe is the main enforcement agency for abattoirs in Victoria. Its most recent Annual Report states merely that ‘70 unannounced inspections’ at facilities including licensed abattoirs were carried out in 2022-23.<sup>23</sup> It does not identify how many licensed abattoirs were inspected, what animals were being slaughtered or by what method. This lack of transparency regarding enforcement means that it is impossible to assess whether the minimum standards in place in Victoria are doing anything to promote pig welfare outcomes, especially those pigs being stunned by gas.
31. The concerns identified above are consistent with general concerns about the lack of transparency regarding animal welfare standards in domestic abattoirs. The RSPCA has identified that:

There is little to no transparency around animal welfare standards or auditing of slaughtering establishments, especially in domestic abattoirs and knackeries. When issues are raised and investigations instigated, such as following the release of undercover footage of animal cruelty or poor practices, in most jurisdictions there is no public reporting of the outcomes of investigations. These problems exist at a time of increasing public concern about livestock production, transport and slaughter, and the regular publication of footage of poor practice at Australian abattoirs, poultry processors and knackeries.<sup>24</sup>

<sup>22</sup> PrimeSafe, *Annual Report 2022-2023*, p 8.

<sup>23</sup> PrimeSafe, *Annual Report 2022-2023*, p 8.

<sup>24</sup> RSPCA Australia, *Animal welfare in abattoirs, poultry processors and knackeries — regulatory scorecard* (2021) at p 3, available at <https://kb.rspca.org.au/wp-content/uploads/2021/05/RSPCA-Australia-Revised-May-2021-Animal-welfare-in-slaughtering-establishments-regulatory-scorecard.pdf>.

**Recommendation 2.1:** That the use of gas to stun pigs in Victorian abattoirs be stopped and its welfare impacts fully investigated.

**Recommendation 2.2:** That the Victorian Government ensure that the Victorian Pig Welfare Standards or other relevant farmed animal standards include pig-specific standards in relation to all relevant methods of killing, stunning and slaughter, and that they are independently reviewed and regularly updated.

***Breeding, housing and confinement standards do not reflect best practice (cf TOR (4))***

32. Research suggests that pigs are highly sociable and cognitively complex animals with traits similar to dogs and chimpanzees.<sup>25</sup> Despite this, pig farming is one of the most intensive animal farming industries, with its indoor housing systems characterised by close confinement and a barren environment.<sup>26</sup>
33. The housing of female pigs used for breeding is of particular concern from a welfare perspective. Despite industry-proposed restrictions from 2017<sup>27</sup>, the use of extreme confinement methods such as sow stalls and farrowing crates ('individual housing') is common.<sup>28</sup>
34. The minimum legally required space for a female pig kept in a sow stall in Victoria is floor space of 0.6m wide and 2.2m long.<sup>29</sup> The minimum legally required space for a farrowing crate is 2 metres by 0.5 metres, making farrowing crates even smaller than sow stalls.<sup>30</sup> While the sow can stand up in a stall or crate, neither is much longer than her body and they therefore prevent her from turning or moving around.
35. According to the pig welfare codes, female pigs can be kept in these crates for up to six weeks.<sup>31</sup>
36. The use of stalls and crates for this length of time would have extremely low welfare outcomes for the mother pig. The ADO notes that confining domestic animals such as dogs or cats, or other farmed animals such as alpacas, in this way for even a short period of time, let alone up to six weeks, would be a breach of Victoria's animal welfare laws. Under the POCTA Act, a person who 'confines an animal where the ...

<sup>25</sup> Marino, Lori and Christina M. Colvin, 2015. "Thinking Pigs: A Comparative Review of Cognition, Emotion, and Personality in *Sus Domesticus*" *International Journal of Comparative Psychology* 28.

<sup>26</sup> Hemsworth, Lauren, Paul Hemsworth, Rutu Acharya and Jeremy Skuse, *Review of the Scientific Literature and the International Pig Welfare Codes and Standards to Underpin the Future Standards and Guidelines for Pigs*. Final Report, APL Project 2017/2217, August 2018, pp 3, 32.

<sup>27</sup> *Ibid* p 19.

<sup>28</sup> *Ibid* p 36.

<sup>29</sup> Victorian Pig Welfare Standards, s 4.1.2(2).

<sup>30</sup> Victorian Pig Welfare Standards, Appendix III.

<sup>31</sup> Standards 4.1.5 and 4.1.7.

confinement of the animal causes, or is likely to cause, unreasonable pain or suffering to the animal...commits an act of cruelty upon that animal' (s 9(1)(b)).

37. Even if pregnant pigs in intensive facilities are kept in group housing, they will not have access to fresh air, daylight, enrichment material (eg straw), or mental stimulation. It is therefore likely that such housing would have negative physical and psychological impacts on these sensitive and intelligent animals during pregnancy.
38. For these reasons the ADO submits that the use of crates and stalls should be phased out in Victoria and that the requirement to phase them out should be enacted in legislation. In support of this submission, two relevant precedents for banning and phasing out the use of individual housing in intensive piggeries will be examined.

