

Animal Cruelty Offences in Victoria

The Sentencing Advisory Council bridges the gap between the community, the courts and the government by informing, educating and advising on sentencing issues.

The Sentencing Advisory Council is an independent statutory body established in 2004 under amendments to the *Sentencing Act 1991* (Vic). The functions of the Council are to:

- provide statistical information on sentencing, including information on current sentencing practices
- conduct research and disseminate information on sentencing matters
- gauge public opinion on sentencing
- consult on sentencing matters
- advise the Attorney-General on sentencing issues
- provide the Court of Appeal with the Council's written views on the giving, or review, of a guideline judgment.

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- one senior academic
- one highly experienced defence lawyer
- one highly experienced prosecution lawyer
- one member of a victim of crime support or advocacy group
- one person involved in the management of a victim of crime support or advocacy group who is a victim of crime or a representative of victims of crime
- one member of the police force of the rank of senior sergeant or below who is actively engaged in criminal law enforcement duties
- the remainder must have experience in the operation of the criminal justice system.

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Animal Cruelty Offences in Victoria

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Contents

Contributors vii

Acknowledgments vii

Abbreviations and acronyms viii

Glossary ix

Warning x

Reporting animal welfare concerns xi

Executive summary xiii

Prevalence of animal cruelty offences xiii

Sentencing outcomes xiv

Offender profiles xiv

Co-sentenced offences xv

Family violence xv

Prior and subsequent offending xv

1. Introduction: impetuses and aims of this report 1

Past research and data 3

Research questions 4

Who investigates animal cruelty in Victoria? 5

2. Defining animal cruelty 7

Relevant offences 9

Prevention of Cruelty to Animals Act 1986 (Vic) 9

Prevention of Cruelty to Animals Regulations 2008 (Vic) 14

Other offences 14

Changes to maximum penalties 15

3. Prevalence of animal cruelty offences 17

How many complaints were sentenced? 17

RSPCA Victoria 19

DEDJTR and DELWP 20

Victoria Police 21

How many animal cruelty charges and cases were sentenced? 22

Cases with a high volume of charges 23

Which courts sentenced animal cruelty offences? 24

Which animal cruelty offences were sentenced? 26

Which agencies prosecuted animal cruelty cases? 27

Offence types prosecuted by each agency 30

4. Sentencing outcomes 31

Which types of sentences were imposed? 31

Yearly trends for sentencing outcomes 32

Type of sentence and offence 32

Sentences of imprisonment 34

How long were sentences of imprisonment? 34

Were the sentences of imprisonment cumulative or concurrent? 35

How many sentences of imprisonment were appealed? 35

Conditions attached to community correction orders	36
Number and value of fines	37
What was the value of non-aggregate fines?	37
With or without conviction	38
Control orders	39
How many control orders were imposed?	40
How long did control orders run for?	41
Which prosecuting agencies were involved in cases with control orders?	41
Gender of offenders subject to control orders	42
Which types of animals were involved in cases in which a control order was imposed?	42
Which types of animals did control orders apply to?	43
Which conditions were attached to control orders?	43

5. Offender profiles 45

How many offenders were sentenced for animal cruelty?	45
What were the characteristics (age and gender) of animal cruelty offenders?	45
Older male animal cruelty offenders (60+)	46
Offence types by gender	47
Corporations sentenced for animal cruelty offences	48

6. Co-sentenced offences 49

Co-sentenced offences in the higher courts	49
Co-sentenced offences in the Magistrates' Court and the Children's Court	49
Co-sentenced offences and gender	51

7. Family violence and animal cruelty 53

The link between family violence and animal cruelty	53
How many animal cruelty cases were flagged as family violence?	55
Sentencing outcomes in animal cruelty cases flagged as involving family violence	56

8. Prior and subsequent offending 57

Previous Council research on prior and subsequent offending	57
Animal cruelty offenders with prior or subsequent offending	57
Number of prior and subsequent sentences	59
How many animal cruelty offenders committed violence against the person?	59
Recidivist animal cruelty offenders	60

9. Concluding remarks 61

High rate of fines	61
Control orders	62
The need for sentencing guidance	62

Appendix A: Consultation 63

Appendix B: Court locations where animal cruelty offences were sentenced 64

Appendix C: Amendments to ANZSOC offence classification 66

References 67

Bibliography	67
Case law	73
Legislation	74
Victoria	74
Other jurisdictions	75

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Abbreviations and acronyms

CCO	Community correction order
DEDJTR	Department of Economic Development, Jobs, Transport and Resources (2015–2018)
DELWP	Department of Environment, Land, Water and Planning (2015–)
DEPI	Department of Environment and Primary Industries (2013–2014)
DPI	Department of Primary Industries (2008–2012)
DSE	Department of Sustainability and Environment (2008–2012)
POCTA Act	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic)
RSPCA	Royal Society for the Protection of Animals

Glossary

Accused	A person or corporation charged with a criminal offence.
Animal cruelty	Any act or omission that contributes to an animal experiencing, or being likely to experience, unreasonable or unnecessary pain or suffering.
Animal cruelty offender	An offender found guilty of an animal cruelty offence.
Case	One or more charges heard as part of the same proceedings.
Charge	A single count of an offence.
Community order	A sentence to be served in the community while subject to certain conditions. In this report, community orders include both community correction orders (since January 2012) and community-based orders (until January 2012).
Corporation	In this report, a company, business or body corporate.
Co-sentenced offence	An offence sentenced in the same case as the offence of interest.
Imprisonment	A sentence involving an immediate custodial component. In this report, imprisonment includes both immediate terms of imprisonment and partially suspended sentences.
Median	The middle value in a set or distribution of numbers.
Offender	A person or corporation found guilty of a criminal offence.
POCTA inspector	A general or specialist inspector under sections 18 and 18A of the <i>Prevention of Cruelty to Animals Act 1986</i> (Vic).
POCTA notice	A notice issued under section 24ZP of the <i>Prevention of Cruelty to Animals Act 1986</i> (Vic).
Prior and subsequent offending	In this report, offending sentenced in the four years before and the four years after a sentence for an animal cruelty offence.
Reference period	In this report, the 10 years from 2008 to 2017 (inclusive).
Sentience	The ability of an organism to perceive its environment and experience sensations such as pain and suffering or pleasure and comfort.

Warning

This report contains content that some readers may find distressing.

Reporting animal welfare concerns

If you would like to report a possible case of animal cruelty in Victoria, you can contact one of the following organisations, depending on which type of animal is involved.

For a **domestic or non-commercial animal**, contact:

- RSPCA Victoria on (03) 9224 2222 or make an online report at <https://www.rspca.org.au/report-cruelty>;
- your local council, which may or may not be licensed to investigate animal cruelty; or
- your local police station.

For **livestock**, contact:

- the Department of Economic Development, Jobs, Transport and Resources (DEDJTR)* on 136 186, or email at aw.complaint@ecodev.vic.gov.au; or
- your local police station.

For **wildlife**, contact:

- the Department of Environment, Land, Water and Planning (DELWP) on 136 186 or email at customer.service@delwp.vic.gov.au; or
- your local police station.

For **hunting**, contact:

- the Game Management Authority (GMA) on 136 186; or
- your local police station.

For **racing**, you can contact the Racing Integrity Commissioner directly on (03) 8684 7776, or call the Racing Integrity Hotline on 1300 227 225 to remain anonymous, or email racingintegrity@stopline.com.au. The Racing Integrity Commissioner cannot, however, investigate criminal offences. If you would like to refer a racing matter for criminal investigation, contact RSPCA Victoria, DEDJTR or your local police station.

If you are unsure about who to contact, or if you are reporting other suspected crimes in addition to animal cruelty, contact your local police station. Contact information for your local police is available at http://www.police.vic.gov.au/content.asp?Document_ID=7.

* As at 1 January 2019, the Department of Economic Development, Jobs, Transport and Resources has transitioned to two new departments: the Department of Transport (DOT) and the Department of Jobs, Precincts and Regions (DJPR).

Executive summary

Criminal proceedings involving animal cruelty offences tend to attract considerable attention from both the media and the general community. To date, however, very little research has been published on the sentencing outcomes of those offences in Victoria, or in Australia generally.

This report aims to fill that gap by providing an overview of sentencing outcomes for animal cruelty offences heard in Victorian courts in the 10 years from 2008 to 2017 (inclusive), using data provided by courts and prosecuting agencies.

In doing so, this report includes an analysis of which animal cruelty offences people and corporations were sentenced for; the sentences that were imposed for those offences and who committed those offences. This report also identifies whether animal cruelty offenders were sentenced for other offences in the same case (co-sentenced offences), whether their offending occurred in the context of family violence and whether those offenders were sentenced for other offending in the four years before and after their sentence for animal cruelty (prior and subsequent offending).

Prevalence of animal cruelty offences

Each year between 2011 and 2017 in Victoria, an average of over 11,000 animal cruelty complaints were made, nearly 900 charges were laid and nearly 400 charges were sentenced. The number of charges sentenced therefore represents approximately 3.5% of complaints made in that same time period. However, a number of legitimate reasons exist for why a complaint of animal cruelty will not result in a sentenced offence. For example, after investigation many complaints are found to be unsubstantiated and do not warrant further action. Further, RSPCA Victoria, which receives the vast majority of complaints, emphasised during consultation that their primary goal is to promote the welfare of animals, and that this is often best achieved through providing assistance and education, rather than employing a criminal justice response.

In total, 2,960 animal cruelty charges were sentenced in 1,115 cases between 2008 and 2017. The agencies that prosecuted the highest proportion of animal cruelty cases were RSPCA Victoria (53%) and Victoria Police (31%). The three most commonly sentenced animal cruelty offences were:

- aggravated cruelty, contrary to section 10(1) of the *Prevention of Cruelty to Animals Act 1986* (Vic) (the 'POCTA Act') (25%);
- failing to provide treatment to a sick or injured animal, contrary to section 9(1)(i) of the POCTA Act (24%); and
- failing to provide sufficient food, drink or shelter to an animal, contrary to section 9(1)(f) of the POCTA Act (19%).

Overall, neglect-related offending – offenders omitting to adequately provide and care for animals – was far more prevalent than more deliberate and malicious acts of cruelty.

Sentencing outcomes

The majority of animal cruelty charges received a fine (60% or 1,786 charges). This is slightly higher than the overall rate for fines imposed for all offences sentenced in the Magistrates' Court (55%). Of the 1,786 fines, 87% were part of an aggregate fine covering multiple charges (1,547 fines). For the fines that were not part of an aggregate sentence (239 fines), the average fine was \$1,355, and the value of fines ranged from \$100 to \$20,000.

Between 2012 and 2017, 121 community correction orders (CCOs) were imposed on animal cruelty offenders (some CCOs covered multiple charges). The most common conditions attached to these CCOs were unpaid community work (73%), participation in a treatment and rehabilitation program (71%) and supervision by Corrections Victoria (53%). This is consistent with previous findings about the rate at which these same conditions are attached to all CCOs in Victoria.

A term of imprisonment was imposed in 8% of animal cruelty cases (86 cases) and on 4% of animal cruelty charges (126 charges). Of those charges, 88 were part of an aggregate sentence. For imprisonment terms that were not part of an aggregate sentence (38 charges), the average duration was three months' imprisonment. A substantial proportion of offender appeals against a sentence of imprisonment were successful; of the 83 cases in which an animal cruelty offender was originally sentenced to imprisonment in the Magistrates' Court, the sentence was successfully appealed in 17% of cases (14 cases), and those offenders either had the duration of imprisonment reduced (five cases) or had the sentence converted into an entirely non-custodial disposition (nine cases).

Courts also frequently imposed control orders on animal cruelty offenders. These are ancillary orders that may be imposed if an offender has been sentenced for an offence under the POCTA Act. A control order places conditions on if, and how, an animal cruelty offender may own or be in charge of animals. A control order was imposed in 20% of animal cruelty cases (228 cases), though almost none were imposed in cases prosecuted by Victoria Police (less than 1% or 3 of 330 cases). Dogs were the animal most likely to be subject to cruelty in cases in which a control order was imposed and the type of animal could be identified (54% or 116 of 216 cases). Further, in cases specifying which animal(s) the control order applied to, 38% of control orders restricted the offender from owning or being in charge of *any animals* (87 of 226 control orders).

Offender profiles

Information relating to the age and gender of offenders was available in 1,019 cases (998 unique offenders). Approximately three-quarters of those offenders were male (743 offenders), approximately one-quarter were female (250 offenders) and five offenders were corporations. The average age of the 993 offenders who were natural persons was 38 years, but ages ranged from 11 years to 83 years.

There were three key differences between male and female animal cruelty offenders. First, 7% of male animal cruelty offenders were aged under 18 years (51 offenders), but less than 1% of female animal cruelty offenders were in that same age group (two offenders). Second, 16% of male animal cruelty offenders were 60 years or older (120 offenders), but just 6% of female animal cruelty offenders were in that same age group. Third, male animal cruelty offenders were three times more likely than female animal cruelty offenders to be sentenced for both deliberate cruelty and aggravated cruelty, contrary to sections 9(1)(a) and 10(1) of the POCTA Act, representing 10% (deliberate cruelty) and 30% (aggravated cruelty) of animal cruelty offences committed by men, compared with 3% and 9% of offences committed by women. In contrast, female animal cruelty offenders were more likely than male animal cruelty offenders to be sentenced for neglect-related offences contrary to sections 9(1)(f) and 9(1)(i) of the POCTA Act, representing 26% (failure to provide food, drink or shelter) and 41% (failure to provide treatment) of animal cruelty offences committed by women, compared with 17% and 18% of offences committed by men.

Co-sentenced offences

The Magistrates' Court dealt with 95% of animal cruelty cases between 2008 and 2017 (the reference period). The most common offence types sentenced alongside a charge of animal cruelty in the Magistrates' Court were additional animal cruelty offences (38% of cases), other animal-related offences (16%) and acts intended to cause injury (11%). In comparison, the most common offence types sentenced alongside a charge of animal cruelty in the Children's Court were theft and related offences (51% of cases), criminal damage (35%) and public order offences (33%). Although only a small number of animal cruelty cases were sentenced in the Children's Court (58 cases), this suggests that young animal cruelty offenders were more generalist in their overall offending, while older offenders were more likely to be sentenced exclusively for animal cruelty or other animal-related offending (such as failing to register a cat or dog).

A similar trend was observed when comparing male and female animal cruelty offenders. Male animal cruelty offenders were more generalist in their overall offending behaviour than female animal cruelty offenders and were more likely to be co-sentenced for almost every category of offence (except for animal-related offences). For example, male animal cruelty offenders were twice as likely to be co-sentenced for a violent offence (13% of cases for male animal cruelty offenders versus 6% for female animal cruelty offenders), three times more likely to be co-sentenced for criminal damage (12% versus 4%), five times more likely to be co-sentenced for theft and related offences (11% versus 2%) and 11 times more likely to be co-sentenced for offences involving weapons or explosives (7.6% versus 0.7%).

Family violence

Approximately 15% of animal cruelty cases sentenced in the Magistrates' Court in 2016 and 2017 were flagged as having occurred in the context of family violence (35 of 231 cases). Almost all offenders in those cases were male (33 of 35 cases). The most common offences in those cases were acts intended to cause injury (57 charges), bail-related offences (44 charges) and breaches of intervention orders (44 charges). In cases flagged as family violence, animal cruelty offenders were much more likely to receive serious sentencing outcomes than all animal cruelty offenders generally: 43% of those family violence offenders were sentenced to imprisonment (compared with 11% of non-family violence offenders in 2016 and 2017) and another 43% were sentenced to a CCO (compared with 9% of non-family violence offenders in 2016 and 2017).

Prior and subsequent offending

Prior and subsequent offending was measured in this report by first identifying offenders sentenced for animal cruelty in 2012 and 2013, and then examining any prior or subsequent sentences in the four years before and the four years after their index sentence. Of the 271 offenders sentenced for animal cruelty in those two years, more than half (57%) were not sentenced for any other offending in the four years before or after their index sentence. The remaining 43% were, however, sentenced on at least one other occasion.

In terms of *prior offending*, 14% of the 271 offenders had been sentenced for other offending in the 12 months before being sentenced for animal cruelty, and 30% had been sentenced at least once in the four years before being sentenced for animal cruelty. In terms of *subsequent offending*, 15% had been sentenced for other offending in the 12 months after being sentenced for animal cruelty, and 32% had been sentenced at least once in the four years following their sentence for animal cruelty.

This suggests that animal cruelty offenders were slightly less likely than all sentenced offenders to reoffend within four years (prior Council research shows a 34% reoffending rate for all sentenced offenders after four years). However, a subgroup of animal cruelty offenders – those who were sentenced for deliberate animal cruelty contrary to section 9(1)(a) of the POCTA Act – were more likely to be sentenced for both prior (44%) and subsequent (46%) offending.

In addition, during the reference period very few animal cruelty offenders were sentenced for animal cruelty offending on multiple occasions. Less than 3% of animal cruelty offenders in the Magistrates' Court (whose identity was discernible) were sentenced for animal cruelty on more than one occasion (22 of 953 offenders).

1. Introduction: impetuses and aims of this report

- I.1 The welfare of animals is currently a high priority for the Victorian Government. Between 2015 and 2018, the government:
- passed the *Prevention of Cruelty to Animals Amendment Act 2015* (Vic), one of the purposes of which was to increase (monetary) penalties for animal cruelty;¹
 - established Animal Welfare Victoria;²
 - appointed Victoria's first Ambassador for Animal Welfare;³
 - announced that it would review and overhaul the *Prevention of Cruelty to Animals Act 1986* (Vic) (the 'POCTA Act') in 2019;⁴ and
 - released Victoria's first ever *Animal Welfare Action Plan* and committed to:
 - reviewing and replacing the current animal welfare legislation and regulations in a way that recognises the sentience of animals;
 - encouraging collaboration between government agencies in matters of animal welfare;
 - providing education about existing and new animal welfare laws; and
 - reviewing and clarifying enforcement of animal welfare legislation.⁵
- I.2 In addition to being a priority for the government, animal welfare is an area of considerable concern for the general community. During consultation on the *Animal Welfare Action Plan*, the government found that 98% of Victorians believed that protecting the welfare of animals is important and that 75% believed that animals need better protection.⁶ Similarly, the Responsible Investment Association Australasia recently asked Australians which issues they would most like to avoid having their money invested into, and animal cruelty was found to be the most important issue that people wanted to avoid investing in (69% of respondents), even more so than human rights violations (62%).⁷
- I.3 Given the community interest in animal welfare generally, the strong community interest in how offenders are sentenced for animal cruelty is not surprising. For example, a recent case in which an offender was sentenced to 49 hours of community service for beating a number of fairy penguins to death with a stick prompted considerable concern on social media, many commentators 'argu[ing] in favour of tougher punishments for animal cruelty'.⁸

1. One of the stated purposes of the amending legislation was 'to increase penalties for offences', though this appears to have exclusively manifested as an increase in the number of penalty units applicable to certain offences: *Prevention of Cruelty to Animals Amendment Act 2015* (Vic) s 1(d). A number of the 2015 amendments to the offences in the *Prevention of Cruelty to Animals Act 1986* (Vic) were prompted by two reports on the greyhound racing industry: Charles Milne, *Investigation into Animal Welfare and Cruelty in the Victorian Greyhound Industry* (2015); Sal Perna, *2015 Own Motion Inquiry into Live Baiting in Greyhound Racing in Victoria: Final Report* (2015).

2. Department of Economic Development, Jobs, Transport and Resources, 'Working with Victorians to Enhance the Welfare of all Animals' (animalwelfare.vic.gov.au, 2018) Animal Welfare Victoria <<http://animalwelfare.vic.gov.au>> at 3 December 2018.

3. Minister for Agriculture, 'Putting Animal Welfare Front and Centre', Media Release (11 September 2016) <<https://www.premier.vic.gov.au/putting-animal-welfare-front-and-centre>> at 3 December 2018.

4. Minister for Agriculture, 'Andrews Labor Government Delivers More Support for Animal Welfare', Media Release (19 October 2017) <<https://www.premier.vic.gov.au/andrews-labor-government-delivers-more-support-for-animal-welfare>> at 3 December 2018.

5. Victorian Government, *Animal Welfare Action Plan: Improving the Welfare of Animals in Victoria* (2018) 14, 17, 21, 23.

6. Ibid 12.

7. Responsible Investment Association Australasia, *From Values to Riches: Charting Consumer Attitudes and Demand for Responsible Investing in Australia* (2017) 9.

8. Alexis Carey, 'Members of the Public and Experts Slam Animal Abuser's "Light Sentence"', *news.com.au* (online) 26 June 2018 <<https://www.news.com.au/finance/money/costs/members-of-the-public-and-experts-slam-tasmanian-animal-abusers-light-sentence/news-story/bcea0a8d32743e0cc036cb2275c54a83>> at 3 December 2018; Laura Beavis, 'Outrage over "Inappropriate" Animal Cruelty

In addition, People for the Ethical Treatment of Animals (PETA) and BirdLife Tasmania expressed their 'disappointment at the leniency of the sentence', stating that it was 'no deterrent whatsoever' and 'would not stop the next person going out and doing exactly the same thing'.⁹ Similar sentiments were expressed following a separate case in which an offender was sentenced to 14 days imprisonment and a \$2,500 fine for killing 406 protected birds, mainly eagles, over an 18-month period.¹⁰

- 1.4 Community concerns with the sentencing of animal cruelty offences are then further reflected in the views of certain stakeholders whose work involves the prosecution of those offences. In November 2017, the RSPCA stated that 'the community would be outraged if it knew the extent of the soft sentences' for animal cruelty offending, and called for tougher penalties.¹¹ The Victorian Court of Appeal has also described the maximum penalty of two years' imprisonment for aggravated cruelty as 'very low'.¹²
- 1.5 Research into the sentencing of animal cruelty offending in Australia has consistently found that such offences tend to attract monetary sanctions (fines and infringement penalties). However, some stakeholders have suggested that the high rate of monetary penalties for animal cruelty offending is inconsistent with the harm and culpability represented by the offending.¹³ This is because these offences are regarded as primarily regulatory, rather than a form of violent and antisocial behaviour. Animal welfare expert Jed Goodfellow has argued that:

[a]nimal welfare offences are not simply technical rule violations or 'side effects' of business operations. A regulatory system that seeks to *manage* animal mistreatment, rather than prohibit it, will not be acceptable to the broader community.¹⁴
- 1.6 The sentencing of animal cruelty generates community interest for two main reasons. The first is that animals are 'sentient creatures [that] have intrinsic moral significance and are, therefore, deserving of some protection against harm'.¹⁵ The second is the common perception that animal abuse is a warning sign that an offender has a predilection for violence and could turn (or has turned) their violent attentions to another person,¹⁶ particularly in the context of family violence.¹⁷

Rulings Prompt Call for System Overhaul', *ABC News* (online) 28 June 2018 <<http://www.abc.net.au/news/2018-06-28/animal-deaths-spark-petition-over-sentence-vows-of-more-/9919166>> at 3 December 2018.

9. Henry Zwart, 'Penguin Killer Joshua Leigh Jeffrey Avoids Jail; Bird Group Expresses "Extreme Disappointment" at Sentence', *ABC News* (online) 25 June 2018 <<http://www.abc.net.au/news/2018-06-25/joshua-leigh-jeffrey-sentenced-over-penguin-killings/9905746>> at 3 December 2018. The Tasmanian Director of Public Prosecutions subsequently appealed the sentence, and the Tasmanian Supreme Court increased the sentence to two months' imprisonment (wholly suspended for 12 months) and 98 hours of community service: Declan Gooch, 'Tasmanian Man Who Beat Penguins to Death Has "Manifestly Inadequate" Sentence Doubled', *ABC News* (online) 16 October 2018 <<http://www.abc.net.au/news/2018-10-15/tasmanian-penguin-killer-sentence-upgraded/10377496>> at 3 December 2018.
10. Jack Kerr, 'Victoria's Environmental Laws Questioned after Asbestos and Eagle-Killer Cases', *ABC News* (online) 3 October 2018 <<http://www.abc.net.au/news/2018-10-03/vic-environmental-laws-under-fire-following-corkman-eagles/10297124>> at 3 December 2018; Rita Panahi, 'Sick, Sadistic Idiots Who Brutalise Animals Should Be in Jail', *Herald Sun* (Melbourne) 30 September 2018 <<https://www.heraldsun.com.au/news/opinion/rita-panahi/sick-sadistic-idiots-who-brutalise-animals-should-be-in-jail/news-story/cldccc3f7a122ec147ccfdcd11564421>> at 3 December 2018.
11. Natasha Bita, 'RSPCA Calls for Tougher Punishments as It's Revealed Animal Cruelty Perpetrators Avoid Jail', *Daily Telegraph* (online) 15 November 2017 <<https://www.dailytelegraph.com.au/news/nsw/calls-to-lock-up-the-real-animals-as-its-revealed-animal-cruelty-perpetrators-escape-punishment/news-story/e5ac0c6b999fa2e624698d69ecdade60>> at 3 December 2018. See also ABC News, 'RSPCA Pushes for Tougher Animal Cruelty Penalties', *ABC News* (online) 10 February 2010 <<http://www.abc.net.au/news/2010-02-10/rspca-pushes-for-tougher-animal-cruelty-penalties/326240>> at 3 December 2018.
12. *Maier v The Queen* [2011] VSCA 136 (12 May 2011) [51].
13. Annabel Markham, 'Animal Cruelty Sentencing in Australia and New Zealand', in Peter Sankoff et al. (eds), *Animal Law in Australasia: Continuing the Dialogue* (2nd ed., 2013) 224.
14. Jed Goodfellow, 'Animal Welfare Law Enforcement: To Punish or Persuade?', in Peter Sankoff et al. (eds), *Animal Law in Australasia: Continuing the Dialogue* (2nd ed., 2013) 206.
15. Steven White, 'Standards and Standard-Setting in Companion Animal Protection' (2016) 38(4) *Sydney Law Review* 463, 463. See also Richard Jochelson and James Gacek, "'Ruff" Justice: Canine Cases and Judicial Law Making as an Instrument of Change' (2018) 24(1) *Animal Law Review* 171; Steven White, 'Exploring Different Philosophical Approaches to Animal Protection in Law', in Peter Sankoff et al. (eds), *Animal Law in Australasia: Continuing the Dialogue* (2nd ed., 2013) 33; Markham (2013), above n 13, 221; Steven White, 'Exploring Different Philosophical Approaches to Animal Protection in Law', in Peter Sankoff and Steven White (eds), *Animal Law in Australasia: A New Dialogue* (2009) 79–107.

- I.7 Despite apparent government, stakeholder and community interest in the sentencing of animal cruelty offending, surprisingly little information on sentencing practices for this type of offending is available. This, at least in part, may be because most animal cruelty offences are sentenced in the Magistrates' Court, for which sentencing remarks are not readily available to the public.¹⁸ Further, the responsibility for prosecuting animal cruelty offences in Victoria is shared among a number of different organisations, such that their data is not centralised and readily accessible.
- I.8 The aim of this report is to provide the first comprehensive review of sentencing of animal cruelty offences in Victoria.

Past research and data

- I.9 Relatively few Australian studies have been published on the sentencing of animal cruelty offences. Available research does, however, reveal that the most common sentencing outcome for animal cruelty offences tends to be a moderate fine, usually of no more than \$1,000.
- I.10 In 2002, Sharman reviewed online sentencing data for animal cruelty and aggravated animal cruelty offences sentenced in New South Wales between January 1996 and December 2000.¹⁹ She found that 3% of offenders who were found guilty of animal cruelty received a term of imprisonment; the percentage was slightly higher, at 5%, for offenders who were found guilty of aggravated animal cruelty. The most common sentencing outcome in more than half of the reported cases was a fine of less than \$1,000. She concluded that there was a need to increase sentences for these offences and suggested that the responsibility for doing so rested with the judiciary.²⁰
- I.11 In 2009, Boom and Ellis reviewed sentencing outcomes for animal cruelty offences in New South Wales between 2001 and 2007.²¹ They found that, of the 1,164 cases with known sentencing outcomes, 62% of offenders (722) received a fine, 36% received community orders, suspended sentences, bonds or dismissal without conviction, and 2% of offenders (28) received some form of custodial sentence. They argued that these sentencing outcomes were inconsistent with the New South Wales Government's stated intention that penalties for these behaviours should send a strong message of denunciation and deterrence.²²

16. Piers Beirne, 'From Animal Abuse to Interhuman Violence? A Critical Review of the Progression Thesis' (2004) 12(1) *Society and Animals* 39, 39–40; Linda Merz-Perez et al., 'Childhood Cruelty to Animals and Subsequent Violence Against Humans' (2001) 45(5) *International Journal of Offender Therapy and Comparative Criminology* 556; Christopher Hensley and Joseph B. Ketron, 'The Predictive Ability of Childhood Animal Cruelty Methods for Later Interpersonal Crimes' (2018) *Behavioral Sciences and the Law*, advance online publication: doi: 10.1002/bsl.2369, 7.

17. See for example, Anne M. Volant et al., 'The Relationship Between Domestic Violence and Animal Abuse: An Australian Study' (2008) 23(9) *Journal of Interpersonal Violence* 1277; Bernard Unti, 'Cruelty Indivisible: Historical Perspectives on the Link Between Cruelty to Animals and Interpersonal Violence', in Frank R. Ascione (ed.), *The International Handbook of Animal Abuse and Cruelty: Theory, Research, and Application* (2008).

18. The Magistrates' Court is not required to publish sentencing decisions. The parties and journalists may, however, apply for audio recordings of the proceedings. Transcripts are only available to the public for committal hearings on the written permission of the Chief Magistrate within 12 months of the decision: Magistrates' Court of Victoria, 'Access to Recordings and Transcripts' (magistratescourt.vic.gov.au, 2018) <<https://www.magistratescourt.vic.gov.au/about-us/media-information/access-recordings-and-transcripts>> at 3 December 2018. The Sentencing Advisory Council maintains a publicly available database of statistics for offences sentenced in the Magistrates' Court, County Court and Supreme Court of Victoria. At the time of publication of this report, the database included around 500 offences sentenced in the Magistrates' Court between 1 July 2013 and 30 June 2016: Sentencing Advisory Council, 'SACStat Sentencing Advisory Council Statistics Online' (sentencingcouncil.vic.gov.au, 2017) <<https://www.sentencingcouncil.vic.gov.au/sacstat/home.html>> at 3 December 2018.

19. Katrina Sharman, 'Sentencing Under Our Anti-Cruelty Statutes: Why Our Leniency Will Come Back to Bite Us' (2002) 13(3) *Current Issues in Criminal Justice* 333.

20. Ibid 336.

21. Keely Boom and Elizabeth Ellis, 'Enforcing Animal Welfare Law: The NSW Experience' (2009) 3 *Australian Animal Protection Law Journal* 6.

22. Ibid 31.

- I.12 A high proportion of fines has also been observed in sentences for animal cruelty offences in Queensland. Taylor and Signal found that 36 of the 39 cases with a known sentencing outcome prosecuted by RSPCA Queensland in 2007–08 resulted in a fine, usually of less than \$3,000.²³
- I.13 In 2010, Geysen et al. argued that more empirical evidence was needed on community expectations of appropriate penalties for companion animal cruelty offences.²⁴
- I.14 A number of researchers have also commented on the appropriateness and effectiveness of increasing maximum penalties for animal cruelty offences. White has called for caution before increasing maximum penalties because of ‘the limited effectiveness of penalty escalation’ in addressing the ‘underlying causes of animal abuse’.²⁵ Instead, he argues that it is ‘important to implement other measures’.²⁶ Geysen et al. have also cautioned against increasing maximum penalties for animal cruelty offences, but on the basis that it is not clear that those increases translate into actual changes in sentencing practices.²⁷
- I.15 More recent research by Morton et al., however, reviewed 314 sentences imposed in cases prosecuted by RSPCA South Australia between 2006 and 2018 and found that increases in maximum penalties resulted in a noticeable change in sentencing practices.²⁸ In particular, their research found that after the maximum financial penalty and imprisonment term were doubled in 2008, the average fine increased from \$700 to \$1,535 and the average prison sentence increased from 37 days to 77 days.²⁹

Research questions

- I.16 This report analyses animal cruelty offences sentenced during the 10-year period from 1 January 2008 to 31 December 2017 (the reference period). The six specific research questions are outlined in Table I (page 5).
- I.17 This report differs from past studies in a number of ways:
 - This is the first known analysis of sentencing for animal cruelty offences in Victoria (previous studies have focused on New South Wales, Queensland and South Australia).
 - The reference period in this report is 10 years, allowing for an insight into long-term trends.
 - The Council’s research is based on information from a number of sources covering all court jurisdictions, and it includes detailed information about sentencing outcomes, thereby allowing for a more comprehensive analysis.
 - This research examines a number of previously unexplored issues, including the demographics of animal cruelty offenders, their co-sentenced offences, whether sentencing courts imposed an ancillary control order, whether the animal cruelty offending was sentenced in a case flagged as family violence and whether animal cruelty offenders engaged in prior or subsequent offending.

23. Nik Taylor and Tania Signal, ‘Lock ‘em Up and Throw Away the Key? Community Opinions Regarding Current Animal Abuse Penalties’ (2009) 3 *Australian Animal Protection Law Journal* 33, 36.

24. Tracey-Lynne Geysen et al., ‘Companion Animal Cruelty and Neglect in Queensland: Penalties, Sentencing and “Community Expectations”’ (2010) 4 *Australian Animal Protection Law Journal* 46.

25. White (2016), above n 15, 490.

26. Ibid 489.

27. Geysen et al. (2010), above n 24, 59.

28. Rochelle Morton et al., ‘Increasing Maximum Penalties for Animal Welfare Offences in South Australia: Has it Caused Penal Change?’ (2018) 8 *Animals* 236.

29. Ibid 248. However, the same legislation that doubled the maximum penalty for *basic cruelty* from one year’s imprisonment to two years’ imprisonment in South Australia also introduced the additional offence of *aggravated cruelty* with a maximum penalty of four years’ imprisonment. The researchers aggregated the post-amendment penalties for both forms of cruelty when determining the average fine and prison sentence for animal cruelty.

Table 1: The six research questions in this report

1. Prevalence	How many animal cruelty offences were sentenced in Victorian courts in the 10 years to 31 December 2017?
2. Sentencing outcomes	What sentences were imposed on those offences?
3. Offender demographics	Who committed those offences (age and gender)?
4. Co-sentenced offences	Were any other offences sentenced in the same case, and if so, what were those offences?
5. Family violence	Did the animal cruelty offending occur in the context of family violence?
6. Prior and subsequent offending	In the four years before and after an offender was sentenced for animal cruelty, did they commit other offences, and if so, what type of offending and when was it committed?

Who investigates animal cruelty in Victoria?

- I.18 The responsibility for investigating animal cruelty offences in Victoria rests with a number of organisations, some of which have a memorandum of understanding in place to allocate responsibilities.³⁰ That allocation is largely dependent on the type of animal and the context in which the alleged criminal behaviour occurs (see Table 2, page 6).
- I.19 The majority of animal cruelty investigations in Victoria are undertaken by RSPCA Victoria, which has primary responsibility for investigating complaints about domestic animals, including both companion animals (typically cats and dogs) and non-commercial livestock (fewer than 10 livestock animals, such as hobby farm animals).³¹ At one point, an agreement was made between RSPCA Victoria and Victoria Police to place a dedicated animal cruelty inspector within the Police Prosecutions Unit of Victoria Police,³² however, this has not eventuated.
- I.20 A number of local councils throughout Victoria are also licensed to prosecute certain animal cruelty offences relating to domestic animals, primarily in relation to the abandonment of cats or dogs and improper management of a domestic animal business, such as a pet shop or breeder. Each local council makes its own determination as to whether to become licensed as an agency able to investigate and prosecute animal cruelty offences.³³
- I.21 Offences against wildlife, such as unlawfully killing eagles,³⁴ are investigated and prosecuted by the Department of Environment, Land, Water and Planning (DELWP).

30. For instance, a memorandum of understanding between RSPCA Victoria and DEDJTR specifies that DEDJTR is responsible for cases involving commercial animals and RSPCA Victoria is responsible for cases involving non-commercial animals: Parliament of Victoria, Economy and Infrastructure Committee, *Inquiry into the RSPCA Victoria* (2017) 16.

31. Following a number of high-profile incidents during RSPCA investigations, the Parliament of Victoria initiated an inquiry into the RSPCA: Neil Comrie, *Independent Review of the RSPCA Victoria Inspectorate: Transformation of the RSPCA Victoria Inspectorate* (2016); Parliament of Victoria (2017), above n 30; Victorian Government, *Victorian Government Response to the Parliamentary Inquiry into the RSPCA Victoria* (2018).

32. Comrie (2016), above n 31, 55.

33. *Prevention of Cruelty to Animals Act 1986* (Vic) s 18(1)(c); *Domestic Animals Act 1994* (Vic) s 72.

34. Emma Field and Nicole Asher, 'Wedge-Tailed Eagles Found Dead After "Clearly Intentional" Mass Killing in East Gippsland', *ABC News* (online) 13 June 2018 <<http://www.abc.net.au/news/2018-06-12/wedge-tailed-eagles-killed-east-gippsland/9859880>> at 3 December 2018.

- 1.22 Offences against commercial animals (livestock), such as failing to medicate a herd of cattle,³⁵ are investigated and prosecuted by the Department of Economic Development, Jobs, Transport and Resources (DEDJTR).
- 1.23 In the most recent years analysed in this report, DELWP and DEDJTR were the bodies responsible for investigating and prosecuting livestock-related and wildlife-related animal cruelty. However, a number of changes were made to the relevant government departments during the reference period. From 2008 to 2013, the Department of Primary Industries (DPI) and the Department of Sustainability and Environment (DSE) were responsible for such matters. From July 2013 to 2014, those departments were merged to create the Department of Environment and Primary Industries (DEPI).³⁶ And in January 2015, DEPI was split into DELWP and DEDJTR.³⁷
- 1.24 Further, although the Office of the Racing Integrity Commissioner does not initiate criminal proceedings, it is empowered to conduct investigations into matters relating to cruelty in the context of racing – including horse racing, harness racing and greyhound racing – and to refer matters to the Racing Appeals and Disciplinary Boards.³⁸
- 1.25 Aside from the Office of the Racing Integrity Commissioner, each of the organisations responsible for investigating and prosecuting animal cruelty offences in Victoria has a number of avenues available to them if they find during an investigation that an offence has been committed. These organisations can issue a verbal or written warning,³⁹ initiate a prosecution⁴⁰ or issue an infringement notice for certain offences.⁴¹

Table 2: Agencies responsible for investigating and prosecuting animal cruelty in Victoria

Agency	Responsibilities
RSPCA Victoria	Domestic animals Hobby farms (fewer than 10 livestock animals)
DEDJTR	Livestock
DELWP	Wildlife Hunting
Local councils (if licensed)	Domestic animals Domestic animal businesses
Victoria Police	Any criminal activity

35. Kate Dowler, 'Livestock Cruelty: Two Victorian Farmers Fined', *The Weekly Times* (online) 1 June 2017 <<https://www.weeklytimesnow.com.au/news/national/livestock-cruelty-two-victorian-farmers-fined/news-story/90f488993d01a6cda255c07ce95e4aed>> at 3 December 2018.

36. Bendigo Advertiser, 'Naphthine Announces DPI and DSE to Merge', *Bendigo Advertiser* (online) 9 April 2013 <<https://www.bendigoadvertiser.com.au/story/I4I9675/naphthine-announces-dpi-and-dse-to-merge>> at 3 December 2018.

37. Cimara Doutré, 'Department of Environment and Primary Industries to Be Split by New Labor Government', *Weekly Times* (online) 5 December 2014 <<https://www.weeklytimesnow.com.au/news/politics/departments-of-environment-and-primary-industries-to-be-split-by-new-labor-government/news-story/42ac6d4194bd4e840d59eb369945094a>> at 3 December 2018.

38. *Racing Act 1958* (Vic) pt 1A.

39. *Prevention of Cruelty to Animals Act 1986* (Vic) s 24ZP(1).

40. *Prevention of Cruelty to Animals Act 1986* (Vic) s 24ZW(1).

41. Examples include failing to secure a dog on the tray of a car on a highway and rodeo-related offences: *Prevention of Cruelty to Animals Act 1986* (Vic) s 37A(1); *Prevention of Cruelty to Animals Regulations 2008* (Vic) r 101, sch 6.

2. Defining animal cruelty

- 2.1 The primary concern of this chapter is how the Council defines *animal cruelty* for the purposes of this report. This definition is necessary to determine which of a wide range of offences constitute animal cruelty in Victoria. In this chapter, the Council also identifies the various offences in Victoria that meet that definition and were operational for some or all of the reference period.
- 2.2 The term *animal cruelty* is not specifically defined in the POCTA Act;⁴² however, section 9(1) provides a list of behaviours that constitute cruelty:

Section 9. Cruelty

(1) A person who—

- (a) wounds, mutilates, tortures, overrides, overdrives, overworks, abuses, beats, worries, torments or terrifies an animal; or
- (b) loads, crowds or confines an animal where the loading, crowding or confinement of the animal causes, or is likely to cause, unreasonable pain or suffering to the animal; or
- (c) does or omits to do an act with the result that unreasonable pain or suffering is caused, or is likely to be caused, to an animal; or
- (d) drives, conveys, carries or packs an animal in a manner or position or in circumstances which subjects or subject, or is likely to subject, it to unnecessary pain or suffering; or
- (e) works, rides, drives or uses an animal when it is unfit for the purpose with the result that unreasonable pain or suffering is caused to an animal; or
- (f) is the owner or the person in charge of an animal which is confined or otherwise unable to provide for itself and fails to provide the animal with proper and sufficient food, drink or shelter; or
- (g) sells, offers for sale, purchases, drives or conveys an animal that appears to be unfit (because of weakness, emaciation, injury or disease) to be sold, purchased, driven or conveyed; or
- (h) abandons an animal of a species usually kept in a state of confinement or for a domestic purpose; or
- (i) is the owner or the person in charge of a sick or injured animal and unreasonably fails to provide veterinary or other appropriate attention or treatment for the animal; or
- (j) other than in accordance with the *Catchment and Land Protection Act 1994*, the *Wildlife Act 1975*, the *Access to Medicinal Cannabis Act 2016* or the *Drugs, Poisons and Controlled Substances Act 1981*, intentionally administers to an animal or lays a bait for the animal containing—(i) a poison; or (ii) any other substance which, when administered to that type of animal, has a harmful effect on the animal; or
- (k) uses spurs with sharpened rowels on an animal; or
- (l) carries out a prohibited procedure on an animal—

commits an act of cruelty upon that animal and is guilty of an offence and is liable to a penalty of not more than, in the case of a natural person, 250 penalty units or imprisonment for 12 months or, in the case of a body corporate, 600 penalty units.

42. The term *animal* is, however, defined in section 3(3) of the *Prevention of Cruelty to Animals Act 1986* (Vic) to include: '(a) a live member of a vertebrate species including any—(i) fish or amphibian that is capable of self-feeding; or (ii) reptile, bird or mammal, other than any human being or any reptile, bird or other mammal that is below the normal mid-point of gestation or incubation for the particular class of reptile, bird or mammal; or (b) a live adult decapod crustacean, that is—(i) a lobster; or (ii) a crab; or (iii) a crayfish'.

- 2.3 The approach of not defining cruelty, but instead providing a list of behaviours that constitute cruelty, is also taken in Western Australia, Queensland and the Australian Capital Territory.⁴³ In the remaining Australian jurisdictions, cruelty is expressly defined.⁴⁴
- 2.4 Drawing primarily on the enumerated behaviours in section 9(1) of the POCTA Act, the Council has defined *animal cruelty* in this report as follows, to ensure that the definition encapsulates all those behaviours:
- Any act or omission that contributes to an animal experiencing, or being likely to experience, unreasonable or unnecessary pain or suffering.*
- 2.5 This definition accounts for both active acts of cruelty and passive acts of neglect. This is necessary to account for the criminalisation of omissions in sections 9(1)(c), (f) and (i) of the POCTA Act, which deem it an offence to omit to do an act that results in an animal experiencing unreasonable pain or suffering, or to fail to provide sufficient food, drink, shelter or treatment to an animal.⁴⁵
- 2.6 The Council's definition also accounts for behaviours that are *likely* to cause pain or suffering, in addition to those that *actually* result in pain or suffering. This is consistent with sections 9(1)(b)–(d) of the POCTA Act, such that a person commits the offence of cruelty if their behaviour is *likely* to cause pain or suffering in certain circumstances.
- 2.7 The Council's definition of cruelty further accounts for unreasonable and unnecessary, but not *unjustifiable*, pain or suffering. Although some other jurisdictions criminalise the infliction of unjustifiable pain or suffering, the behaviours in section 9(1) of the POCTA Act are only criminal if they result in *unreasonable* or *unnecessary* pain or suffering; the term *unjustifiable* does not appear in the Victorian legislation. This exclusion is, however, likely to be irrelevant due to the almost complete overlap between the three concepts, such that if a behaviour that causes pain or suffering to an animal is considered to be unreasonable or unnecessary, it is very likely that same behaviour is also unjustifiable.
- 2.8 The Council has further excluded behaviours that might otherwise be classified as cruelty but that can be permissible in certain circumstances. For example, it is a crime to destroy the habitat of protected wildlife,⁴⁶ and there are circumstances in which this behaviour would qualify as animal cruelty; however, it is also possible to lawfully engage in this behaviour with appropriate authorisation, such as during the harvesting of timber or other forest produce.⁴⁷ It is not possible to distinguish between instances of these offences in which this behaviour occurs in a cruel fashion and instances in which the offender simply does not have the appropriate authorisation.
- 2.9 In total, the Council identified 35 offences in Victorian legislative instruments (containing 48 prohibited behaviours) that met its definition of *animal cruelty*.⁴⁸

43. *Animal Welfare Act 2002* (WA) s 19; *Animal Care and Protection Act 2001* (Qld) s 18; *Animal Welfare Act 1992* (ACT) s 6A.

44. *Prevention of Cruelty to Animals Act 1979* (NSW) s 4(2); *Animal Welfare Act 1999* (NT) ss 9(2)–(3); *Animal Welfare Act 1985* (SA) s 13(3); *Animal Welfare Act 1993* (Tas) s 8(1).

45. Notably, legislation in Queensland and the Australian Capital Territory criminalises neglect separately from cruelty: *Animal Care and Protection Act 2001* (Qld) ss 17–19; *Animal Welfare Act 1992* (ACT) ss 6B–7A.

46. *Wildlife Regulations 2013* (Vic) r 42(1).

47. *Wildlife Regulations 2013* (Vic) r 42(2)(b).

48. *Prevention of Cruelty to Animals Act 1986* (Vic); *Domestic Animals Act 1994* (Vic); *Prevention of Cruelty to Animals Regulations 2008* (Vic); *Prevention of Cruelty to Animals Regulations 1997* (Vic) (no longer in operation); *Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2016* (Vic); *Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006* (Vic) (no longer in operation); *Livestock Management Act 2010* (Vic); *Racing Act 1958* (Vic); *Wildlife Act 1975* (Vic).

- 2.10 The number of cruelty behaviours exceeds the total number of offences because several statutory provisions prohibit a number of distinct behaviours. For instance, section 9(1)(a) of the POCTA Act prohibits a person from a range of behaviours, such as abusing, beating, worrying or tormenting an animal. Therefore, while section 9(1)(a) represents a single offence, multiple behaviours can constitute a contravention of that offence. The Council was able, for the most part, to discern which behaviour was sentenced in each case.