### **Legislative prohibitions on the use of crates and stalls**

#### *Australian Capital Territory*

39. Intensive indoor housing of pigs in general, and sow stalls and farrowing crates in particular, are banned in the Australian Capital Territory (**ACT**) on animal welfare grounds.

40. Under the *Animal Welfare Act 1992* (ACT) (**AW Act (ACT)**), 'appropriate accommodation' for pigs is defined as accommodation:

(a) that allows the pig to—

(i) **turn around**, stand up and lie down without difficulty; and

(ii) have a clean, comfortable and adequately drained place in which it can lie down; and

(iii) maintain a comfortable temperature; and

(iv) **have outdoor access**,<sup>32</sup>

A person commits an offence under the AW Act (ACT) if:

(a) the person keeps a pig; and

(b) the pig is not kept in appropriate accommodation.

Maximum penalty: 50 penalty units.<sup>33</sup>

41. The ban was inserted into the AW Act (ACT) in 2014 by the Animal Welfare (Factory Farming) Amendment Bill 2013 (the bill). The Explanatory Statement for the bill states that:

The bill's aim of greater protection of animal welfare can be justified in a free and democratic society. The community expects that animals will be treated well and not be

<sup>32</sup> Section 9B(3), emphases added.

<sup>33</sup> Section 9B(1).

exposed to cruelty, pain or suffering.<sup>34</sup>

42. The ADO submits that communities in Victoria would hold the same expectations that animals must be treated well and not exposed to unnecessary cruelty, pain or suffering, and that this applies as much to animals kept for food as to those kept as companions.

### *New Zealand*

43. New Zealand is an interesting case study as the use of stalls and crates in the commercial pig industry was the subject of a recent High Court case.<sup>35</sup>

44. In 2020 animal lawyers and advocates applied to New Zealand's High Court to argue that the use of farrowing crates and sow stalls was contrary to the purposes of New Zealand's animal welfare legislation, and in particular the obligations in relation to the physical, health and behavioural needs of animals.<sup>36</sup>

45. In *New Zealand Animal Law Association v The Attorney-General* [2020] (**NZ case**), the Court accepted that a 'farrowing crate is a specialist piece of pig maternity equipment used to house the sow before and during the birth and lactation phase of a sow's reproductive cycle.'<sup>37</sup> At the time of the case farrowing crates were common. The Court noted that '[a]bout half of New Zealand pig farms use farrowing crates, including most indoor farms.'<sup>38</sup>

46. The decision in the NZ case highlights the welfare 'trade offs' in using farrowing crates in particular. It basically comes down to preserving piglets (economic units) at the expense of the ongoing welfare of the mother pig.

47. The Court noted that a crate 'provides the piglets with an area where they have ready access to the sow, can maintain body temperature and can avoid being crushed. Farrowing crates can also aid with fostering piglets between sows.'<sup>39</sup> However, it also noted that the 'disadvantages of farrowing crates for the sow include the restriction of movement and a reduced ability to carry out nest building behaviours. ... The sow is able to lie down or stand but she cannot turn around.'<sup>40</sup> The National Animal Welfare Advisory Committee (**NAWAC**) (one of the respondents) accepted that farrowing crates 'restrict the movement of sows and reduce their ability to carry out nest building behaviours and other normal behaviours' but balanced this with 'the advantages of farrowing crates, which, scientific research shows, reduce mortality in piglets from

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<sup>34</sup> Page 4.

<sup>35</sup> *The New Zealand Animal Law Association v The Attorney-General* [2020] NZHC 3009 (**NZ case**).

<sup>36</sup> *Animal Welfare Act 1999* (NZ), s 10.

<sup>37</sup> NZ case [35].

<sup>38</sup> NZ case [37].

<sup>39</sup> NZ case [35].

<sup>40</sup> NZ case [36].

crushing by sows compared to alternative systems, including outdoor systems.<sup>41</sup> However, by 2018 NAWAC had reached the view that:

Previous trade-offs of long term sow freedom against piglet survival can no longer be used as current perceptions are that the requirements of each individual in the system should be provided for if possible.<sup>42</sup>