Relevant offences

- 2.11 The Council identified 35 animal cruelty offences that were operational during the reference period. The full list of cruelty offences analysed in this report is given in Table 3 (pages 10–13).

Prevention of Cruelty to Animals Act 1986 (Vic)

- 2.12 The primary cruelty offences in Victoria are in sections 9(1) and 10(1) of the POCTA Act. Section 9(1) provides an extensive list of distinct behaviours that constitute cruelty. Section 10(1) prohibits aggravated cruelty, which involves a person engaging in one of the behaviours outlined in section 9(1) in a way that results in the serious disablement or death of an animal. The following short descriptions are utilised in this report to describe the most common offences listed in section 9(1):
- **deliberate cruelty** collectively describes the behaviours in section 9(1)(a) – wounding, mutilating, torturing, overriding, overdriving, overworking, abusing, beating, worrying, tormenting or terrifying an animal;⁴⁹
 - **improperly loading, crowding or confining** describes the behaviours in section 9(1)(b) – loading, crowding or confining an animal when it causes, or is likely to cause, unreasonable pain or suffering;⁵⁰
 - **causing or endangering pain or suffering** describes the behaviours in section 9(1)(c) – doing or omitting to do an act that causes, or is likely to cause, unreasonable pain or suffering to an animal;
 - **failing to provide food, drink or shelter** describes the behaviours in section 9(1)(f) – being the owner or person in charge of an animal that is confined or otherwise unable to provide for itself and failing to provide sufficient food, drink or shelter; and
 - **failing to provide treatment** describes the behaviours in section 9(1)(i) – being the owner or person in charge of a sick or injured animal and unreasonably failing to provide veterinary or other appropriate attention or treatment for the animal.
- 2.13 In addition to sections 9(1) and 10(1) of the POCTA Act, section 11A(1) deems it an offence to allow a prohibited procedure to be carried out on an animal, and section 13 prohibits a number of offences related to animal fighting, baiting and luring.

49. Despite the short description of this offence as *deliberate cruelty*, the offence has no *mens rea* element.

50. Similarly, the behaviours in section 9(1)(d), which were not as prevalent, are described as *improperly driving, conveying, carrying or packing*.

Table 3: Offence, statutory reference and maximum penalty for animal cruelty offences that were operational in Victoria between 2008 and 2017

Offence	Statutory reference	Maximum penalty (as at 31 December 2017)
Wound an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	Natural person 12 months' imprisonment 250 penalty units Corporation 600 penalty units
Mutilate an animal		
Torture an animal		
Override an animal		
Overdrive an animal		
Overwork an animal		
Abuse an animal		
Beat an animal		
Worry an animal		
Torment an animal		
Terrify an animal		
Load an animal in a way that causes, or is likely to cause, unreasonable pain or suffering	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(b)	
Crowd an animal in a way that causes, or is likely to cause, unreasonable pain or suffering		
Confine an animal in a way that causes, or is likely to cause, unreasonable pain or suffering		
Do an act that causes, or is likely to cause, unreasonable pain or suffering	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(c)	
Omit to do an act that causes, or is likely to cause, unreasonable pain or suffering		
Drive, convey or carry an animal in a way that causes, or is likely to cause, unnecessary pain or suffering	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(d) ^a	

Table 3 *continued*

Offence	Statutory reference	Maximum penalty (as at 31 December 2017)
Work, ride, drive or use an animal when it is unfit for the purpose in a way that causes unreasonable pain or suffering	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(e)	Natural person 12 months' imprisonment 250 penalty units
Fail to provide food, drink or shelter for an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(f)	Corporation 600 penalty units
Sell, offer for sale, purchase, drive or convey an animal that appears to be unfit because of weakness, emaciation, injury or disease	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(g) ^b	
Abandon an animal usually kept in confinement for a domestic purpose	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(h)	
Unreasonably fail to provide treatment for a sick or an injured animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(i)	
Intentionally administer or lay bait containing poison for an animal or that has a harmful effect on an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(j)	
Use spurs with sharpened rowels on an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(k)	
Carry out a prohibited procedure on an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(l)	
Aggravated cruelty	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 10(1) ^c	Natural person 2 or 3 years' imprisonment 500 or 750 penalty units Corporation 1,200 or 1,800 penalty units
Allow prohibited procedure to be carried out on an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 11A(1)	Natural person 12 months' imprisonment 250 penalty units Corporation 600 penalty units

Table 3 continued

Offence	Statutory reference	Maximum penalty (as at 31 December 2017)
Keep or use premises for animal fights, baiting or maltreating an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1)(a) <i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1)	Natural person 2 years' imprisonment 500 penalty units
Allow or encourage an animal to fight with another animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1A)	Corporation 1,200 penalty units ^d
Release an animal to be pursued, injured or killed by a dog	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1)(b) <i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1B)	
Cause captive animal to be injured or killed by a dog	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1)(c) <i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1C)	
Use an animal as kill or lure for blooding greyhound	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1)(d) <i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1D)	
Keep an animal as kill or lure for blooding greyhound	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1)(e) <i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1E)	
Attend an event at which an animal is encouraged to fight with another animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(4) <i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1F)	120 penalty units
Attend an event at which a person is using an animal as a lure or kill for the purpose of blooding a greyhound	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1G)	
Place or transport an animal in an enclosed boot of a sedan	<i>Prevention of Cruelty to Animals Regulations 2008</i> (Vic) s r 6	5 penalty units
Use mouthpiece on horse where mouthpiece is twisted	<i>Prevention of Cruelty to Animals Regulations 2008</i> (Vic) r 8	10 penalty units
Use pronged collar on any animal	<i>Prevention of Cruelty to Animals Regulations 2008</i> (Vic) r 9	
Use device that can impart electric current or shock on an animal	<i>Prevention of Cruelty to Animals Regulations 2008</i> (Vic) r 11	

Table 3 continued

Offence	Statutory reference	Maximum penalty (as at 31 December 2017)
Strike or poke an animal in a way that may cause unreasonable pain or injury	<i>Prevention of Cruelty to Animals Regulations 2008</i> (Vic) r 83	10 penalty units
Dock a dog's tail	<i>Prevention of Cruelty to Animals Regulations 1997</i> (Vic) r 7A ^e	
Use or possess a dogfighting or cockfighting implement	<i>Prevention of Cruelty to Animals Regulations 1997</i> (Vic) r 7C <i>Prevention of Cruelty to Animals Regulations 2008</i> (Vic) r 7(1)	20 penalty units
Possess an animal with intent to cause that animal to fight	<i>Prevention of Cruelty to Animals Regulations 2008</i> (Vic) r 7(3)	
Fail to provide sufficient food or drink for domestic fowls	<i>Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2016</i> (Vic) rr 6(1)–(2)	5 penalty units
Fail to comply with cage or non-cage storage requirements for domestic fowls	<i>Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2016</i> (Vic) rr 7–13	
Abandon a cat or dog	<i>Domestic Animals Act 1994</i> (Vic) s 33	10 penalty units
Fail to provide sufficient food, drink, shelter or treatment (as a proprietor of a boarding kennel)	<i>Domestic Animals Act 1994</i> (Vic) s 64	
Being involved in a greyhound race that uses an animal as a lure	<i>Racing Act 1958</i> (Vic) s 55	100 penalty units

- While most of the offences in section 9(1) require the pain or suffering to have been *either unnecessary or unreasonable*, section 9(1)(d) is limited to unnecessary pain or suffering. There is no legislative definition of 'unnecessary'; however, a decision in the Western Australia Magistrates Court suggests that the maximisation of profit does not, on its own, demonstrate that the pain or suffering was necessary: *Department of Regional Government and Local Department v Emanuel Exports Pty Ltd* (Unreported, Western Australia Magistrates Court, Crawford M, 8 February 2008) [97], citing *Ford v Wiley* (1889) 23 QB 203.
- Section 9(1)(g) was amended in 2015 to include all animals (not just calves) and to include unfitness due to emaciation, injury or disease (not just weakness): *Prevention of Cruelty to Animals Amendment Act 2015* (Vic) s 5(1).
- This offence can be predicated on any of the cruelty behaviours outlined in section 9(1).
- The section 13 offences were amended and expanded in 2015 following an investigation into the Victorian greyhound racing industry: Charles Milne, *Investigation into Animal Welfare and Cruelty in the Victorian Greyhound Industry* (2015) 22–23; *Prevention of Cruelty to Animals Amendment Act 2015* (Vic) s 10(1).
- This offence was only in operation until March 2008, when it was revoked: *Prevention of Cruelty to Animals (Prohibited Procedures) Regulations 2008* (Vic) r 4.

- 2.14 Most of the offences in the POCTA Act do not require the offender to have a particular *mens rea* (mental state).⁵¹ Offences that do not require a *mens rea* are known as either *absolute* or *strict liability* offences. In the late nineteenth century, an early iteration of Victorian animal welfare legislation required the prosecution, in proving animal cruelty, to establish that the offender *intended* to engage in cruelty.⁵² By the middle of the twentieth century, that requirement had been removed,⁵³ such that most offences in the current statute also have no *mens rea* element.⁵⁴ A number of cases around Australia have since established that animal cruelty offences without a *mens rea* element should be construed as strict (as opposed to absolute) liability offences, meaning that the accused can avoid liability if they can establish that they had an honest and reasonable belief about facts that, if true, would mean they had not engaged in cruelty.⁵⁵
- 2.15 Sections 9 and 10 of the POCTA Act are therefore strict liability offences. For example, the prosecution would not be required to prove that an accused intentionally or negligently failed to provide sufficient food and water for an animal, contrary to section 9(1)(f) of the POCTA Act. However, the accused might be able to avoid liability if they could establish that they honestly and reasonably believed that they had provided the animal with proper and sufficient food and water.

Prevention of Cruelty to Animals Regulations 2008 (Vic)

- 2.16 A number of offences are also in subordinate legislative instruments, particularly the *Prevention of Cruelty to Animals Regulations 2008 (Vic)*⁵⁶ and the *Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2016 (Vic)*, both of which replaced previous regulations of the same name.

Other offences

- 2.17 Finally, two cruelty offences are included in the *Domestic Animals Act 1994 (Vic)*: abandoning a cat or dog and failing to provide sufficient food, drink, shelter or treatment for animals while acting as the proprietor of a place that boards cats or dogs. It is also an offence under the *Racing Act 1958 (Vic)* to be involved in a greyhound race that uses an animal as a lure.

51. For some cruelty offences, this is a relatively recent change. Sections 9(1)(c), (f) and (i) previously required the offender to have engaged in those behaviours knowingly or negligently, but the mental element, or *mens rea* requirement, was removed from these offences in 2005: *Primary Industries Acts (Further Amendment) Act 2005 (Vic)* s 27.

52. *Animals Protection Act 1890 (Vic)* s 3 (no longer in operation) defined *cruelty* as 'the intentional infliction upon any animal of pain that in its kind or degree or its objects or its circumstances is unreasonable' (emphasis added).

53. *Protection of Animals Act 1966 (Vic)* s 3 (no longer in operation).

54. *Prevention of Cruelty to Animals Act 1986 (Vic)* ss 9–10.

55. *Greyhound Racing Victoria Stewards v Anderton* [2018] VSC 64 (28 February 2018), citing *He Kaw Teh v R* [1985] HCA 43 (11 July 1985); *Tapp v Hodgetts* (Unreported, Supreme Court of Victoria, Crockett J, 30 September 1988); *Bell v Gunter* (Unreported, New South Wales Supreme Court, Dowd J, 24 October 1997); *Fleet v District Court of New South Wales* [2002] NSWCA 25 (26 February 2002); *Pearson v Janlin Circuses Pty Ltd* [2002] NSWSC 1118 (25 November 2002); *Mitchell v Marshall* [2014] TASSC 43 (18 August 2014); *Sutcliffe v RSPCA (SA) Inc* [2016] SASC 125 (11 August 2016). See also *Mansbridge v Nichols* [2004] VSC 530 (17 December 2004); Phillip Jamieson, 'A Question of Criminal Guilt – *mens rea* Under Animal Protection Law' (1988) 15(1) *University of Queensland Law Journal* 75.

56. The *Prevention of Cruelty to Animals Regulations 2008 (Vic)* replaced the *Prevention of Cruelty to Animals Regulations 1997 (Vic)* on 15 December 2008 by virtue of section 5 of the *Subordinate Legislation Act 1994 (Vic)*, which provides that a statutory rule is automatically revoked on the tenth anniversary of the rule being made. The operational period of the 1997 regulations was extended by one year to 15 December 2008 by the *Subordinate Legislation (Prevention of Cruelty to Animals Regulations 1997 – Extension of Operation) Regulations 2007 (Vic)*.

Changes to maximum penalties

2.18 This section provides an outline of the changes to the maximum penalties for certain cruelty offences during the reference period. These changes are important because one of the key considerations in sentencing is the maximum penalty for an offence,⁵⁷ and sentencing practices would therefore theoretically be affected by any changes to maximum penalties. For example, the maximum financial penalty for cruelty contrary to section 9(1) of the POCTA Act doubled in 2012. Each of the changes to maximum penalties for animal cruelty offences related to the number of penalty units available; the maximum periods of imprisonment were unchanged.

Table 4: Changes to maximum penalties (for natural persons) for various animal cruelty offences during the reference period, 2008 to 2017

Statutory reference and offence	2008	2012	2015
<i>Prevention of Cruelty to Animals Act</i> (Vic) s 9 Cruelty	12 months' imprisonment 120 penalty units ^a	– 246 penalty units ^b	– 250 penalty units ^c
<i>Prevention of Cruelty to Animals Act</i> (Vic) s 10 Aggravated cruelty	2 years' imprisonment 240 penalty units ^d	– 492 penalty units ^e	– 500 penalty units ^f
<i>Prevention of Cruelty to Animals Act</i> (Vic) s 11A Prohibited procedure	12 months' imprisonment 120 penalty units	– –	– 250 penalty units ^g
<i>Prevention of Cruelty to Animals Act</i> (Vic) ss 13(1)(a)–(e) 13(1)–(1E) Animal fighting	2 years' imprisonment 240 penalty units	– –	– 500 penalty units ^h

- a. The maximum penalty for this offence had been doubled on 12 December 2007 from 6 months' imprisonment or 60 penalty units: *Animals Legislation Amendment (Animal Care) Act 2007* (Vic) s 80.
- b. *Domestic Animals Amendment (Puppy Farm Enforcement and Other Matters) Act 2011* (Vic) s 25.
- c. *Prevention of Cruelty to Animals Amendment Act 2015* (Vic) s 5(2).
- d. The maximum fine had been increased from 120 to 240 penalty units in December 2007: *Animals Legislation Amendment (Animal Care) Act 2007* (Vic) s 81.
- e. *Domestic Animals Amendment (Puppy Farm Enforcement and Other Matters) Act 2011* (Vic) s 26.
- f. *Prevention of Cruelty to Animals Amendment Act 2015* (Vic) s 6.
- g. *Prevention of Cruelty to Animals Amendment Act 2015* (Vic) s 7.
- h. *Prevention of Cruelty to Animals Amendment Act 2015* (Vic) s 10.

57. *Sentencing Act 1991* (Vic) s 5(2)(a).

- 2.19 Notably, section 10(2) states that a person found guilty of aggravated cruelty ‘may be liable to the penalty for that offence *in addition to* or instead of any other penalty to which the person is liable under section 9’ (emphasis added). This language seems to suggest that the maximum possible penalty for contravening section 10(1) is a combination of the penalties listed in both sections 9(1) and 10(1), because the subsection would otherwise be redundant. On this reading, the maximum penalty for the offence of aggravated cruelty would be three years’ imprisonment (not two) or 750 penalty units (not 500) for a natural person and 1,800 penalty units (not 1,200) for a corporation, and the decision about whether to combine the two maximum penalties would be left to the discretion of the sentencing magistrate or judge.
- 2.20 There does not appear to have been any cases testing this possible interpretation of the legislation. Instances of similar language in other Victorian Acts seem to focus on ancillary orders that courts may make *in addition to* or *instead of* the available penalty, rather than any combining of two maximum penalties for a single offence.⁵⁸
- 2.21 The analysis of sentencing outcomes in this report cannot easily be compared with similar research in other Australian jurisdictions. The maximum penalties for animal cruelty and aggravated animal cruelty offences vary across Australia. In Queensland and Western Australia, there is a single offence and maximum penalty for cruelty, with no aggravated form.⁵⁹ In other jurisdictions, similar to Victoria, there are separate offences and penalties for cruelty and aggravated cruelty.⁶⁰ The highest imprisonment term in any jurisdiction is five years (in Tasmania and Western Australia), and the highest fine is approximately \$261,000 (in Queensland).

58. See for example, *Crimes Act 1958* (Vic) s 319D; *Domestic Animals Act 1994* (Vic) s 84XA; *Fisheries Act 1995* (Vic) s 129A; *Environment Protection Amendment Act 2018* (Vic) s 120(1)(a) (not yet in force). See also David Cole, ‘Creative Sentencing – Using the Sentencing Provisions of the South Australian Environment Protection Act to Greater Community Benefit’ (2008) 25(1) *Environmental and Planning Law Journal* 25.

59. *Animal Care and Protection Act 2001* (Qld) s 18; *Animal Welfare Act 2002* (WA) s 19(1).

60. *Animal Welfare Act 1992* (ACT) ss 7–7A; *Prevention of Cruelty to Animals Act 1979* (NSW) ss 5–6; *Animal Welfare Act 1999* (NT) ss 9–10; *Animal Welfare Act 1985* (SA) ss 13(1)–(2); *Animal Welfare Act 1993* (Tas) ss 8, 9.

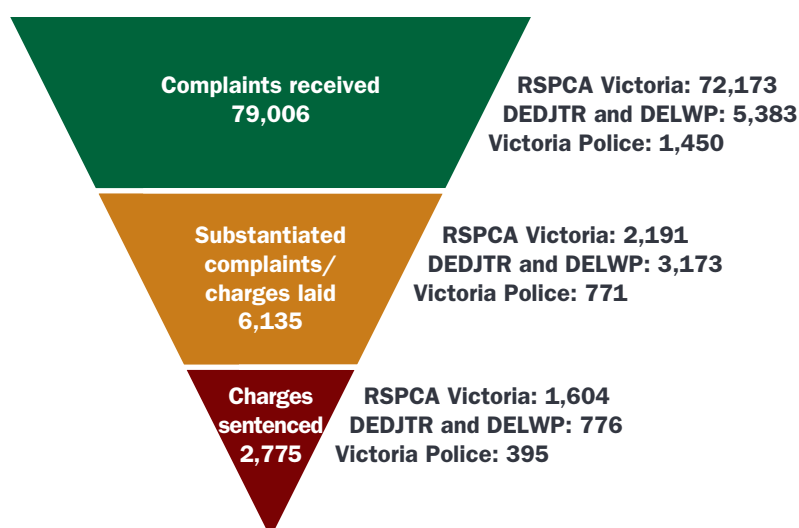
3. Prevalence of animal cruelty offences

- 3.1 This chapter examines how many animal cruelty offences were recorded and sentenced, including yearly trends, in Victoria between 2008 and 2017, and analyses which animal cruelty behaviours were most commonly recorded and sentenced.
- 3.2 The data in this report includes the number of complaints received and the proportion of complaints that were found to be substantiated or resulted in charges being laid. Data was provided to the Council by each of the key organisations responsible for investigating and prosecuting animal cruelty in Victoria: RSPCA Victoria, the Department of Economic Development, Jobs, Transport and Resources (DEDJTR), the Department of Environment, Land, Water and Planning (DELWP) and Victoria Police (through Victoria Police data provided by the Crime Statistics Agency).

How many complaints were sentenced?

- 3.3 Figure 1 provides a broad overview of the number of complaints received over the seven-year period from 2011 to 2017,⁶¹ the rates at which complaints were found to be substantiated, and the rates at which sentences were imposed.

Figure 1: Number of animal cruelty complaints, substantiated complaints and charges sentenced, by agency, 2011–2017



- 3.4 Overall, in those seven years, 79,006 complaints of animal cruelty were received, 6,135 complaints were substantiated and 2,775 charges were sentenced. The number of charges sentenced therefore represents 3.5% of all complaints received.
- 3.5 Figure 1 has a number of caveats. First, each of the above agencies records data in a slightly different, although comparable, manner. In its annual report each year, RSPCA Victoria specifies the number of animal cruelty reports that were received or investigated, and that number

61. This time period is utilised because DEDJTR and DELWP only recorded substantiated offences from the year 2011 onwards.

- is often considerably lower than the number of animals involved in the alleged offending.⁶² DEDJTR and DELWP also specify the number of complaints received. In comparison, Victoria Police specifies the number of 'offences recorded', which are 'any criminal act or omission by a person or organisation for which a penalty could be imposed'.⁶³ Further, while DEDJTR and DELWP record the number of substantiated complaints, regardless of whether charges were laid, both RSPCA Victoria and Victoria Police simply record the number of charges laid, which for various reasons was always lower than the number of substantiated complaints.
- 3.6 The second caveat is that each agency utilises a slightly different reporting period for the number of complaints and substantiated complaints each year. The annual Victoria Police data provided by the Crime Statistics Agency runs from April to March each year; DEDJTR's and DELWP's data is based on a calendar year to December; and RSPCA Victoria's data is based on either a financial year to June (number of complaints) or a calendar year to December (number of charges laid).
 - 3.7 The third caveat is that complaints and sentences do not occur contemporaneously; that is, a lag always exists between a complaint being made and a sentence being imposed. As a result, the charges in Figure 1 may have been sentenced in the same time period as complaints were received, but a number of charges sentenced may have arisen from complaints that preceded that time period. Also, a number of complaints would not have been sentenced until after that time period.
 - 3.8 Finally, the reported number of complaints is, in a way, both an underestimation and an overestimation of the rate at which animal cruelty occurs in Victoria. On the one hand, many complaints received by the various investigative agencies do not actually amount to animal cruelty. On the other hand, a great deal of animal cruelty is unreported and therefore undetected,⁶⁴ in the same way that family violence, sexual violence and child abuse are frequently underreported.⁶⁵
 - 3.9 Nevertheless, the Council considers that Figure 1 provides a broad indication of the number of animal cruelty complaints in Victoria and the proportion that are sentenced.
 - 3.10 Many legitimate reasons exist for why an investigated complaint might not lead to charges being laid or a sentence being imposed. For example, the complaint may relate to behaviour that does not actually constitute animal cruelty, such as leaving a dog tied up in the backyard during the day. There may be insufficient evidence to justify charges being laid, or there may be resource constraints on the number of investigations and prosecutions that can be undertaken. Further, investigators may conclude that the most appropriate course of action – one that best ensures the animal's welfare – is to issue a verbal or written warning and educate or assist the person responsible. Indeed, such an approach is consistent with the purpose of the *Prevention of Cruelty to Animals Act 1986* (Vic) ('the POCTA Act'), which the Court of Appeal recently described as 'directed at animal welfare rather than enforcement of the criminal law'.⁶⁶
 - 3.11 In addition, the proportion of complaints received by each agency that resulted in a sentence being imposed varied, ranging from 2.2% for RSPCA Victoria to 27% for Victoria Police. This is most likely a reflection of differences in both the nature of complaints each agency receives and the primary objectives of their organisations.

62. For example, according to its most recent annual report, RSPCA Victoria received 10,642 reports of animal cruelty, and those complaints involved at least 26,428 animals (12,740 dogs, 8,200 horses and 5,488 cats): RSPCA Victoria, *Annual Report 2017–18* (2018) 2.

63. Crime Statistics Agency, 'Explanatory Notes' (crimestatistics.vic.gov.au, 2018) <<https://www.crimestatistics.vic.gov.au/about-the-data/explanatory-notes>> at 5 December 2018.

64. Markham (2013), above n 13, 221.

65. See for example, Our Watch, *Reporting on Domestic Violence* (2014) 5; Kate B. Wolitzky-Taylor et al., 'Is Reporting of Rape on the Rise? A Comparison of Women with Reported Versus Unreported Rape Experiences in the National Women's Study-Replication' (2011) 26(4) *Journal of Interpersonal Violence* 807; Tiffany Sharples, 'Study: Most Child Abuse Goes Unreported' *Time* (online) 2 December 2008 <<http://content.time.com/time/health/article/0,8599,1863650,00.html>> at 5 December 2018.

66. *Healey v RSPCA* [2018] VSCA 245 (26 September 2018) [100].

RSPCA Victoria

- 3.12 Reported data on the number of complaints received and charges laid by RSPCA Victoria comes from two separate sources: the number of complaints was extracted from RSPCA's annual reports, which are available online, and the number of charges laid was provided to the Council by RSPCA Victoria. For that reason, the data in Figures 2 and 3 covers two distinct time periods.
- 3.13 Seven years of data was available on the number of reports of animal cruelty received each year by RSPCA Victoria (Figure 2). That number increased overall, with the exception of a drop in 2016–17.⁶⁷
- 3.14 Nine years of data was available on the number of charges laid each year by RSPCA Victoria, representing 2,511 charges of animal cruelty (Figure 3). Between 2009 and 2015, there was a relatively steady increase in the number of charges laid, followed by a sharp decline in 2016 and an even sharper increase in 2017.
- 3.15 The most common charge laid by RSPCA Victoria was failing to provide treatment (36% or 902 charges). This was followed by failing to provide food, drink or shelter (22%), causing or endangering pain or suffering through acts or omissions (14%), improperly loading, crowding or confining (11%) and aggravated cruelty (8%). Notably, deliberate cruelty constituted just 1.4% of all animal cruelty charges laid by RSPCA Victoria over the nine years.

Figure 2: Number of animal cruelty complaints received by RSPCA Victoria, 2011–12 to 2017–18

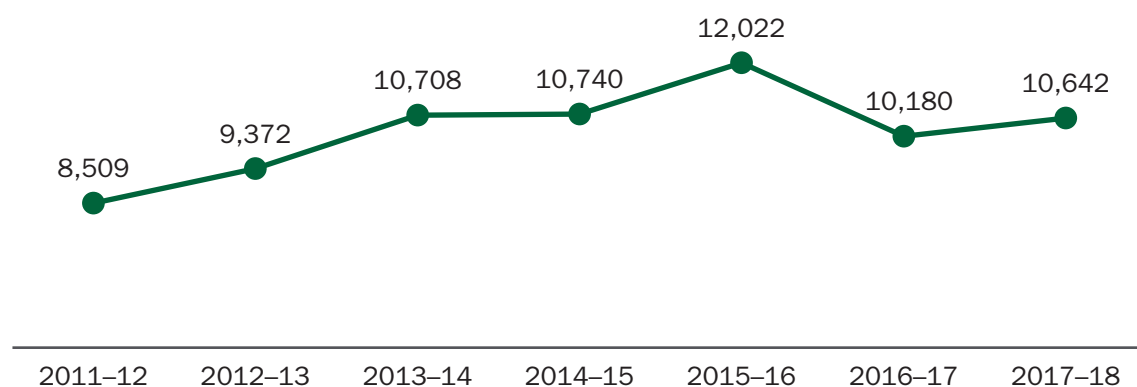
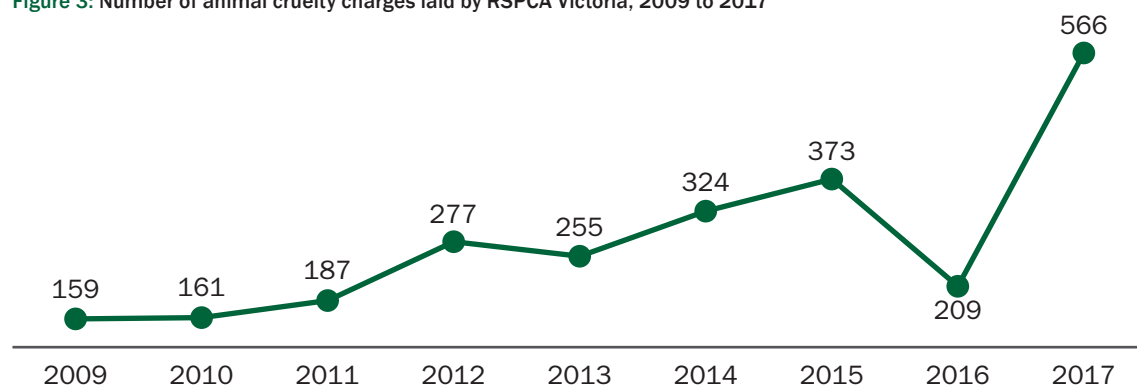


Figure 3: Number of animal cruelty charges laid by RSPCA Victoria, 2009 to 2017

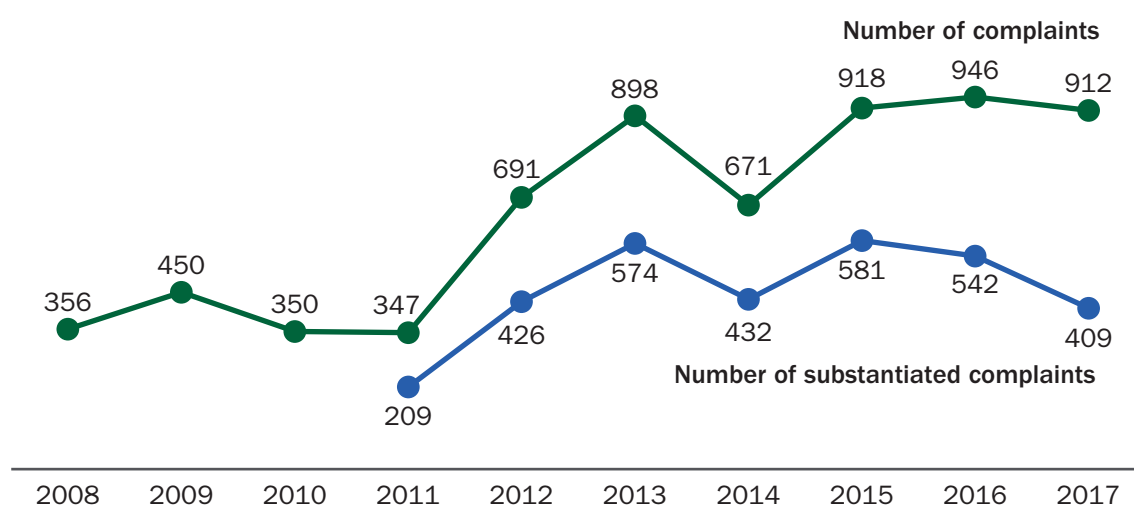


67. RSPCA Victoria reported the number of *complaints* in the three previous years (2008–09 to 2010–11), but this appears to reflect the number of offences or types of animal cruelty mentioned in those complaints. In all subsequent years, the term *complaints* is synonymous with the number of *reports received*. While the reference period in this report runs from 2008 to 2017, RSPCA Victoria released its 2017–18 annual report during the course of this project, allowing for the inclusion of their most recent data.

DEDJTR and DELWP

- 3.16 Figure 4 indicates the number of animal cruelty complaints received by DEDJTR and DELWP as well as the number of those complaints that were substantiated.⁶⁸ Data on the number of substantiated complaints was not available for the years 2008 to 2010.
- 3.17 Overall, DEDJTR and DELWP received 6,539 complaints of animal cruelty. Figure 4 shows an overall increase in these complaints, particularly between 2011 and 2013.
- 3.18 The proportion of complaints that were substantiated during those seven years was 59% (3,173 of 5,383). However, while the proportion of substantiated complaints ranged from 60% to 64% between 2011 and 2015, that proportion dropped to 57% in 2016 and 45% in 2017. Representatives from DEDJTR suggested that this could be a result of 'easier reporting methods, an increased comfort to report, and varied understanding or knowledge of livestock production'.⁶⁹
- 3.19 The most common animal cruelty complaints received by DEDJTR and DELWP were neglect-related offending, including failing to provide food, drink or shelter (1,714) and failing to provide treatment (1,313). DEDJTR and DELWP received comparatively few complaints of deliberate cruelty (58). A large number of complaints involved a combination of various animal cruelty behaviours (1,882), such that it was not possible to discern which behaviours were involved in those complaints. No data was available from DEDJTR and DELWP on the number of aggravated cruelty offences contrary to section 10(1) of the POCTA Act because these offences are instead recorded as section 9(1) cruelty behaviour that resulted in the death or disablement of an animal.⁷⁰

Figure 4: Number of animal cruelty complaints received by DEDJTR and DELWP and number of substantiated complaints, 2008 to 2017



68. Substantiated complaints do not reflect whether charges were laid. Rather, substantiated complaints resulted in identification of an offence or breach of an animal welfare code of practice.

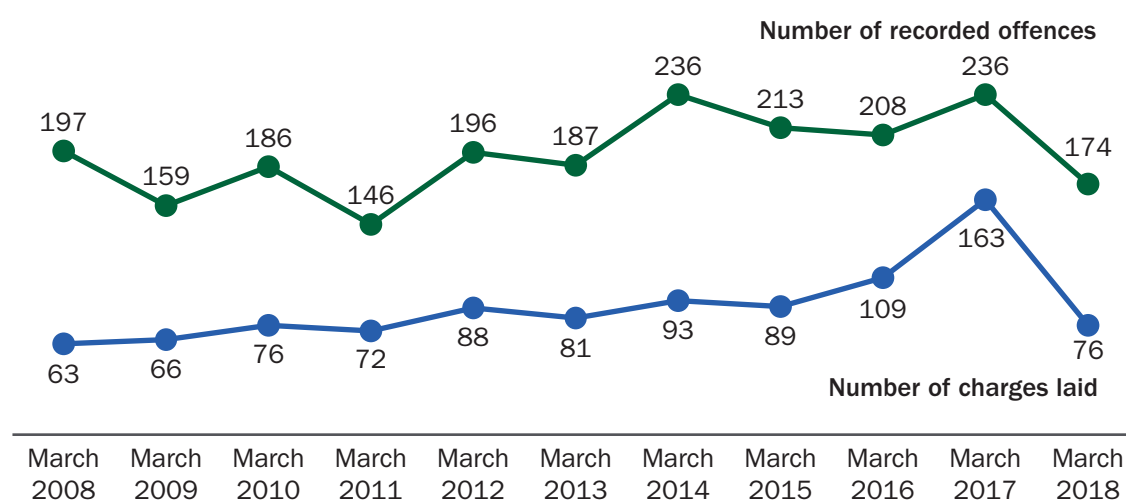
69. Email from DEDJTR to Sentencing Advisory Council, 20 November 2018.

70. Email from DEDJTR to Sentencing Advisory Council, 31 August 2018.

Victoria Police

- 3.20 Figure 5 indicates the number of animal cruelty offences recorded by Victoria Police,⁷¹ as well as the number of charges laid,⁷² in the 11 years to March 2018.
- 3.21 Figure 5 shows a slight overall increase in the number of offences recorded by Victoria Police and the number of charges laid between 2008 and 2017, though there was a sharp decline in the number of offences and charges in the 12 months to March 2018.
- 3.22 A representative from Victoria Police suggested that police officers tend to become aware of animal cruelty in a number of ways, including neighbours reporting what they believe is animal cruelty, police members discovering animal cruelty while executing a search warrant for other offending, RSPCA Victoria inspectors approaching police members over safety concerns during an investigation and police members performing functions other than the execution of a search warrant, such as attending a premises after a report of family violence.⁷³
- 3.23 The most common animal cruelty offence recorded by Victoria Police was aggravated cruelty (39% or 154 offences). The remaining offences included deliberate cruelty (112), causing or endangering pain or suffering (55), failing to provide food, drink or shelter (43) and 30 charges of other cruelty behaviours.

Figure 5: Number of animal cruelty offences recorded by Victoria Police and number of charges laid, April 2007 to March 2018



71. 'Offences recorded' are 'any criminal act or omission by a person or organisation for which a penalty could be imposed'; see [3.5] and Crimes Statistics Agency (2018), above n 63.

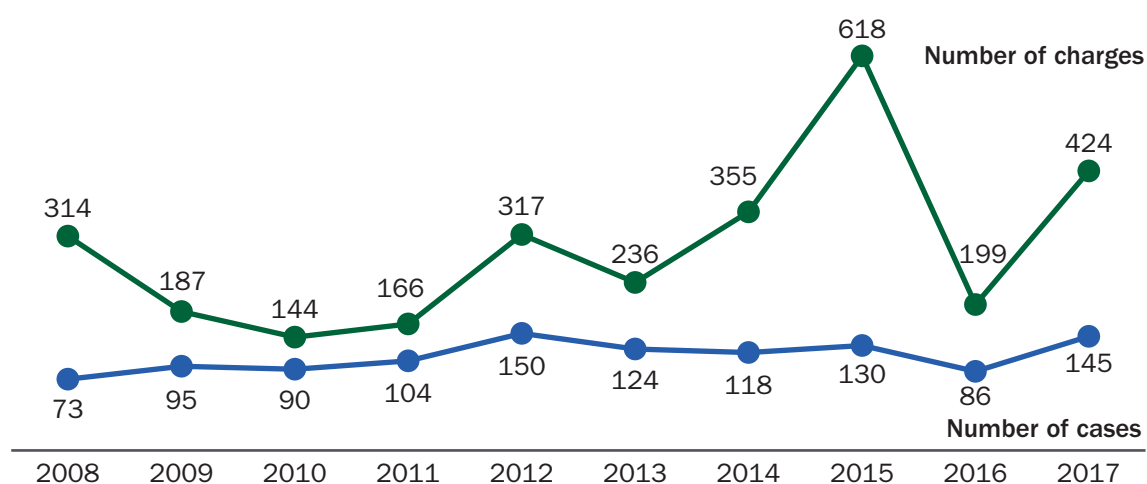
72. The Crimes Statistics Agency measures the number of charges laid by identifying when the offence recorded results in an arrest and/or summons.

73. Roundtable Discussion Forum with Stakeholders (2 November 2018).

How many animal cruelty charges and cases were sentenced?

- 3.24 Figure 6 shows the total number of animal cruelty charges and cases sentenced each year during the reference period. In total, 2,960 charges of animal cruelty were sentenced in 1,115 cases, representing an average of 2.7 cruelty charges per case.
- 3.25 The number of cases sentenced each year doubled during the reference period, from 73 cases in 2008 to 145 in 2017. Stakeholders suggested that this increase in cases is likely to be a result of improved community awareness of animal cruelty, greater preparedness in the community to report such behaviour, including in the agricultural sector, and improvements in the mechanisms through which the community can make such reports, especially online reporting systems.⁷⁴ Of course, cases involving animal cruelty still represent only a small proportion of cases sentenced each year in Victorian courts.⁷⁵
- 3.26 The number of charges sentenced each year increased from an average of 225 charges per year in the first five years to an average of 366 in the most recent five years. In comparison with the number of cases sentenced each year, the number of charges sentenced each year varied greatly, ranging from a low of 144 charges in 2010 to a high of 618 charges in 2015. Rather than indicating any volatile trends, however, this variability is largely a result of a small number of offenders being sentenced for a high volume of charges in their individual cases.
- 3.27 In particular, 38% of all charges were sentenced in 4% of cases. In 45 cases during the reference period, an animal cruelty offender was sentenced for 10 or more animal cruelty charges in a single case, and those cases disproportionately accounted for 1,139 charges sentenced. These high-volume offenders were responsible for the noticeable spikes in the number of charges in 2008, 2015 and 2017, which are not reflected in the corresponding number of cases for those years. In contrast, in 703 cases (63% of all cases) the animal cruelty offender was sentenced for just one animal cruelty offence.

Figure 6: Number of charges and cases of animal cruelty offences sentenced in Victoria, all courts, 2008 to 2017



74. Roundtable Discussion Forum with Stakeholders (2 November 2018).

75. For example, in 2017–18 102,671 cases were sentenced in Victorian courts (97,133 in the Magistrates' Court, 1,721 in the County and Supreme Courts and 3,817 in the Children's Court). Animal cruelty cases represented 0.14% of those cases. See Sentencing Advisory Council, 'Sentencing Trends' (sentencingcouncil.vic.gov.au, 2018) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics>> at 5 December 2018.

Cases with a high volume of charges

- 3.28 Analysis of the offences within some of the high-volume cases suggests that those offenders are primarily involved in puppy farms and in the agricultural industry with large numbers of livestock.
- 3.29 The highest number of animal cruelty charges against an offender (other than a corporation) in the one case was 77 sentenced offences. Following an RSPCA Victoria investigation into a puppy farm, the offender was sentenced in 2015 for:
- 38 charges of failing to provide treatment;
 - 14 charges of improperly confining or crowding;
 - 14 charges of causing or endangering pain or suffering;
 - nine charges of failing to provide food, drink or shelter; and
 - two charges of aggravated cruelty.
- 3.30 The offender was sentenced to an aggregate fine of \$25,000. The company the offender was operating was also sentenced for 81 animal cruelty offences and received a \$40,000 fine, and two additional co-offenders were similarly sentenced for 81 animal cruelty offences between them, each receiving an aggregate \$60,000 fine. The animal cruelty offences in this case (239 charges in total) represent 8% of all animal cruelty offences sentenced during the reference period.
- 3.31 Only one other case had a high volume of charges involving improper confinement or crowding offences. In 2008, an offender was sentenced for 74 animal cruelty offences that were similar to those in the above case, including 42 charges of failing to provide food, drink, shelter or treatment for an animal, 29 charges of improperly confining an animal and three charges of aggravated cruelty. It was not, however, possible to ascertain whether this case also involved a puppy farm.
- 3.32 Anecdotal evidence suggests that the other category of offender responsible for high-volume cases would seem to be farmers who are unable to adequately care for their animals. This category of offender was raised numerous times by various stakeholders, who suggested that this type of offending is relatively common compared to other offender categories and is typically attributable to unusually long droughts,⁷⁶ financial distress, the effects of old age and/or declining mental health.⁷⁷ Stakeholders further suggested that farmers in such circumstances can be reluctant to request assistance,⁷⁸ or to acknowledge their declining health because their animals represent their livelihood.⁷⁹
- 3.33 The following cases contain a high volume of animal cruelty charges that may be indicative of this category of offenders, based on the offence types involved in each case:
- In 2015, a 62 year-old man was sentenced for 53 animal cruelty offences, 37 of which were aggravated cruelty, 15 were failing to provide treatment and one was improperly loading, crowding or confining. He was sentenced to an aggregate fine of \$8,000.
 - In 2008, a 50 year-old man was sentenced for 43 animal cruelty offences, including five charges of failing to provide food, drink or treatment to an animal, 20 charges of causing or endangering pain or suffering and 18 charges of aggravated cruelty.

76. At the time of publication of this report, 100% of New South Wales and nearly 60% of Queensland were in drought: Joanne Woodburn, 'NSW Government Says Entire State in Drought, New DPI Figures Reveal Full Extent of Big Dry', ABC News (online) 8 August 2018 <<http://www.abc.net.au/news/2018-08-08/nsw-government-says-entire-state-is-now-in-drought/10088628>> at 5 December 2018.

77. Meeting with Department of Economic Development, Jobs, Transport and Resources (4 July 2018).

78. New figures show that up to 15,000 farmers eligible for drought assistance may not have applied for it: Anna Henderson, 'Drought-Hit Farmers Urged to Apply for Government Assistance Payment', ABC News (online) 28 July 2018 <<http://www.abc.net.au/news/2018-07-29/drought-hit-farmers-urged-to-apply-for-assistance-payment/10047686>> at 5 December 2018.

79. Meeting with Department of Economic Development, Jobs, Transport and Resources (4 July 2018).

For the 18 aggravated cruelty offences, he received a wholly suspended sentence of imprisonment, and for the remaining offences he received an aggregate \$15,000 fine.

- One offender was sentenced three times for animal cruelty during the reference period, in 2009, 2013 and 2014. On the first occasion, the 57 year-old man was sentenced to an aggregate fine of \$1,000 for four animal cruelty offences: two charges of aggravated cruelty and two charges of failing to provide treatment. In 2013, he was sentenced to an aggregate \$3,000 fine and an adjourned undertaking for the same four offences. A year later, in 2014, he was sentenced to a 12-month community correction order (CCO) for 44 animal cruelty offences, including 24 charges of aggravated cruelty, one charge of do act likely to cause pain or suffering and 19 charges of omission likely to cause pain or suffering.

- 3.34 The majority of cases prosecuted by DEDJTR tended to involve neglect-related offending, such as failing to provide food, drink or treatment to livestock.⁸⁰ However, not all animal cruelty offending that occurs in an agricultural context necessarily involves neglect-related offending. For example, four offenders were sentenced in 2017 for dozens of charges relating to beating and abusing sheep while they were shearing them. The sentencing magistrate described their behaviour as 'confronting', 'offensive' and 'very serious'.⁸¹ In a related shearing case in 2016, an offender received an adjourned undertaking for 'abusing sheep by twisting the limbs of sheep and lambs while standing on them, stomping on them and kneeling on a lamb with force'.⁸²

Which courts sentenced animal cruelty offences?

- 3.35 During the reference period, the vast majority of animal cruelty cases (95% or 1,053 cases) were sentenced in the Magistrates' Court, another 5% (58 cases) were sentenced in the Children's Court and four cases were sentenced in the higher courts (the County Court and the Supreme Court).
- 3.36 Given that the Magistrates' Court dealt with the vast majority of animal cruelty cases, the trend in the number of cases sentenced in that jurisdiction each year is effectively the same as the trend in Figure 6; that is, there was a relatively steady increase in the number of cases, with some variation from year to year.
- 3.37 Relatively few animal cruelty cases were sentenced in the Children's Court, and the number of those cases has gradually declined each year, from an average of eight cases per year in the first five years of the reference period to an average of four cases in the most recent five years. Just one case involving animal cruelty was sentenced in the Children's Court in 2017. Stakeholders suggested that, at least since 2015,⁸³ this is likely to be an underrepresentation of the number of cases in which young offenders are charged with animal cruelty offences because the majority of young offenders would have participated in a youth diversion program instead of being sentenced.⁸⁴

80. Agriculture Victoria, 'Record of Prosecutions' (agriculture.vic.gov.au, 2018) <<http://agriculture.vic.gov.au/agriculture/animal-health-and-welfare/animal-welfare/record-of-prosecutions>> at 5 December 2018.

81. Agriculture Victoria, 'Shearers Plead Guilty to 60 Animal Cruelty Charges', Media Release (1 March 2017) <<http://agriculture.vic.gov.au/about-us/media-releases/shearers-plead-guilty-to-60-animal-cruelty-charges>> at 5 December 2018.