48. Despite the alleged advantages regarding piglets (preserving economic units), from an animal welfare perspective the use of sow stalls and farrowing crates had only ever been permitted in New Zealand under an exemption in the *Animal Welfare Act 1999* (NZ) (**AW Act (NZ)**) known as the ‘exceptional circumstances’ exemption. This exemption was legally necessary because otherwise the use of these methods of confinement for any length of time was considered to be contrary to the objectives of the AW Act (NZ).<sup>43</sup> In this sense the use of crates and stalls was considered to be a ‘non-compliant practice’. In 2015, however, the exemption was repealed.<sup>44</sup> This reform was extremely important because it meant that regulations and codes could no longer permit husbandry practices of a lower welfare standard (eg use of crates and stalls) than those in the Act. The exemption was replaced with a legislative scheme whereby husbandry practices had to ‘fully comply with the obligations in the Act’<sup>45</sup> or—importantly for this Inquiry—animal welfare regulations had to specify time frames for ‘non-compliant practices to be transitioned or phased out... after not more than 10 years.’<sup>46</sup> The ADO notes that this requirement to phase out non-compliant (ie cruel) practices such as using crates and stalls over a specified time was mandatory even ‘where there are no viable alternatives’.<sup>47</sup>
49. A legislative mandate to phase out practices that would otherwise be a breach of animal welfare laws was required because the industry itself could not be relied upon to phase out the practices voluntarily. The Court noted that in 2010 the New Zealand pig industry had been put on notice about the need to find alternatives when the relevant animal welfare code at the time ‘sent a *strong signal that alternatives to farrowing crates needed to be found and adopted in the near future.*’<sup>48</sup> Yet the pig industry failed to do this. Instead, it tried to argue that, after years of being accepted as a non-compliant practice permissible only via the ‘exceptional circumstances’ exemption in the AW Act (NZ), the use of crates and stalls was suddenly fully compliant with the Act when the exemption was repealed.

50. In essence, the Court refused to accept this, and held that with ‘no change in science

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<sup>41</sup> NZ case [58].

<sup>42</sup> NZ case [111].

<sup>43</sup> NZ case [18].

<sup>44</sup> Animal Welfare Amendment Act (No 2) 2015, s 67.

<sup>45</sup> NZ case [21].

<sup>46</sup> NZ case [21], [25].

<sup>47</sup> NZ case [133].

<sup>48</sup> NZ case [158]. Original emphasis.

making them compliant', the use of stalls and crates did not further the Act's purpose<sup>49</sup>, and declared that the regulations and standards allowing their indefinite use were 'unlawful and invalid'.<sup>50</sup> In light of its judgement, the Court directed the relevant Minister to 'consider recommending new regulations phasing out the use of farrowing crates and mating stalls' under the AW Act (NZ).<sup>51</sup>

### *The law in New Zealand today*

51. On 18 December 2020 clause 26 was inserted in the *Animal Welfare (Care and Procedures) Regulations 2018* (NZ):

#### **26 Farrowing requirements**

- (1) The owner of, and every person in charge of, a pig must ensure that—
  - (a) sows, in any farrowing system constructed after 3 December 2010, are provided with material that can be manipulated until farrowing:
  - (b) a sow in a farrowing crate is able to avoid all of the following:
    - (i) touching both sides of the crate simultaneously:
    - (ii) touching the front and the back of the crate simultaneously:
    - (iii) touching the top of the crate when standing:
  - (c) a sow is not confined in a farrowing crate for more than 5 days before farrowing:
  - (d) if a sow is confined in a farrowing crate for lactation, it is not confined for more than 4 weeks after farrowing unless—
    - (i) it is a nurse sow confined in the farrowing crate for fostering purposes, in which case it may be confined for a further week; and
    - (ii) no more than 5% of sows in any herd at any one time are being retained as nurse sows.
- (2) A person who fails to comply with subclause (1)(b) commits an offence and is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$3,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$15,000.
- (3) **This regulation is revoked on 18 December 2025.**<sup>52</sup>

52. The same Regulations set out a similar phasing-out period for confining pigs in stalls used for the purpose of mating (sow stalls).

53. In short, New Zealand law now mandates that the use of crates and stalls, which is in essence a practice that does not comply with New Zealand animal welfare laws, will be phased out by the end of 2025 even if no alternatives exist.

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<sup>49</sup> NZ case [184].

<sup>50</sup> NZ case [201].

<sup>51</sup> NZ case [203].

<sup>52</sup> Emphasis added.

**Recommendation 3.1:** That the Victorian Government follows the ACT and New Zealand and mandates in legislation that individual housing such as crates and stalls for pigs used for breeding in the commercial pig industry be phased out, with no exceptions, by a specified date.

**Recommendation 3.2:** That the Victorian Government follows New Zealand and ensures that delegated legislation or standards cannot permit husbandry practices that would not comply with welfare requirements in the principal Act.

## **Conclusion**

54. This Inquiry presents Victoria with an opportunity to become a world leader by introducing changes to ensure best practice for pig welfare. We hope this opportunity is not missed.

55. Thank you for considering our submissions.

Sincerely

**Jake Fitzgerald, Andrew Joyce, and Tara Ward**  
**Legal Intern and Solicitors**  
**Animal Defenders Office**