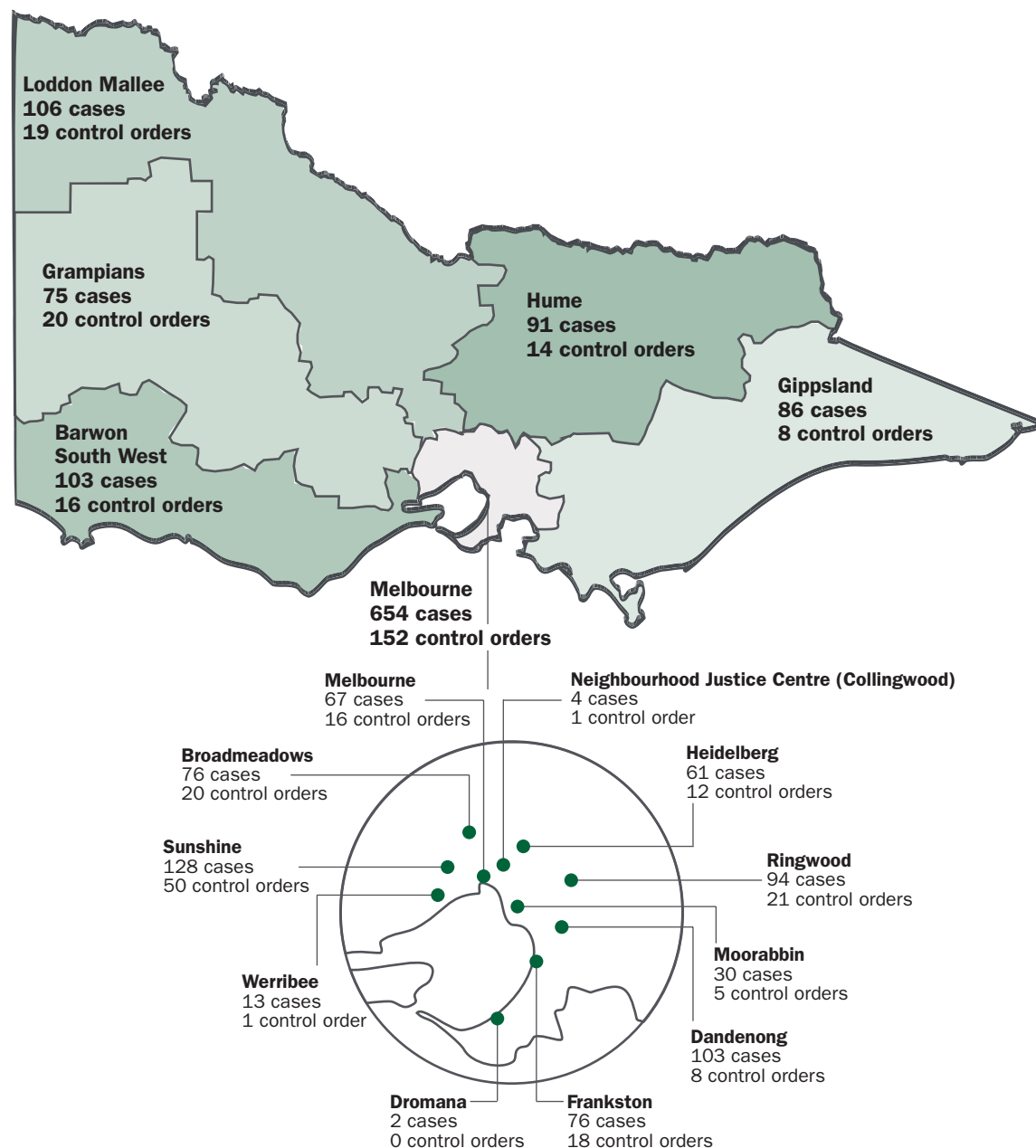
82. Agriculture Victoria, 'Shearer Disqualified for Animal Cruelty Offences', Media Release (9 December 2016) <<http://agriculture.vic.gov.au/about-us/media-releases/shearer-disqualified-for-animal-cruelty-offences>> at 5 December 2018.

83. A 12-month youth diversion pilot program was established in 2015. In its 2016–17 budget, the Victorian Government committed to ongoing funding of the youth diversion program.

84. Roundtable Discussion Forum with Stakeholders (2 November 2018).

- 3.38 Figure 7 identifies the justice regions in Victoria that animal cruelty offenders were sentenced in (according to court location, not offence location). The figure also gives the number of control orders imposed in each region (for a discussion of control orders, see [4.40]–[4.59]). Of the six justice regions in Victoria, the majority (59%) of animal cruelty cases were prosecuted in courts in the Greater Melbourne area. This is unsurprising; 71% of Victoria's population lives within the Greater Melbourne area. The courts in the Greater Melbourne area that sentenced the highest number of animal cruelty offenders were Sunshine Magistrates' Court (128 cases) and Dandenong Magistrates' Court (103 cases).
- 3.39 The number of cases in the other five justice regions were relatively consistent, ranging from 75 cases in the Grampians to 106 cases in Loddon Mallee. A detailed breakdown of the number of cases sentenced in individual courts in each region is provided in Appendix B.

Figure 7: Number of animal cruelty cases sentenced in Victoria, 2008 to 2017, by justice region



Which animal cruelty offences were sentenced?

3.40 The number of proven charges against each statutory provision are shown in Figure 8. The most common offence was aggravated cruelty (25%), followed by failing to provide treatment (24%) and failing to provide food, drink or shelter (19%).

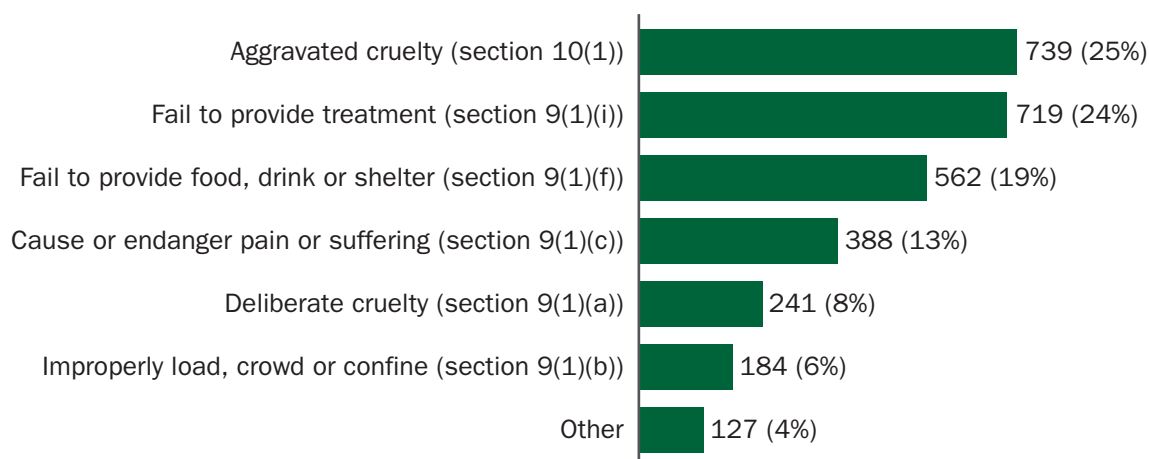
3.41 The prevalence of offences of omission to provide necessities, contrary to sections 9(1)(f) and 9(1)(i) of the POCTA Act, seems to suggest that the majority of sentenced animal cruelty offending in Victoria is a result of neglect, rather than intentional acts of cruelty. This point has been made previously by RSPCA Victoria, which in its 2015–16 annual report wrote:

While the number of animal cruelty reports received throughout Victoria by our Inspectorate team increases year on year, the majority of reports that we receive seem to be the result of ignorance or inability rather than malice.⁸⁵

3.42 This was confirmed by stakeholders, with a representative of an investigating agency saying, '[t]hat's very much what we're seeing: inability, ignorance and a little bit of apathy'.⁸⁶ Indeed, roundtable attendees broadly agreed that the vast majority of aggravated cruelty charges are also likely to be premised on neglect-related offending.⁸⁷

3.43 As to the high rate of aggravated cruelty charges, one roundtable participant commented that this was unsurprising, because 'it's so hard to prove cruelty except if the animal dies'.⁸⁸

Figure 8: Types of animal cruelty offences committed in Victoria, by statutory reference, all courts, 2008 to 2017



3.44 It was also possible to identify which specific behaviours constituted contraventions of most of the statutory provisions. For example, section 9(1)(a) prohibits 11 forms of cruelty: wounding, mutilating, torturing, overriding, overdriving, overworking, abusing, beating, worrying, tormenting or terrifying an animal. The data available to the Council identified which of those forms of cruelty each offender was sentenced for. It was not possible to identify which forms of cruelty were the basis of the 739 charges of aggravated cruelty, though as mentioned above, stakeholders were of the view that most of these charges would have involved neglect-related offending. A detailed breakdown of the identified behaviours that animal cruelty offenders were found guilty of is given in Table 6 (pages 28–29).

85. RSPCA Victoria, *Annual Report 15/16* (2016) 15.

86. Roundtable Discussion Forum with Stakeholders (2 November 2018).

87. Roundtable Discussion Forum with Stakeholders (2 November 2018). Further, the data provided to the Council by DEDJTR specified whether certain aggravated cruelty charges were premised on death or serious disablement. Of the 276 charges where that distinction was identified, 32% were premised on the animal dying (87 charges) and the other 68% were premised on the animal being seriously disabled (189 charges).

88. Roundtable Discussion Forum with Stakeholders (2 November 2018).

- 3.45 In relation to section 9(1)(c) of the POCTA Act, Table 6 shows that offenders were far more frequently sentenced for behaviours that were *likely* to cause pain or suffering (328 charges) than for behaviours that *actually* caused pain or suffering (60 charges). This disparity may be because of the difficulties in establishing pain or suffering. During consultation, a number of stakeholders commented that evidentiary issues around establishing pain or suffering, from victims who cannot speak for themselves, are a common challenge when prosecuting animal cruelty offences.⁸⁹
- 3.46 Table 6 also shows that the most common behaviour involved in contravening section 9(1)(b) was improperly confine an animal (134 charges), as opposed to improperly crowd or load an animal. It also shows that the most common contraventions of section 9(1)(a) were beat an animal (98 charges) and abuse an animal (67 charges).

Which agencies prosecuted animal cruelty cases?

- 3.47 Table 5 shows the number of cases each agency prosecuted as well as the number of charges in those cases. The Council was able to determine the prosecuting agency for all but 65 of the 1,115 cases involving animal cruelty offences sentenced during the reference period. In these 1,050 cases, RSPCA Victoria prosecuted both the majority of cases (556) and the majority of charges (1,604).
- 3.48 The second highest number of *charges* (776) were prosecuted by DEDJTR and DELWP; however, Victoria Police dealt with the second highest number of *cases* (330). This is likely to be because DEDJTR's and DELWP's investigations more frequently involve a high volume of alleged offences.
- 3.49 DEDJTR and DELWP have been combined in this dataset because, as discussed at [1.22], the two departments have existed together and apart at various points during the reference period. It is not possible to determine the proportion of cases sentenced prior to 2015 that would fall within DEDJTR's remit and those that would fall within DELWP's remit under the current system.
- 3.50 As a general indication, though, in the three years from January 2015 to December 2017, DEDJTR prosecuted the bulk of animal cruelty offences between the two departments: 33 cases and 298 charges were prosecuted by DEDJTR in comparison with nine cases and 15 charges prosecuted by DELWP. This suggests that agriculture- and livestock-related offending, as opposed to wildlife-related offending, most likely represents the bulk of charges prosecuted by the various iterations of those departments during the reference period.

Table 5: Agencies responsible for prosecuting animal cruelty offences in Victoria, all courts, 2008 to 2017, by number of cases and charges prosecuted and sentenced

Agency	Cases prosecuted	Charges prosecuted
RSPCA Victoria	556 (53%)	1,604
DEDJTR and DELWP	114 (11%)	776
Victoria Police	330 (31%)	395
Local councils	50 (5%)	98
Total	1,050	2,873

89. Meeting with Department of Economic Development, Jobs, Transport and Resources (4 July 2018).

Table 6: Types of proven animal cruelty offences in Victoria, by behaviour, all courts, 2008 to 2017

Behaviour	Provision	Magistrates' Court	Children's Court	Higher courts	Total
Aggravated cruelty	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 10(1)	687	48	4	739
Fail to provide treatment	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(i)	719	–	–	719
Fail to provide food, drink or shelter	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(f) <i>Domestic Animals Act 1994</i> (Vic) s 63	560 1	1	–	562
Omission <i>likely</i> to cause pain or suffering	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(c)	205	–	–	205
Improperly confine an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(b)	134	–	–	134
Do act <i>likely</i> to cause pain or suffering	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(c)	121	2	–	123
Beat an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	94	4	–	98
Abuse an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	60	6	1	67
Cause pain or suffering	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(c)	59	1	–	60
Wound an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	38	1	–	39
Improperly load an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(b)	31	–	–	31
Allow prohibited procedure	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 11A(1)	20	1	–	21
Attend animal fight	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1F)	21	–	–	21
Improperly crowd an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(b)	19	–	–	19

Table 6 continued

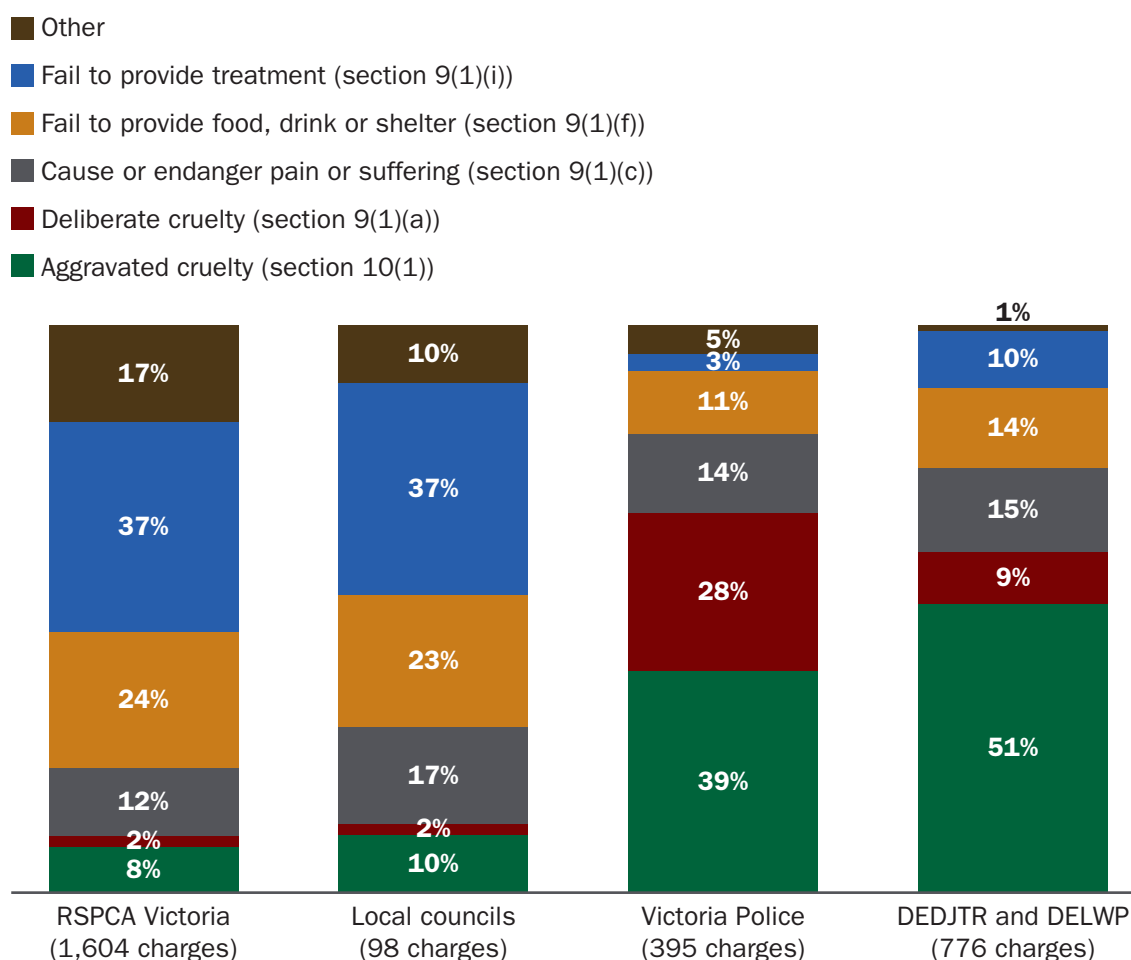
Behaviour	Provision	Magistrates' Court	Children's Court	Higher courts	Total
Possess or use animal fighting implement	<i>Prevention of Cruelty to Animals Regulations 2008</i> (Vic) r 7(1)	18	–	–	18
Abandon an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(h) <i>Domestic Animals Act 1994</i> (Vic) s 33	14 2	–	–	16
Keep or use an animal as kill or lure to blood greyhound	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1D) <i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1E)	11 3	–	–	14
Terrify an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	11	1	–	12
Torture an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	9	2	–	11
Torment an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	5	4	–	9
Lay bait for, or poison, an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(j)	8	–	–	8
Improperly convey or carry an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(d) <i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(g)	6 2	–	–	8
Release animal to be pursued or killed by a dog	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 13(1B)	4	2	–	6
Worry an animal	<i>Prevention of Cruelty to Animals Act 1986</i> (Vic) s 9(1)(a)	3	1	–	4
Other offences ^a		15	1	–	16

a. In the Magistrates' Court, other offences included dock a dog's tail (3), possess an animal with intent to cause that animal to fight (3), keep or use premises for animal fights (3), strike or poke an animal at a rodeo or rodeo school in a way that may cause unreasonable pain or injury (2), use premises to bait or maltreat an animal (2), mutilate an animal (1) and place an electronic shock device on an animal (1). The other offence in the Children's Court was place or transport an animal in an enclosed boot of a sedan.

Offence types prosecuted by each agency

- 3.51 As illustrated in Figure 9, each prosecuting agency dealt with different offence types during the reference period, as would be expected given that each agency has distinct remits. The most common offences prosecuted by RSPCA Victoria were failing to provide treatment (37%) and failing to provide sufficient food, drink or shelter (24%). The same was true for local councils (37% for failing to provide treatment and 23% for failing to provide sufficient food, drink or shelter).
- 3.52 In contrast, the most common animal cruelty offences in cases prosecuted by Victoria Police were aggravated cruelty (39%) and deliberate cruelty contrary to section 9(1)(a) of the POCTA Act (28%). And the majority of offences in cases prosecuted by DEDJTR and DELWP were aggravated cruelty (51%), with a relatively even mix of other offences. The high rate of *other* offences prosecuted by RSPCA Victoria and local councils primarily consisted of improperly loading, crowding or confining contrary to section 9(1)(d) of the POCTA Act.

Figure 9: Types of animal cruelty offences sentenced in all Victorian courts, by prosecuting agency, 2008 to 2017



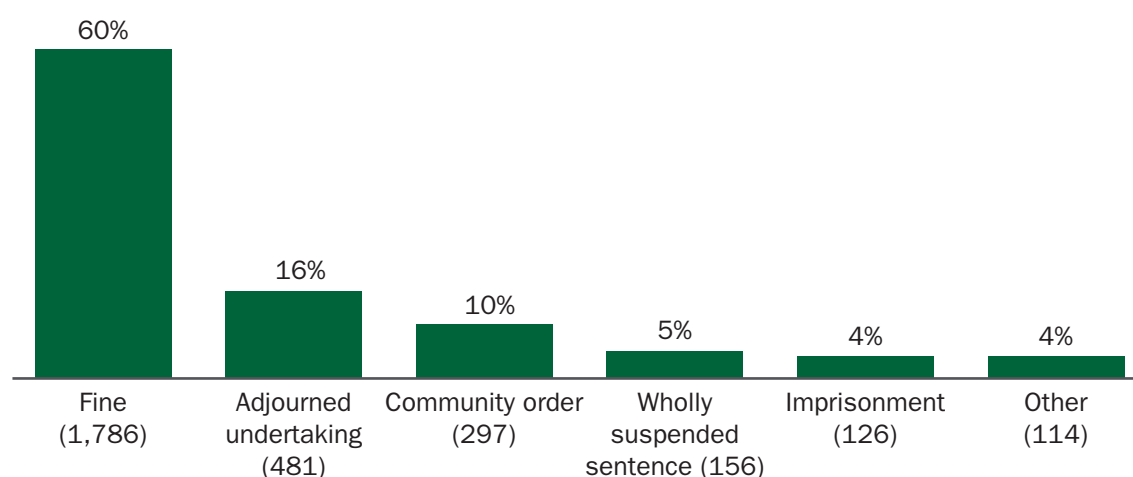
4. Sentencing outcomes

- 4.1 This chapter provides an overview of sentencing outcomes for proven animal cruelty offences in Victoria during the 10-year reference period from 2008 to 2017 (inclusive). It includes an analysis of the types of sentences imposed, both over the reference period as a whole and in terms of yearly trends.
- 4.2 This chapter also includes an analysis of particular features of certain sentences, including:
- **imprisonment:** aggregate or non-aggregate sentences of imprisonment,⁹⁰ imprisonment length, concurrency or cumulation and appeals;
 - **community correction orders (CCOs):** the conditions attached to CCOs;⁹¹ and
 - **finest:** aggregate or non-aggregate fines and fine amounts.
- 4.3 In analysing sentencing outcomes, only the most serious penalty imposed on a charge was counted. For example, a sentence of imprisonment combined with a CCO was only counted once, as a sentence of imprisonment.

Which types of sentences were imposed?

- 4.4 Figure 10 shows the types of sentences imposed on all 2,960 animal cruelty charges during the reference period. Consistent with the findings of earlier research on sentencing for animal cruelty offending in Australia, the most common sentencing outcome for an animal cruelty offence in Victoria during the reference period was a fine (60% or 1,786 of 2,960 sentences).

Figure 10: Sentencing orders imposed for animal cruelty offences, by type of sentence, all Victorian courts, 2008 to 2017



90. For certain sentencing dispositions, especially fines and imprisonment terms, courts can impose an aggregate sentence, which is a single sentence for multiple offences. It is not possible to determine the contribution of each offence to an aggregate sentence overall; for this reason, in reporting on the value of fines or duration of imprisonment, aggregate sentences are excluded.

91. This includes all cases in which the animal cruelty offence received a CCO or a combined sentence, but this does not include cases in which the offender received a CCO for other offending in the case and not the animal cruelty offending.

This is slightly higher than the proportion of all sentenced offences in the Magistrates' Court that received a fine (55% in 2016–17).⁹² The second most common outcome was an adjourned undertaking (16%), followed by a community order (10%),⁹³ a wholly suspended sentence (5%) and a term of imprisonment (4%).⁹⁴

- 4.5 The remaining 114 sentences, classified as *other* in Figure 10, included 17 intensive correction orders, which have been abolished, a number of dispositions only available when sentencing child offenders (79)⁹⁵ and 18 charges for which the offender was convicted and discharged.⁹⁶ The most common sentences imposed in the Children's Court were good behaviour bonds (39%) and probation (31%).
- 4.6 Almost all of the 2,960 charges sentenced had a maximum penalty of a term of imprisonment. However, imprisonment or a community order were not available for 27 charges because the maximum penalty was a fine (either 10 or 20 penalty units).⁹⁷

Yearly trends for sentencing outcomes

- 4.7 The yearly trends for sentencing outcomes are outlined in Table 7 (page 33). It shows that fines were the most common sentence for animal cruelty offences each year. Fines were especially common in 2008 and 2015; in both years, fines constituted 80% of all sentences imposed for animal cruelty. A significant contributor to the spike in 2015 was a case in which four co-accused received fines for 239 animal cruelty charges between them (see [3.30]).
- 4.8 In the most recent four years, there was an increase in the proportion of animal cruelty offences sentenced to community orders and a slight increase in the proportion of sentences of imprisonment. The sudden increase in sentences of imprisonment in 2017 was due to a single offender who was prosecuted by Victoria Police for 23 separate charges of failing to provide food, drink or shelter and was sentenced to 18 months' imprisonment.
- 4.9 The rate of adjourned undertakings increased after the first three years but has remained stable since then. The decline in the *other* category of sentencing outcomes was because suspended sentences, which constituted more than half of that category, were abolished in 2014.⁹⁸

Type of sentence and offence

- 4.10 The sentencing outcomes for the most common animal cruelty offences are outlined in Table 8 (page 33). A fine was the most common sentencing outcome for each of the listed offences, though the proportion varied by offence. In total, 72% of sentences for improperly loading, crowding or confining an animal contrary to section 9(1)(b) of the *Prevention of Cruelty to Animals Act 1986* (Vic) (the 'POCTA Act') received a fine, but a much lower proportion (43%) received a fine for the more deliberate forms of cruelty in section 9(1)(a), such as abuse, beat or torment an animal.

92. Sentencing Advisory Council, 'Sentencing Outcomes in the Magistrates' Court' (sentencingcouncil.vic.gov.au, 2018) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-magistrates-court>> at 5 December 2018.

93. Community orders include community correction orders and community-based orders.

94. A term of imprisonment includes partially suspended sentences and sentences of imprisonment.

95. Dispositions include good behaviour bonds (29), probation (23), youth attendance or supervision orders (16), youth justice centre orders (6) and accountable undertakings (5): *Children, Youth and Families Act 2005* (Vic) ss 365, 367, 380, 387, 397, 412.

96. *Sentencing Act 1991* (Vic) s 73.

97. These charges included possess or use animal fighting implement (18), dock a dog's tail (3), possess an animal with intent to cause that animal to fight (3), abandon an animal usually kept in confinement for a domestic purpose (2), strike or poke an animal at a rodeo or rodeo school (2), failing to provide sufficient food, drink or shelter as a boarding kennel operator (1), place an electronic shock device on an animal (1) and place or transport an animal in an enclosed boot of a sedan (1).

98. Suspended sentences were gradually phased out as a sentencing option in 2013 and 2014; *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic).

Table 7: Sentencing outcomes for animal cruelty charges by year, all Victorian courts, 2008 to 2017

Sentencing outcome	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Imprisonment	4	9	3	11	8	5	17	10	19	40	126
Community order	1	14	11	15	51	17	70	45	44	29	297
Fine	252	77	69	74	125	147	182	492	82	286	1,786
Adjourned undertaking	26	37	23	45	71	48	74	47	43	67	481
Other	31	50	38	21	62	19	12	24	11	2	270
Total	314	187	144	166	317	236	355	618	199	424	2,960

Table 8: Sentencing outcomes for animal cruelty charges by offence, all Victorian courts, 2008 to 2017

Sentencing outcome	Aggravated cruelty section 10(1)	Deliberate cruelty section 9(1)(a)	Load, crowd or confine section 9(1)(b)	Pain or suffering section 9(1)(c)	Food, drink or shelter section 9(1)(f)	Treatment section 9(1)(i)	Other	Total
Imprisonment	53	27	0	12	32	0	2	126
Community order	97	40	9	58	29	43	21	297
Fine	399	104	133	237	381	474	58	1,786
Adjourned undertaking	65	37	34	62	72	169	42	481
Other	125	33	8	19	48	33	4	270
Total	739	241	184	388	562	719	127	2,960

- 4.11 The offences most likely to be sentenced to imprisonment were deliberate acts of cruelty (11% of deliberate cruelty offences) and aggravated cruelty (7%). No sentences of imprisonment were imposed for failing to provide treatment or improperly loading, crowding or confining an animal.
- 4.12 Of the 2,123 contraventions of section 9(1), for which the maximum penalty is 12 months' imprisonment, 63% received fines and 3% received sentences of imprisonment. In contrast, of the 739 sentenced charges of aggravated cruelty, which has a maximum penalty of two years' imprisonment, 54% received fines and 7% received a term of imprisonment. Therefore, fewer charges of aggravated cruelty received fines and twice as many charges received a term of imprisonment. This suggests that the higher maximum penalty for aggravated cruelty has guided courts in exercising their sentencing discretion, as required by section 5(2)(a) of the *Sentencing Act 1991* (Vic).

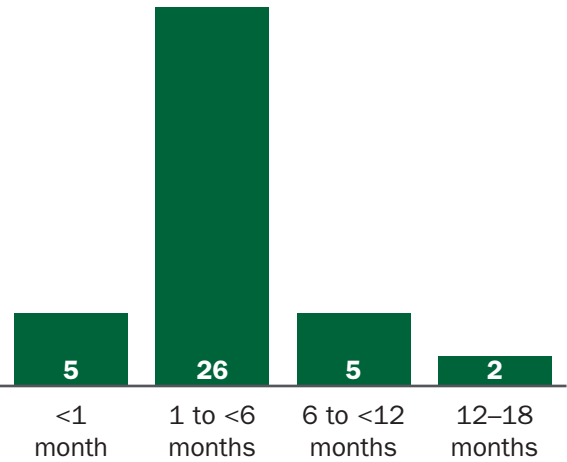
Sentences of imprisonment

- 4.13 The Council examined who received imprisonment for animal cruelty, the duration of imprisonment and the extent to which sentences of imprisonment were cumulative or concurrent with sentences for other offences. The analysis accounts for cases in which the County Court, on appeal, imposed a different sentence from that originally imposed in the Magistrates' Court, including changes in both the type of sentence and duration for successful appeals.
- 4.14 Offender information was available for 70 offenders who were sentenced to a term of imprisonment. Of those 70 offenders, 63 were male and seven were female.

How long were sentences of imprisonment?

- 4.15 In examining the length of imprisonment, the Council has by necessity excluded aggregate sentences of imprisonment.⁹⁹ Aggregate sentences apply to multiple charges, and it is therefore not possible to determine the contribution of each charge to the overall sentence. Of the 126 sentences of imprisonment imposed for animal cruelty offences (in 86 cases), 70% (88) were part of an aggregate sentence, leaving 38 non-aggregate sentences of imprisonment to be examined here (three in the higher courts and 35 in the Magistrates' Court).

Figure 11: Non-aggregate sentences of imprisonment for animal cruelty offences, by sentence length, all Victorian courts, 2008 to 2017



- 4.16 Figure 11 shows the lengths of imprisonment imposed on those 38 proven charges of animal cruelty during the reference period. The average length was three months; the shortest term of imprisonment was two days (three charges), and the longest was 18 months (two charges).

99. An aggregate term of imprisonment is a single sentence covering multiple offences: *Sentencing Act 1991* (Vic) s 9. The Council has previously noted a high rate of aggregate sentences of imprisonment in Victoria, particularly in the Magistrates' Court: Sentencing Advisory Council, *Secondary Offences in Victoria* (2017) 50.

- 4.17 The 88 animal cruelty offences that were part of aggregate sentences of imprisonment were sentenced in 45 cases. In seven of those cases, the offender was sentenced exclusively for animal cruelty offending, while in the remaining 38 cases the offender was co-sentenced for additional offences. Those additional co-sentenced offences tended to have higher maximum penalties than cruelty or aggravated cruelty. For example, in 24 of these 38 cases, offenders were also sentenced in the same case for acts intended to cause injury; in 22 cases, offenders were co-sentenced for theft; in 19 cases, offenders were co-sentenced for criminal damage; and in five cases, offenders were co-sentenced for burglary or aggravated burglary. In another 18 cases, offenders were co-sentenced for breaching an intervention order, an offence that has the same maximum penalty as aggravated cruelty (two years' imprisonment).
- 4.18 In at least some of these 38 cases resulting in an aggregate sentence of imprisonment, the totality of the offending behaviour was most likely what necessitated the imposition of a term of imprisonment, particularly when that offending involved offences with higher maximum penalties than animal cruelty.

Were the sentences of imprisonment cumulative or concurrent?

- 4.19 The *Sentencing Act 1991* (Vic) provides that, in cases involving multiple charges, sentences of imprisonment can be ordered to be served cumulatively (one after the other), concurrently (at the same time) or a combination of both.¹⁰⁰ There is a presumption of concurrency in most circumstances.¹⁰¹ Of the 38 animal cruelty charges sentenced to a non-aggregate term of imprisonment:
- 5 represented the base sentence in the case;
 - 12 were wholly cumulative;
 - 17 were wholly concurrent; and
 - 4 were partly concurrent and partly cumulative.
- 4.20 Therefore, nearly half of animal cruelty charges sentenced to non-aggregate periods of imprisonment did not result in the offender having to serve any additional time.

How many sentences of imprisonment were appealed?

- 4.21 The above analysis of sentences of imprisonment takes into account any changes that were made to an offender's sentence as a result of a *de novo* appeal.
- 4.22 A *de novo* appeal is an appeal from the Magistrates' Court to the County Court by either the offender appealing their sentence and/or conviction¹⁰² or the Director of Public Prosecutions appealing the sentence.¹⁰³ Rather than considering the merits of the sentence imposed by the Magistrates' Court, a *de novo* appeal requires the County Court to set aside the original sentence and conduct the sentencing exercise afresh, as a rehearing.¹⁰⁴ This can result in a more severe sentence, a less severe sentence or no change at all.¹⁰⁵
- 4.23 The Council received data from the County Court on animal cruelty cases that originally received a sentence of imprisonment in the Magistrates' Court and that were subject to a *de novo* appeal in the County Court.

100. *Sentencing Act 1991* (Vic) s 16.

101. *Sentencing Act 1991* (Vic) s 16(1).

102. *Criminal Procedure Act 2009* (Vic) s 254.

103. *Criminal Procedure Act 2009* (Vic) s 257.

104. *Criminal Procedure Act 2009* (Vic) ss 256, 259.

105. If an offender initiates the appeal, the court must warn them that they face the possibility of a more severe sentence than the one imposed in the Magistrates' Court: *Criminal Procedure Act 2009* (Vic) s 256(3).

- 4.24 Of the 83 cases in the Magistrates' Court in which an offender was sentenced to a term of imprisonment (including four partially suspended sentences) for at least one animal cruelty offence, 28 were subject to a *de novo* appeal.
- 4.25 Of these 28 appeals:
- seven were abandoned or struck out before the appeal could be heard;
 - 14 sentences were reduced;
 - five sentences were unchanged;
 - one sentence was increased; and
 - one appeal was still pending at the time of the Council's data request.
- 4.26 Of the 14 appeals in which the sentence was reduced (representing half of all appeals), the term of imprisonment was reduced in five cases, and the sentence was changed to an entirely non-custodial sentence in nine cases (two fines, three CCOs and four wholly suspended sentences). The one case in which the sentence was increased was a six-month term of imprisonment that was changed to an 18-month term of imprisonment.
- 4.27 The most common prosecuting agencies in the 20 finalised appeals were Victoria Police (14 cases) and RSPCA Victoria (5 cases). There was also one case involving DEDJTR.

Conditions attached to community correction orders

- 4.28 In 2012, CCOs came into effect in Victoria, replacing a number of now-abolished sentencing orders (suspended sentences, intensive correction orders and community-based orders). In 2014, the Court of Appeal delivered a guideline judgment on the appropriate use of CCOs as a sentencing disposition.¹⁰⁶ The Council has also published a number of reports on the use and contravention of CCOs.¹⁰⁷
- 4.29 When sentencing a person to a CCO, the court must attach certain mandatory conditions, such as not reoffending while subject to a CCO, and it must also attach at least one of a number of optional conditions.¹⁰⁸
- 4.30 Figure 12 (page 37) shows which optional conditions were attached to the 120 CCOs imposed for animal cruelty offences between January 2012 and December 2017. Note that the above analysis of imprisonment sentences was concerned with sentences at the *charge level*; this analysis considers the total number of CCOs imposed at the *case level*.
- 4.31 Unpaid community work was the most common optional condition attached to a CCO imposed on an animal cruelty offence (73% of cases), followed by treatment and rehabilitation (71% of cases) and supervision by Corrections Victoria (53% of cases). Judicial monitoring was attached to the CCO in 12 cases, a justice plan was attached in six cases and an alcohol exclusion condition was attached in one case. This is consistent with the most common conditions attached to CCOs in general: community work (77% of all CCOs), assessment and treatment (74%), supervision (50%) and judicial monitoring (9%).¹⁰⁹

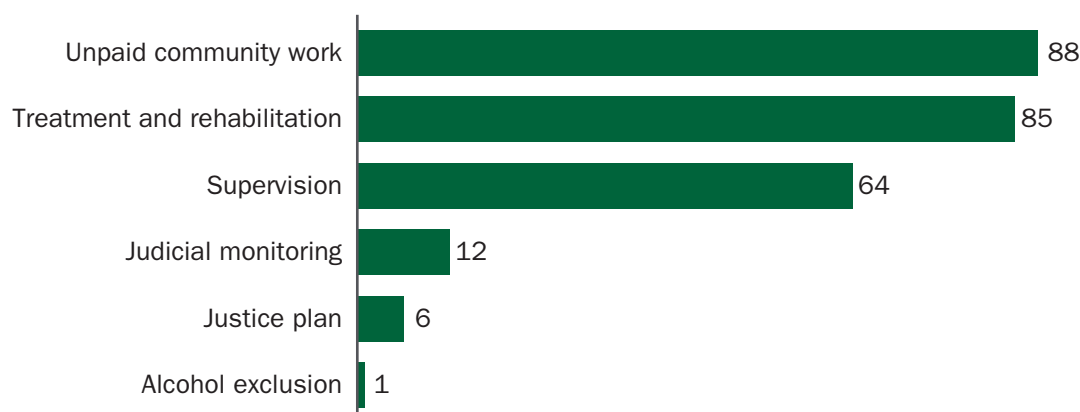
106. *Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen* [2014] VSCA 342 (22 December 2014).

107. Sentencing Advisory Council, *Community Correction Orders: Monitoring Report* (2014); Sentencing Advisory Council, *Community Correction Orders in the Higher Courts: Imposition, Duration, and Conditions* (2014); Sentencing Advisory Council, *Community Correction Orders: Second Monitoring Report (Pre-Guideline Judgment)* (2015); Sentencing Advisory Council, *Community Correction Orders: Third Monitoring Report (Post-Guideline Judgment)* (2016); Sentencing Advisory Council, *Contravention of Community Correction Orders* (2017); Sentencing Advisory Council, *Serious Offending by People Serving a Community Correction Order: 2016–17* (2018).

108. *Sentencing Act 1991* (Vic) pt 3A.

109. Sentencing Advisory Council (2016), above n 107, 17.

Figure 12: Most common optional conditions attached to CCOs imposed for animal cruelty, by number of CCOs with those conditions, all Victorian courts, 2012 to 2017



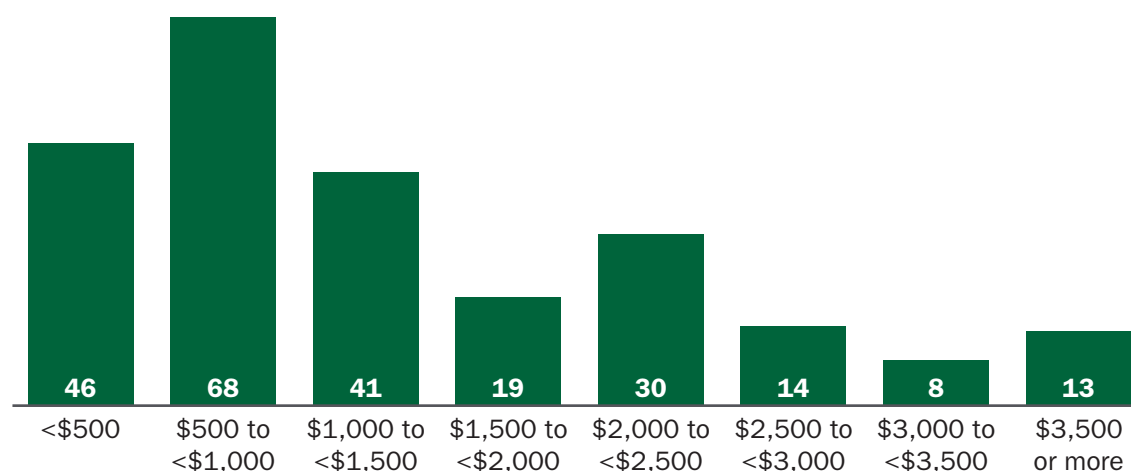
Number and value of fines

4.32 Over the reference period, 1,786 animal cruelty charges were sentenced to a fine in 531 cases.¹¹⁰ Courts may also impose aggregate fines, similar to aggregate sentences of imprisonment, such that one fine can cover multiple charges.¹¹¹ Aggregate fines were very common. Of the 1,786 animal cruelty charges sentenced to a fine, 87% (1,547) were part of an aggregate fine; only 239 animal cruelty charges received a non-aggregate fine. Because it is not possible to discern the contribution each offence had to the ultimate value of an aggregate fine, the 1,527 charges sentenced to an aggregate fine are excluded from the following analysis.

What was the value of non-aggregate fines?

4.33 Figure 13 shows the value, in \$500 increments, of the 239 non-aggregate fines imposed during the reference period. The average (mean) value of those fines was \$1,355, with a median of \$1,000. The three highest non-aggregate fines were imposed for aggravated cruelty; one fine was \$20,000 and two were \$7,500. The lowest fine was \$100, imposed in one case for possess a dogfighting implement.

Figure 13: Number of non-aggregate fines imposed for animal cruelty offences, by amount, all Victorian courts, 2008 to 2017



110. This represents all charges for which a fine was the most serious penalty on the charge. Another 55 charges were sentenced to a more serious penalty (49 of which were community orders) in addition to a fine.

111. *Sentencing Act 1991* (Vic) s 51.

- 4.34 Substantial *aggregate* fines were also imposed in some animal cruelty cases over the reference period. For example, 11 offenders received aggregate fines in excess of \$20,000 for animal cruelty offending. These included two individual offenders who received an aggregate fine of \$60,000 each, and another nine offenders (eight individuals and one corporation) who received aggregate fines of between \$25,000 and \$50,000.¹¹²
- 4.35 Stakeholders were not surprised at the high rate of fines, or their average value of 2% to 3% of the available maximum. A number of stakeholders were of the view that fines in the range of \$1,000 to \$3,500 tended to be consistently imposed not only for animal cruelty but also for all offence types, regardless of the maximum penalty.¹¹³
- 4.36 A question was also raised about the appropriateness of fines in response to animal cruelty, particularly for offenders experiencing financial strain:
- They can't afford their vet bills and then they have to spend \$1,000 on paying a fine. Are the animals suffering more as a result of that?¹¹⁴
- 4.37 A representative of RSPCA Victoria further commented that, as a prosecuting authority, the organisation is far more likely to seek costs than to recommend the imposition of a fine, particularly due to the significant costs incurred in treating and rehabilitating rescued animals:
- We never seek operational or investigation costs, just costs related to veterinary treatment and food ... the welfare costs related to animals we have seized.¹¹⁵

With or without conviction

- 4.38 The court must record a conviction when sentencing an offender to a term of imprisonment (or previously to a suspended sentence), or to detention in a youth justice centre or youth residential centre, or to a drug treatment order.¹¹⁶ For all other sentencing orders, the court has the discretion whether or not to record a conviction.¹¹⁷ Stakeholders at the Council's roundtable emphasised the considerable difference in the punitiveness of a sentence if a conviction is or is not recorded.¹¹⁸
- 4.39 In total, a conviction was recorded for 90% of animal cruelty charges sentenced to a community order, 80% of charges sentenced to a fine (including aggregate fines) and 28% of charges sentenced to an adjourned undertaking.

112. Four of the 10 aggregate fines in excess of \$20,000 were imposed in the same puppy farm case in 2015.

113. Roundtable Discussion Forum with Stakeholders (2 November 2018).

114. Roundtable Discussion Forum with Stakeholders (2 November 2018).

115. Roundtable Discussion Forum with Stakeholders (2 November 2018).

116. *Sentencing Act 1991* (Vic) ss 7(1)(a)–(da).

117. *Sentencing Act 1991* (Vic) ss 7(1)(e)–(j).

118. Roundtable Discussion Forum with Stakeholders (2 November 2018).

Control orders

- 4.40 If a person is guilty of an offence under the POCTA Act, the sentencing court may issue a *control order*. This order can either disqualify the person from owning, or being in charge of, a certain type of animal or apply conditions that the person must comply with whenever they own, or are in charge of, an animal.¹¹⁹ For example, a number of farmers who had not provided appropriate veterinary treatment for their livestock were ordered to have a qualified veterinary practitioner attend their farms on a regular basis, at the farmers' own expense.¹²⁰
- 4.41 If a court disqualifies a person from owning or being in charge of a certain type of animal, the maximum period of the control order is 10 years, unless the person has already previously been subject to a similar order (in Victoria or elsewhere in Australia). In those circumstances, the control order can be permanent or for any other period.¹²¹ If a court imposes conditions on an offender, rather than disqualifying the offender, the control order can similarly be permanent or for any other period.¹²² It is an offence to not comply with a control order, punishable by up to 500 penalty units or two years' imprisonment.¹²³
- 4.42 When a court imposes a control order, it may do so 'in addition to or instead of any other penalty'. This means that, if the court sees fit, it need not impose another sentencing disposition, such as a fine or an adjourned undertaking.¹²⁴ When imposing a control order, a court is also required to consider whether to authorise POCTA inspectors to monitor the offender's compliance with the order.¹²⁵ In deciding whether to authorise the monitoring of a control order, a court may take into account any factor it considers relevant, and it must specify the period of the monitoring, which may be equal to, or less than, the duration of the control order, as well as any other conditions of the monitoring.¹²⁶
- 4.43 During consultation, prosecuting authorities emphasised that control orders are a vital component of sentencing for animal cruelty offences and in many instances represent, in their view, the best outcome to ensure animal welfare after the case has concluded.¹²⁷ One of its representatives did, however, note that, as an organisation, RSPCA Victoria in some circumstances may need to assess its resources before requesting that the court attach a monitoring condition because of the consequential resources that are required to monitor offenders.¹²⁸

119. *Prevention of Cruelty to Animals Act 1986* (Vic) s 12.

120. Agriculture Victoria, 'Farmer Guilty of Sheep and Cattle Cruelty', Media Release (1 June 2017) <<http://agriculture.vic.gov.au/about-us/media-releases/farmer-guilty-of-sheep-and-cattle-cruelty>> at 5 December 2018; Agriculture Victoria, 'Trawalla Livestock Owner Convicted for Sheep Cruelty', Media Release (29 November 2017) <<http://agriculture.vic.gov.au/agriculture/animal-health-and-welfare/animal-welfare/record-of-prosecutions/trawalla-livestock-owner-convicted-for-sheep-cruelty>> at 5 December 2018. The second offender was also required to attend and complete a sheep management course.

121. *Prevention of Cruelty to Animals Act 1986* (Vic) ss 12(1)(a)(i)–(ii).

122. *Prevention of Cruelty to Animals Act 1986* (Vic) s 12(1)(b).

123. *Prevention of Cruelty to Animals Act 1986* (Vic) s 12AF.

124. *Prevention of Cruelty to Animals Act 1986* (Vic) s 12(2). This does not appear to have occurred in any case analysed by the Council.

125. *Prevention of Cruelty to Animals Act 1986* (Vic) ss 12(3), 21A(1).

126. *Prevention of Cruelty to Animals Act 1986* (Vic) ss 21A(2)–(3). The provisions allowing for the imposition of monitoring conditions were inserted by section 11 of the *Prevention of Cruelty to Animals Amendment Act 2015* (Vic).

127. Meeting with RSPCA Victoria (2 July 2018).

128. Roundtable Discussion Forum with Stakeholders (2 November 2018).

4.44 Information relating to control orders imposed in Victoria is stored in a statewide database maintained by DEDJTR. DEDJTR provided the Council with the following data, where available, relating to control orders:

- the number of control orders issued each year during the reference period;
- the duration of each control order;
- the agency responsible for investigating and prosecuting the case;
- the court that issued the control order;
- the gender of the offender subject to the control order;
- the species of animal involved in each case;
- the type (or types) of animal to which the control order applied; and
- the conditions attached to each control order.

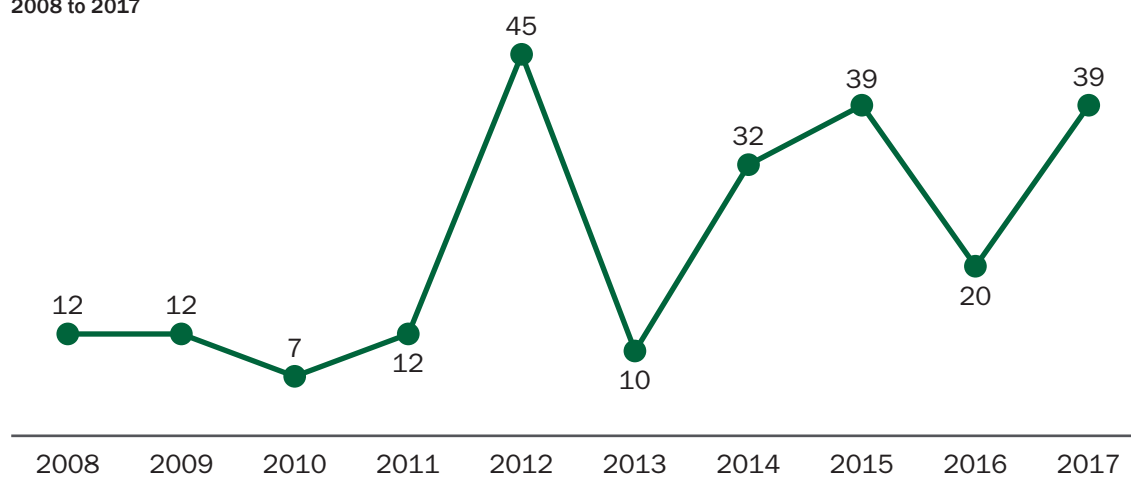
4.45 The following is an analysis of control orders imposed during the 10-year reference period, based on that data. This is unlikely to be a complete account of control orders issued, as DEDJTR's database 'is reliant on [each prosecuting agency] uploading the relevant information' at the conclusion of each case.¹²⁹

How many control orders were imposed?

4.46 In total, DEDJTR provided information on 307 control orders imposed during the reference period. A number of these orders were excluded from the analysis for various reasons.¹³⁰ Therefore, the Council analysed 228 control orders imposed in cases in which the offender was sentenced for an animal cruelty offence between 2008 and 2017 in either the Magistrates' Court (226) or the County Court (2). No control orders appear to have been imposed in the Children's Court.

4.47 For the first six years of the reference period, the number of control orders issued each year seemed to be relatively constant, with the exception of 2012, during which RSPCA Victoria prosecuted a large number of offenders involved in a cockfighting event. In the most recent four years of the reference period, however, the number of control orders issued increased (Figure 14).

Figure 14: Number of control orders imposed in animal cruelty cases each year, Magistrates' Court and County Court, 2008 to 2017



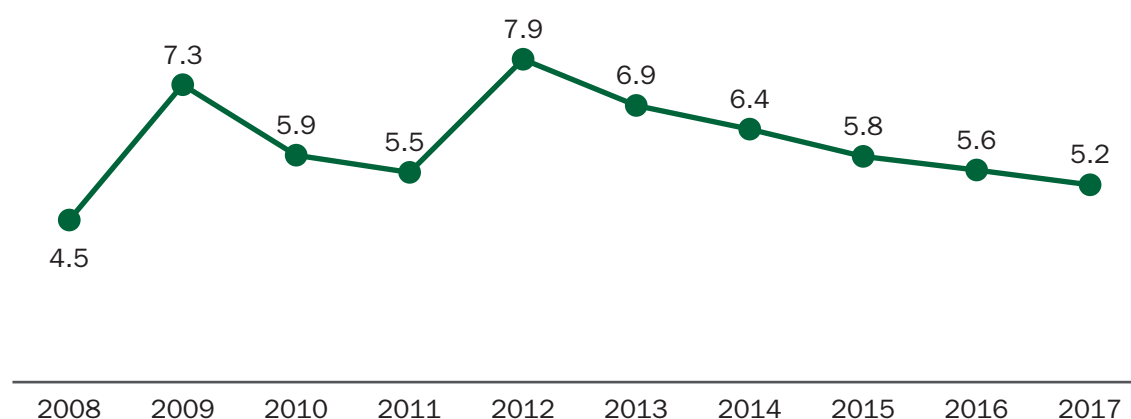
¹²⁹ Letter from Animal Welfare Victoria to Sentencing Advisory Council, 22 August 2018.

¹³⁰ For example, 52 offenders were made subject to a control order following a cockfighting investigation and prosecution by RSPCA Victoria; however, those offenders were not sentenced for an offence under the *Prevention of Cruelty to Animals Act 1986* (Vic), which is a necessary precondition for the imposition of a control order. Instead, the offenders were sentenced for the offence of being found in a place for the purpose of unauthorised gambling without lawful excuse: *Gambling Regulation Act 2003* (Vic) s 2.5.43. The offenders were therefore excluded from this analysis because they had not been sentenced for an animal cruelty offence.

How long did control orders run for?

4.48 Figure 15 shows the duration of control orders. Of the 226 control orders with a finite length, the average duration was 6.2 years. This excludes two control orders that were to run for the lifetime of the offenders (both were sentenced in 2017 for failing to provide adequate care for a number of horses). In terms of yearly trends, the average duration of control orders reached a high of 7.9 years in 2012, primarily because all the offenders in the above cockfighting case were given a 10-year control order. The average duration has gradually declined since then to 5.2 years in 2017.

Figure 15: Average duration of control orders, all Victorian courts, 2008 to 2017

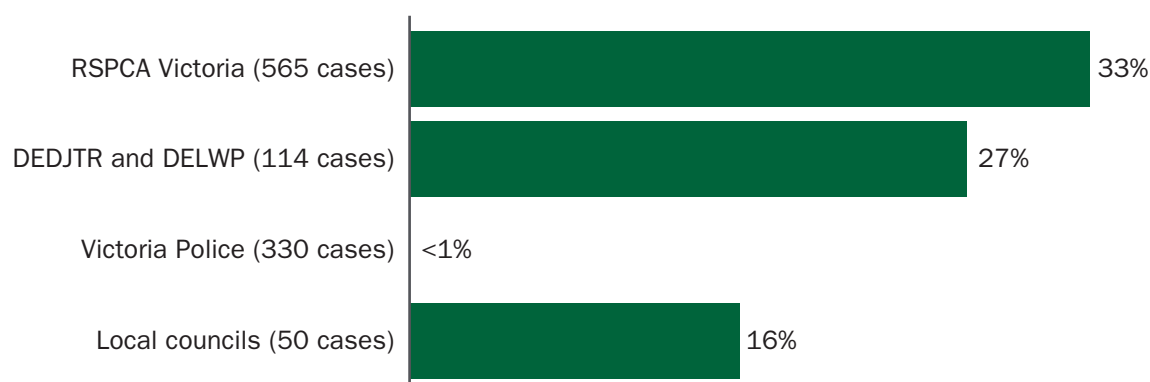


Which prosecuting agencies were involved in cases with control orders?

4.49 Figure 16 shows the proportion of cases in which the court imposed a control order, according to the agency that prosecuted the case. As the agency responsible for prosecuting the majority of animal cruelty cases in the state, RSPCA Victoria was the prosecuting agency for the majority of cases in which control orders were issued. RSPCA Victoria was also the agency with the highest *proportion* of cases in which a control order was issued (33%). In comparison, a control order was imposed in 27% of cases prosecuted by DEDJTR and DELWP and 16% of cases prosecuted by local councils.

4.50 Less than 1% of animal cruelty cases prosecuted by Victoria Police resulted in a control order (3 of 330 cases). Victoria Police has confirmed that this appears to be an educational issue.

Figure 16: Proportion of cases in which a control order was imposed in the Magistrates' Court and County Court, by prosecuting agency, 2008 to 2017



It has advised that it intends to address this issue by including training about control orders in the sentencing section of the prosecutions training package, incorporating a presentation from a representative of RSPCA Victoria.¹³¹

- 4.51 Stakeholders suggested that a lack of knowledge about control orders may also be an issue among the magistracy:

[M]y experience is that a lot of magistrates don't know about them. There's certainly nothing in the judicial [sentencing] manual. There's no guidelines. There's nothing to draw their attention to it.¹³²

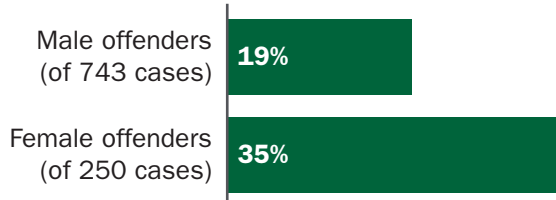
- 4.52 Another stakeholder commented that:

it's concerning to learn that magistrates don't know of all the options ... That's really disturbing given the amount of effort that everyone goes to in order to try and provide tools, and they're not used.¹³³

Gender of offenders subject to control orders

Figure 17: Proportion of cases in which a control order was issued, by gender, Magistrates' Court and County Court, 2008 to 2017

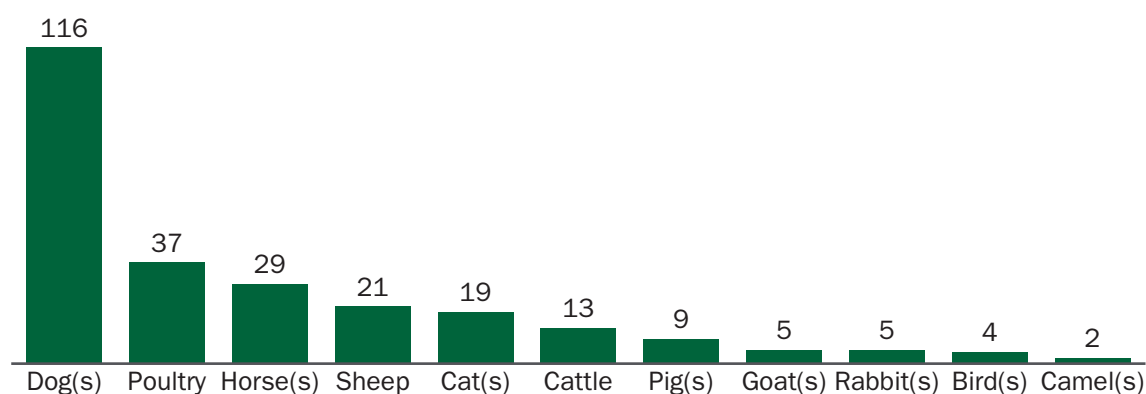
- 4.53 Figure 17 shows the proportion of cases in which men and women sentenced for animal cruelty were made subject to a control order. By number, male animal cruelty offenders received more control orders (141) than female animal cruelty offenders (87). However, as a proportion, female animal cruelty offenders were more likely to receive a control order (35% of cases) than male animal cruelty offenders (19% of cases).



Which types of animals were involved in cases in which a control order was imposed?

- 4.54 Figure 18 shows the types of animals that were subjected to cruelty in 216 cases in which a control order was imposed. Twelve cases were excluded because the data provided by DEDJTR did not specify the types of animals. Dogs were the most common animal; they were involved in more than half of all cases in which a control order was imposed (54%).

Figure 18: Number of cases in which a control order was imposed, by type of animal subject to cruelty, Magistrates' Court and County Court, 2008 to 2017



131. Roundtable Discussion Forum with Stakeholders (2 November 2018).

132. Roundtable Discussion Forum with Stakeholders (2 November 2018).

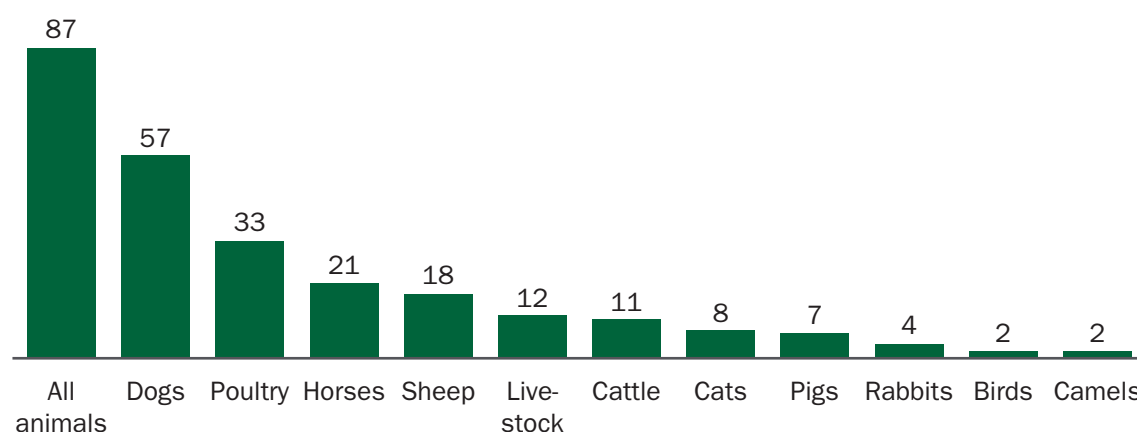
133. Roundtable Discussion Forum with Stakeholders (2 November 2018).

- 4.55 Figure 18 does not indicate the total number of animals involved in each case but instead the number of cases that included each type of animal. Most cases involved multiple animals. For example, one offender allowed seven horses to die from a lack of water after his dam water supply pipe had silted up;¹³⁴ another provided insufficient food and medical treatment to 1,400 sheep.¹³⁵ At least four cases involved animal hoarding, and one set of proceedings involved the death of more than 86,000 chickens after the two offenders failed to provide proper and sufficient food.¹³⁶

Which types of animals did control orders apply to?

- 4.56 When issuing a control order, a court can specify the type (or types) of animal that the order applies to. Of the 228 control orders imposed, data on the type of animal the order applied to was available for 226 cases (Figure 19). Most commonly, control orders prohibited the offender from owning or being in charge of *any animals* (38% of control orders), followed by dogs (25%) and then poultry (15%).

Figure 19: Number of control orders by type of animal to which the order applied, Magistrates' Court and County Court, 2008 to 2017



Which conditions were attached to control orders?

- 4.57 In addition to determining the duration of a control order and the animals to which it applies, a court can decide which conditions are attached to the control order. A court can entirely disqualify a person from owning or being in charge of animals or it can place conditions on a person owning or being in charge of animals. Further, although not specified in legislation, a demarcation seems to have emerged whereby courts distinguish between absolute disqualifications with no exceptions and partial disqualifications with upper limits on the number of animals of a certain type that a person can own or be in charge of.
- 4.58 Of the 105 control orders that had discernible conditions:
- 72% were absolute disqualifications (76 cases);
 - 25% were partial disqualifications (26 cases); and
 - 3% placed conditions on the offender (3 cases).

¹³⁴ Agriculture Victoria, 'No Excuse for Neglecting Horses', Media Release (24 November 2015) <<http://agriculture.vic.gov.au/about-us/media-releases/no-excuse-for-neglecting-horses>> at 5 December 2018.

¹³⁵ Agriculture Victoria, 'Livestock Owner Guilty of Cruelty Charges', Media Release (27 November 2015) <<http://agriculture.vic.gov.au/about-us/media-releases/livestock-owner-guilty-of-cruelty-charges>> at 5 December 2018.

¹³⁶ Agriculture Victoria, 'Poultry Feed Processor Banned for Acts of Animal Cruelty', Media Release (30 April 2015) <<http://agriculture.vic.gov.au/about-us/media-releases/poultry-feed-processor-banned-for-acts-of-animal-cruelty>> at 5 December 2018.

4.59 All three cases in which a control order placed conditions on an offender occurred in the context of farming. One offender was required to engage an employee to manage his sheep, was permitted to have sheep only if such a person was employed and was required to follow all lawful directions of that person in relation to the welfare of the sheep. In the other two cases, the offenders were subject to the same four conditions:

- to engage a veterinary practitioner to assess all farm animals every three months for five years;
- to provide a copy of the report to DEDJTR;
- to follow all lawful directions of the veterinary practitioner; and
- to permit POCTA inspectors entry to their premises.¹³⁷

¹³⁷ Agriculture Victoria, 'Farmer Guilty of Sheep and Cattle Cruelty', Media Release (1 June 2017); Agriculture Victoria, 'Trawalla Livestock Owner Convicted for Sheep Cruelty', Media Release (29 November 2017). See also above n 120.

5. Offender profiles

- 5.1 The focus of this chapter is offender demographics, including the total number of offenders sentenced for animal cruelty offences during the reference period, the age and gender of offenders, and the number of charges for which offenders were sentenced.

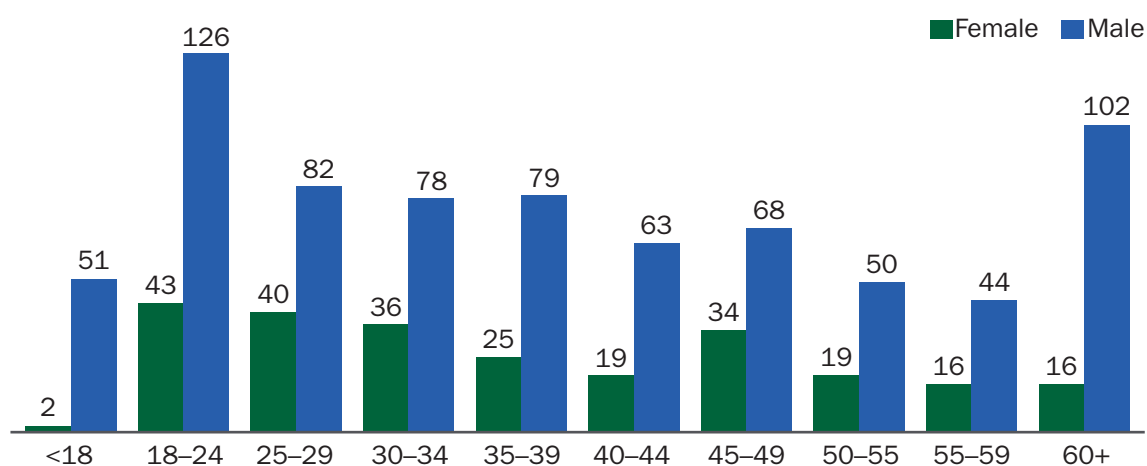
How many offenders were sentenced for animal cruelty?

- 5.2 In order to determine how many unique offenders were sentenced for animal cruelty offences, the Council identified records with the same name and date of birth. To address problems with alternative spellings of names and errors in date of birth, the Council used a series of rules to allow matches, based on the Soundex process developed by the Bureau of Crime Statistics and Research.¹³⁸ For age and gender information, each offender was identified once, at the date of their first sentence during the reference period.
- 5.3 Offender data was available for most of the 1,115 animal cruelty cases sentenced between 2008 and 2017. However, the available data did not provide identifying information about the offender – including age, gender or both – in 96 cases. In order to provide a comprehensive analysis of offender profiles, those 96 cases were excluded from this analysis, leaving 1,019 cases for which offender data was available.
- 5.4 In total, 998 unique offenders were sentenced in those 1,019 cases over the reference period. Five offenders were corporations and 993 were natural persons.

What were the characteristics (age and gender) of animal cruelty offenders?

- 5.5 The age and gender of individual offenders are illustrated in Figure 20. Three-quarters of offenders were male (743), and one-quarter were female (250).

Figure 20: Age and gender of offenders sentenced for animal cruelty offences, all courts, 2008 to 2017



138. Jiuzhao Hua and Jacqueline Fitzgerald, *Matching Court Records to Measure Reoffending*, Crime and Justice Bulletin: Contemporary Issues in Crime and Justice no. 95 (2006) 2. The Council has previously used this approach to identify unique offenders: Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (2016) 80; Sentencing Advisory Council (2017), above n 99, 10.

- 5.6 The average age of female animal cruelty offenders was 38 years, and the highest number of female animal cruelty offenders were aged 18 years to 24 years (43 offenders or 17% of all female animal cruelty offenders). Numbers generally declined for older age groups, except for a slight spike in the number of female animal cruelty offenders aged 45 years to 49 years.
- 5.7 A similar trend is observed for male animal cruelty offenders. Their average age was 39 years. The highest number of male animal cruelty offenders was also aged 18 years to 24 years (126 offenders or 17% of all male animal cruelty offenders), and that number steadily declined with age. There were, however, three apparent differences between male and female animal cruelty offenders (aside from the high proportion of male animal cruelty offenders):
1. The number of female animal cruelty offenders aged 18 years to 24 years was only slightly higher than other age ranges, but substantially more male animal cruelty offenders were aged 18 years to 24 years than any other age range.
 2. Only two female animal cruelty offenders (less than 1%) were aged under 18 years (a 16 year-old and a 17 year-old), but 7% of male animal cruelty offenders were aged under 18 years (51 offenders). The ages of these male child offenders ranged from 11 years to 17 years.
 3. Just 6% of female animal cruelty offenders were aged 60 years or over (16 offenders), but more than 14% of male animal cruelty offenders were aged 60 years or more (102 offenders).

Older male animal cruelty offenders (60+)

- 5.8 It was suggested at the roundtable that the cohort of 102 older male animal cruelty offenders might be primarily constituted by older farmers struggling to adequately care for their livestock.¹³⁹ The data supports this proposition, but not conclusively so.
- 5.9 First, just over one-third of charges for which this cohort was sentenced (35% or 195 of 565 charges) involved neglect-related offending, specifically failing to provide food, drink, shelter or treatment to an animal contrary to sections 9(1)(f) and 9(1)(i) of the *Prevention of Cruelty to Animals Act 1986* (Vic) (the 'POCTA Act'). As illustrated in Table 9 (page 47), this is consistent with the overall rate at which all male animal cruelty offenders were sentenced for those offences (35%). Older male animal cruelty offenders, however, had a relatively high rate of aggravated cruelty charges (40% or 225 charges) and omissions likely to cause pain or suffering (9% of charges), both of which could be indicative of neglect-related offending.
- 5.10 Second, DEDJTR and DELWP were nearly three times more likely to be the prosecuting agencies for this cohort (29%) than for all animal cruelty offenders (11%). This is, though, still less than one in three cases, with RSPCA Victoria prosecuting the majority of this cohort of offenders (54%).
- 5.11 Third, 70% of this cohort were sentenced exclusively for animal cruelty (compared with 51% of all male animal cruelty offenders), and an additional 23% were sentenced exclusively for animal-related offences (including both cruelty and non-cruelty offences). In other words, only 7% of this cohort were co-sentenced for any offending unrelated to animals.
- 5.12 Finally, offenders in this cohort were sentenced for an average of 5.5 charges each (twice the rate of all animal cruelty offenders at 2.7 charges each). As discussed at [3.28]–[3.34], most high-volume animal cruelty cases tend to involve either puppy farms or agricultural-related offending.

¹³⁹ Roundtable Discussion Forum with Stakeholders (2 November 2018).

Offence types by gender

- 5.13 Table 9 shows the number of charges male and female animal cruelty offenders were sentenced for, by offence type, and the proportion of each gender's offending those charges represent. There is an apparent distinction in the type of offending committed by male and female animal cruelty offenders.
- 5.14 Specifically, women were far more likely to engage in neglect-related offending, while men were more prone to deliberate acts of cruelty: 67% of animal cruelty charges committed by female animal cruelty offenders involved failing to provide food, drink, shelter or treatment,¹⁴⁰ while only 35% of charges committed by male animal cruelty offenders fell into that same category.
- 5.15 Instead, nearly four times as many male animal cruelty offenders as female animal cruelty offenders committed deliberate acts of cruelty: section 9(1)(a) offences constituted more than 10% of animal cruelty charges committed by men, compared with 3% of charges committed by women. Male animal cruelty offenders were also far more likely to be sentenced for aggravated cruelty (30%) than were female animal cruelty offenders (9%).

Table 9: Animal cruelty offences sentenced, by gender, all Victorian courts, 2008 to 2017

Offence and section of the POCTA Act	Number and percentage of charges (male animal cruelty offenders)	Number and percentage of charges (female animal cruelty offenders)
Deliberate cruelty, section 9(1)(a)	207 (10%)	19 (3%)
Cause or endanger pain or suffering, section 9(1)(c)	267 (13%)	66 (10%)
Fail to provide food, drink or shelter, section 9(1)(f)	342 (17%)	166 (26%)
Fail to provide treatment, section 9(1)(i)	367 (18%)	264 (41%)
Aggravated cruelty, section 10(1)	602 (30%)	60 (9%)
Other	208 (10%)	64 (10%)
Total	1,993 (100%)	639 (100%)

140. *Prevention of Cruelty to Animals Act 1986* (Vic) ss 9(1)(f), (i).

Corporations sentenced for animal cruelty offences

5.16 The Council identified five corporations that were sentenced for animal cruelty during the reference period:

- a company (along with its two directors) was prosecuted by the former Department of Primary Industries for starving tens of thousands of chickens;
- a puppy farming company (along with its three directors) was prosecuted by RSPCA Victoria for improperly confining animals, failing to provide treatment and a number of other offences;
- a company was prosecuted by a local council for 36 charges of conducting a domestic animal business in contravention of the relevant code of practice, three charges of failing to provide treatment and 16 charges of failing to notify authorities about the sale of an unregistered cat or dog;¹⁴¹
- a company was prosecuted by a local council for one charge of omission likely to cause pain or suffering and 24 charges of conducting a domestic animal business in contravention of the relevant code of practice; and
- a company was prosecuted by the former Department of Environment and Primary Industries for a single charge of failing to provide treatment.

¹⁴¹ *Domestic Animals Act 1994* (Vic) s 63A.

6. Co-sentenced offences

- 6.1 In this chapter, the Council considers the offence types sentenced alongside animal cruelty offences in the period 2008 to 2017. The chapter includes an analysis of co-sentenced offences in each court jurisdiction and co-sentenced offences by gender.
- 6.2 Of the 1,115 cases involving animal cruelty that were sentenced during the reference period, 502 included offences other than animal cruelty. That is, 55% of animal cruelty offenders (613 offenders) were sentenced exclusively for animal cruelty.
- 6.3 In reporting on co-sentenced offences in the 502 cases, the Council has used the Australian and New Zealand Standard Offence Classification (ANZSOC) in order to ensure the findings here can be utilised in future research.¹⁴² The Council did, however, adopt three amendments, which are outlined in Appendix C. In brief, these included separating *justice procedures offences* into three categories: bail-related offences, breaches of intervention orders and other justice procedures offences; separating animal-related offences into a distinct category; and reclassifying ANZSOC category 5 as *threats* rather than *abduction, harassment and other offences against the person*. It is also worth noting the significant overlap between the various ANZSOC offence categories – many offences could easily qualify for multiple categories.¹⁴³
- 6.4 Only one category in the ANZSOC offence classification system, namely *homicide and related offences*, was not sentenced alongside any animal cruelty offences during the reference period.

Co-sentenced offences in the higher courts

- 6.5 In the four animal cruelty cases sentenced in the higher courts, the most common co-sentenced offences were acts intended to cause injury (3 cases) and theft and related offences (3 cases). Two cases involved criminal damage (one of which included arson), two cases included other justice procedure offences (both of which were resisting police) and two cases involved a burglary offence.

Co-sentenced offences in the Magistrates' Court and the Children's Court

- 6.6 The rates at which various offence types were co-sentenced with animal cruelty in both the Magistrates' Court and the Children's Court are shown in Table 10 (page 50).
- 6.7 During the reference period, 1,053 cases that involved animal cruelty offences were sentenced in the Magistrates' Court. The majority (59%) exclusively involved animal cruelty offending (620 cases). In the remaining 433 cases (41%), the offender was sentenced for other offence types alongside the animal cruelty offences.
- 6.8 In contrast, in the Children's Court, a much larger proportion of cases included other offending in addition to animal cruelty (84% or 49 of 58 cases).

142. The Australian and New Zealand Standard Offence Classification (ANZSOC) (2011) is produced by the Australian Bureau of Statistics for use within Australia and New Zealand in the production and analysis of crime and justice statistics, with the aim of providing a uniform national statistical framework for classifying criminal behaviour: Australian Bureau of Statistics, *Australian and New Zealand Standard Offence Classification (ANZSOC)*, cat. no. 1234.0 (2011).

143. For example, entering a private place without authorisation is classified as a public order offence (category 13), but it could also be classified as unlawful entry or burglary (category 07).

Table 10: Proportion of cases involving a sentenced animal cruelty offence and another offence type, by ANZSOC code, Magistrates' Court and Children's Court, 2008 to 2017

Offence category	ANZSOC code	Magistrates' Court (1,053 cases)	Children's Court (58 cases)
Additional animal cruelty offence	–	38%	18%
Other animal-related (non-cruelty) offence	–	16%	5%
Acts intended to cause injury	02	11%	18%
Criminal damage	12	8%	35%
Public order offences	13	8%	33%
Bail-related offences	15	7%	11%
Theft and related offences	08	6%	51%
Weapons and explosives offences	11	5%	9%
Breach intervention order	15	5%	9%
Driving-related offences	14	5%	10%
Threats	05	5%	21%
Illicit drug offences	10	4%	7%
Justice procedure (other)	15	4%	4%
Burglary	07	2%	25%
Dangerous or negligent acts	04	2%	5%
Fraud and deception	09	2%	4%
Robbery and related offences	06	<1%	–
Sexual assault and related offences	03	<1%	7%
Any additional offence (other than animal cruelty)	(any)	41%	84%

This table is colour-coded to show the prevalence of different offence types for each court (based on the proportion of cases in which that offence type was sentenced). The darkest shade shows the most prevalent offence type. Each successively lighter shade indicates less prevalent offences. Dashes indicate that no person was sentenced for a charge of the offence type.

- 6.9 The three most common co-sentenced offence types in the Magistrates' Court were additional animal cruelty offences (in 38% of cases), other animal-related (non-cruelty) offences (16%) and acts intended to cause injury (11%). Very few cases included sexual offences co-sentenced with animal cruelty (three cases). The non-cruelty animal offences sentenced in the Magistrates' Court primarily consisted of regulatory offences for which adults tend to be more frequently accountable, such as failing to comply with a POCTA notice (66 cases) and failing to register a cat or dog (28 cases).
- 6.10 In the Children's Court, the most common co-sentenced offence types were theft and related offences (51% of animal cruelty cases), criminal damage (35%), public order offences (33%), burglary offences (25%) and threats (21%).
- 6.11 This shows that offenders sentenced in the Magistrates' Court tended to commit exclusively animal-related offending, including both cruelty and non-cruelty offences. In comparison, offenders in the Children's Court were more generalist in their offending; five categories of offences were more prevalent as co-sentenced offences than any additional animal-related offences.

Co-sentenced offences and gender

- 6.12 Table II (page 52) shows the proportion of male and female animal cruelty offenders who were co-sentenced for the various offence types. Overall, male animal cruelty offenders were more generalist in their offending than female animal cruelty offenders. Male animal cruelty offenders were co-sentenced for other offences in 49% (403) of the 818 cases during the reference period, while female animal cruelty offenders were co-sentenced for an offence other than animal cruelty in 29% (85) of the 292 cases during the reference period.
- 6.13 Indeed, male animal cruelty offenders were sentenced at a higher rate than female animal cruelty offenders for every offence category other than the two animal-related categories (cruelty and non-cruelty). Excluding those two animal-related categories, the most common co-sentenced offences for male animal cruelty offenders were acts intended to cause injury (at twice the rate of female animal cruelty offenders), criminal damage (at three times the rate of female animal cruelty offenders) and theft and related offences (at six times the rate of female animal cruelty offenders).
- 6.14 The greatest proportional difference in co-sentenced offences between male and female animal cruelty offenders was for weapons and explosives offences, which were sentenced in 7.6% of animal cruelty cases involving male offenders. This is 11 times the rate at which female animal cruelty offenders were co-sentenced for those offences (0.7% of cases).
- 6.15 Excluding the two animal-related categories, female animal cruelty offenders were most commonly co-sentenced for acts intended to cause injury (6% of cases), criminal damage (4%) and public order offences (also 4%).

Table 11: Proportion of cases involving a sentenced animal cruelty offence and another offence type, by ANZSOC code, all courts, 2008 to 2017¹⁴⁴

Offence category	ANZSOC code	Male animal cruelty offenders (818 cases)	Female animal cruelty offenders (292 cases)
Additional animal cruelty offence	–	34%	46%
Other animal-related (non-cruelty) offence	–	14%	18%
Acts intended to cause injury	02	13%	6%
Criminal damage	12	12%	4%
Public order offences	13	11%	4%
Theft and related offences	08	11%	2%
Bail-related offences	15	8%	3%
Weapons and explosives offences	11	8%	1%
Breach intervention order	15	7%	2%
Driving-related offences	14	6%	1%
Justice procedure (other)	15	6%	2%
Threats	05	6%	2%
Burglary	07	5%	–
Illicit drug offences	10	5%	1%
Dangerous or negligent acts	04	3%	<1%
Fraud and deception	09	2%	1%
Sexual assault and related offences	03	1%	–
Robbery, extortion and related offences	06	0%	–
Any additional offence (other than animal cruelty)	(any)	49%	29%

This table is colour-coded to show the prevalence of different offence types for each gender (based on the proportion of cases in which that offence type was sentenced). The darkest shade shows the most prevalent offence type. Each successively lighter shade indicates less prevalent offences. Dashes indicate that no person was sentenced for a charge of the offence type.

144. The data did not include the offender's gender for five cases; these cases were excluded from Table 11.

7. Family violence and animal cruelty

- 7.1 This chapter briefly explores the link between family violence and animal cruelty. It includes an analysis of animal cruelty cases that were sentenced during the reference period and flagged as having occurred in the context of family violence.

The link between family violence and animal cruelty

- 7.2 The link between family violence and animal cruelty is well recognised. A substantial amount of family violence offending involves some form of animal cruelty.¹⁴⁵ A number of studies of pet-owning women seeking services from domestic violence shelters have found that between 47% and 71% of the respondents' male partners had threatened, harmed or killed their pet.¹⁴⁶ In addition to a link between animal cruelty and family violence, research has found that family violence offenders who engage in animal cruelty are more likely than other family violence offenders to engage in violence and controlling behaviours.¹⁴⁷
- 7.3 Legislation in Victoria (and many other jurisdictions)¹⁴⁸ expressly recognises animal abuse as a form of family violence. In Victoria, the *Family Violence Protection Act 2008* (Vic) defines *family violence* to include:
- causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.¹⁴⁹
- 7.4 Some researchers have also argued that animals could themselves be considered victims of family violence, particularly given the number of people who perceive their companion animals as members of the family.¹⁵⁰ Animals, however, are not included in the list of *affected family members* who can be protected by family violence intervention orders in Victoria,¹⁵¹ though they are in some jurisdictions in the United States.¹⁵²

145. See for example, Sarah DeGue and David DeLillo, 'Is Animal Cruelty a "Red Flag" for Family Violence? Investigating Co-Occurring Violence Toward Children, Partners, and Pets' (2009) 24(6) *Journal of Interpersonal Violence* 1036; Frank R. Ascione, 'Emerging Research on Animal Abuse as a Risk Factor for Intimate Partner Violence', in Kathleen A. Kendall-Tackett and Sarah M. Giacomoni (eds), *Intimate Partner Violence* (2007) [3–1]–[3–17].

146. Frank R. Ascione, 'Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals' (1998) 1(1) *Journal of Emotional Abuse* 125; Catherine A. Faver and Elizabeth B. Strand, 'To Leave or to Stay? Battered Women's Concern for Vulnerable Pets' (2003) 18(12) *Journal of Interpersonal Violence* 1367.

147. Catherine A. Simmons and Peter Lehmann, 'Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships' (2007) 22(9) *Journal of Interpersonal Violence* 1211, 1218–1219.

148. *Family Violence Act 2016* (ACT) s 8(2)(c); *Domestic and Family Violence Protection Act 2012* (Qld) s 8(2)(g); *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 8(4)(d); *Domestic and Family Violence Act 2007* (NT) ss 5(b), (f), 6(1)(b)(ii); *Restraining Orders Act 1997* (WA) s 5A(2)(f).

149. *Family Violence Protection Act 2008* (Vic) s 5(2)(e).

150. Charlotte A. Lacroix, 'Another Weapon for Combating Family Violence: Prevention of Animal Abuse', in Frank R. Ascione and Phil Arkow (eds), *Child Abuse, Domestic Violence, and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention* (1999) 63–64.

151. *Family Violence Protection Act 2008* (Vic) s 4 (definition of 'affected family member').

152. Frank R. Ascione et al., 'The Relations Among Animal Abuse, Psychological Disorders, and Crime: Implications for Forensic Assessment' (2018) *Behavioral Sciences & the Law*, advance online publication: doi:10.1002/bsl.2370, 7.

- 7.5 Researchers have also begun to identify a distinction in the types of animal cruelty perpetrated by offenders in ongoing relationships and offenders in terminated relationships. In its submission to the Royal Commission into Family Violence, RSPCA Victoria wrote that:
- [t]he RSPCA Inspectorate is often called in to investigate cruelty to animals in homes with family violence. In many cases, animals are abused as a method of controlling partners *while in the home*, or they may be starved, abused or neglected *when the victim flees the home*. The RSPCA often needs to seize animals from these homes. Animals in these situations can be a tool of abuse or collateral damage.¹⁵³
- 7.6 A New Zealand study investigating the link between animal cruelty and family violence found that *in-relationship* animal cruelty was especially multifaceted and included:
- normalised outbursts of violence, often as a demonstration of anger for other family members;
 - perverse satisfaction from hurting animals;
 - punishment of another family member's unsatisfactory behaviour by hurting animals;
 - abuse of an animal because the perpetrator is jealous of the affection it receives from other family members; and
 - pre-emptive abuse aimed at maintaining a family member's 'good behaviour' (this was especially constituted by men threatening to harm an animal if their partner ended the relationship).¹⁵⁴
- 7.7 In contrast, *post-relationship* animal cruelty tended to consist more simply of either threatening to harm or actually harming animals, especially when those animals have been left in the perpetrator's care. Since the Royal Commission into Family Violence, the Victorian Government, in collaboration with Safe Steps, has established a program that assists family violence victims to find appropriate shelters for their animals during periods of high risk, and there has been a high demand for this service.¹⁵⁵
- 7.8 The distinction between *in-relationship* and *post-relationship* animal cruelty can be observed in the small number of animal cruelty cases that were sentenced in Victoria's higher courts during the reference period. All four cases sentenced in the higher courts occurred in the context of family violence. In one case, the offender and the victim were still in a relationship, and the offender threatened to – and actually – harmed the victim's animal because she did not give him money soon enough. In another two cases of *post-relationship* animal cruelty, the offenders entered uninvited into their ex-partners' homes and killed the animals they found there.

153. RSPCA Victoria, *Submission to the Royal Commission into Family Violence* (2016) 1 (emphasis added).

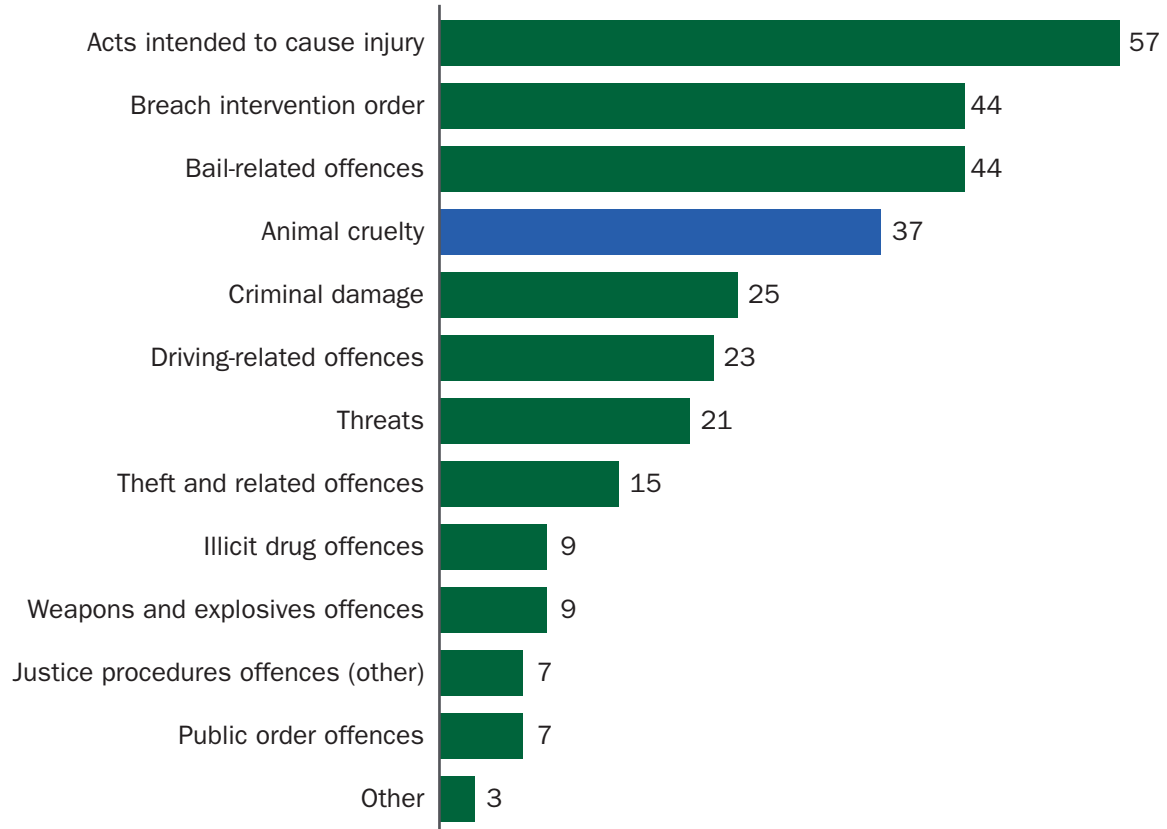
154. Michael Roguski, *Pets as Pawns: The Co-Existence of Animal Cruelty and Family Violence* (2012) v–vi, 21–26.

155. Peter Lusted, "Life-Saving" Victorian Domestic Violence Pet Shelter Program Struggling to Meet High Demand', *ABC News* (online) 31 March 2017 <<http://www.abc.net.au/news/2017-02-28/domestic-violence-pet-shelter-program-struggling-to-meet-demand/8308606>> at 7 December 2018.

How many animal cruelty cases were flagged as family violence?

- 7.9 Since 2009, the Magistrates' Court has flagged cases that involve family violence offending, and since April 2015 that flag has been automatically linked to Victoria Police's LEAP system.¹⁵⁶
- 7.10 In order to allow for an adjustment period of that flagging system, this report analyses animal cruelty cases flagged as family violence in the Magistrates' Court in 2016 and 2017. This is likely to be an underrepresentation of all animal cruelty cases that occurred in the context of family violence, but it provides an estimation of the proportion of animal cruelty offences committed in the context of family violence.
- 7.11 Of the 231 animal cruelty cases sentenced in the Magistrates' Court in 2016 and 2017, 35 were flagged as involving family violence, representing 15% of all animal cruelty cases in those two years.
- 7.12 Figure 21 shows which offence types were most prevalent (at the charge level) in those cases. There were 301 charges sentenced in those 35 cases, the most common of which were assault-related offences (57), bail-related offences (44) and contraventions of family violence intervention orders and safety notices (44).

Figure 21: Number of charges sentenced in cases flagged as family violence with at least one animal cruelty offence, by offence type, Magistrates' Court, 2016 and 2017



¹⁵⁶ Sentencing Advisory Council, *Swift, Certain and Fair Approaches to Family Violence: Discussion Paper* (2017) 34.

- 7.13 A representative from Victoria Police noted that some of the threat-related offences may also reflect threats to harm an animal, contrary to section 198 of the *Crimes Act 1958* (Vic).¹⁵⁷ There is no specific offence of threatening to harm an animal; however, it is an offence to threaten to destroy any property belonging to another person, even if that property is jointly owned by the offender, and animals may be classified as *property*. It was also suggested that some of the criminal damage charges could similarly be based on harming animals, though this was considered less likely given the available cruelty offences with which offenders could instead be charged.
- 7.14 All 35 animal cruelty cases flagged as involving family violence were prosecuted by Victoria Police. Victoria Police prosecuted 75 animal cruelty cases in that same timeframe; therefore nearly half of all animal cruelty cases prosecuted by Victoria Police in those two years were family violence-related.
- 7.15 The most common animal cruelty offence in the 35 cases was deliberate cruelty, contrary to section 9(1)(a) of the *Prevention of Cruelty to Animals Act 1986* (Vic) (the 'POCTA Act') (16 charges), followed by aggravated cruelty (10 charges) and do act likely to cause pain or suffering (9 charges). There was also one charge each of failing to provide food, drink or shelter and of release an animal to be pursued, injured or killed by a dog. This data suggests that family violence offenders engage in more active forms of animal cruelty, such as abusing or beating an animal, as opposed to what might be described as *passive* or neglect-based forms of cruelty.
- 7.16 Cases flagged as involving family violence had a much higher proportion of male animal cruelty offenders compared with all cases of animal cruelty (94% or 33 of 35 cases). This is unsurprising given the consistent finding in family violence research that the overwhelming majority of family violence is committed by men.¹⁵⁸ This suggests that not only are males more likely to engage in animal cruelty generally (three-quarters of animal cruelty offenders were male: see [5.5]), but an even stronger association exists between gender and animal cruelty when the offending occurs in the context of family violence.

Sentencing outcomes in animal cruelty cases flagged as involving family violence

- 7.17 Of the 35 animal cruelty cases flagged as family violence, 15 received imprisonment, 15 received a CCO, two received a fine and three received an adjourned undertaking. This suggests that cases involving family violence were much more likely to receive more serious sentencing outcomes than other animal cruelty cases. In particular, 11% of animal cruelty cases in 2016 and 2017 that did *not* involve family violence received imprisonment, and 9% received a CCO. In comparison, 43% of animal cruelty cases flagged as family violence received a term of imprisonment (nearly four times the rate of other cases), and another 43% received a CCO (nearly five times the rate of other cases).

¹⁵⁷ Roundtable Discussion Forum with Stakeholders (2 November 2018).

¹⁵⁸ State of Victoria, Royal Commission into Family Violence, *Report and Recommendations*, vol. 1 (2016) 17; Crime Statistics Agency, *An Overview of Family Violence in Victoria: Finding from the Victorian Family Violence Database 2009–10 to 2013–14* (2016) 146. The latter was produced by the Crime Statistics Agency on behalf of the Royal Commission into Family Violence and is found in volume 7 of the Royal Commission's *Report and Recommendations*.

8. Prior and subsequent offending

- 8.1 This chapter explores the prior and subsequent offending patterns of 271 offenders sentenced for animal cruelty in 2012 and 2013. The chapter includes an analysis of how many offenders were sentenced for other offending in the four years before and after they were sentenced for animal cruelty, how soon they reoffended and the offence types for which they were sentenced.

Previous Council research on prior and subsequent offending

- 8.2 Over the last six years, the Council has published a number of studies on prior and subsequent offending in Victoria. The Council has analysed reoffending following sentence in the Magistrates' Court,¹⁵⁹ reoffending following sentence in all Victorian courts,¹⁶⁰ offending before and after sentencing for contravening family violence intervention orders and safety notices,¹⁶¹ and reoffending by children and young people.¹⁶² The overarching aim of those studies was to better understand the likelihood of certain offenders committing further offences after sentencing, and if they did commit further offences, when and what offence types were committed.
- 8.3 Those studies utilised the Council's reoffending database, which includes all sentences imposed by Victorian criminal courts since July 2004.¹⁶³ Reoffending is defined in those studies as one or more subsequent sentences after an index sentence. Other studies of reoffending (also described as *recidivism*) may use different measures, such as the number of arrests following release from prison.¹⁶⁴

Animal cruelty offenders with prior or subsequent offending

- 8.4 Building on that previous research, this report examines prior and subsequent offending of animal cruelty offenders who were sentenced between 2012 and 2013. For this analysis, an index sentence is defined as an offender's most recent sentence for animal cruelty within that two-year period. The reference period for prior and subsequent offending is the four years before and after the date of the index sentence. This ensures an equal follow-up time for all offenders, regardless of their sentence date.
- 8.5 In total, 271 animal cruelty offenders were sentenced in 2012 and 2013. The proportion of those offenders who had been sentenced for any prior and subsequent offending in the four years before and after their index sentence is shown in Figure 22 (page 58).

159. Sentencing Advisory Council, *Reoffending Following Sentence in the Magistrates' Court of Victoria* (2013).

160. Sentencing Advisory Council, *Reoffending Following Sentence in Victoria: A Statistical Overview* (2015).

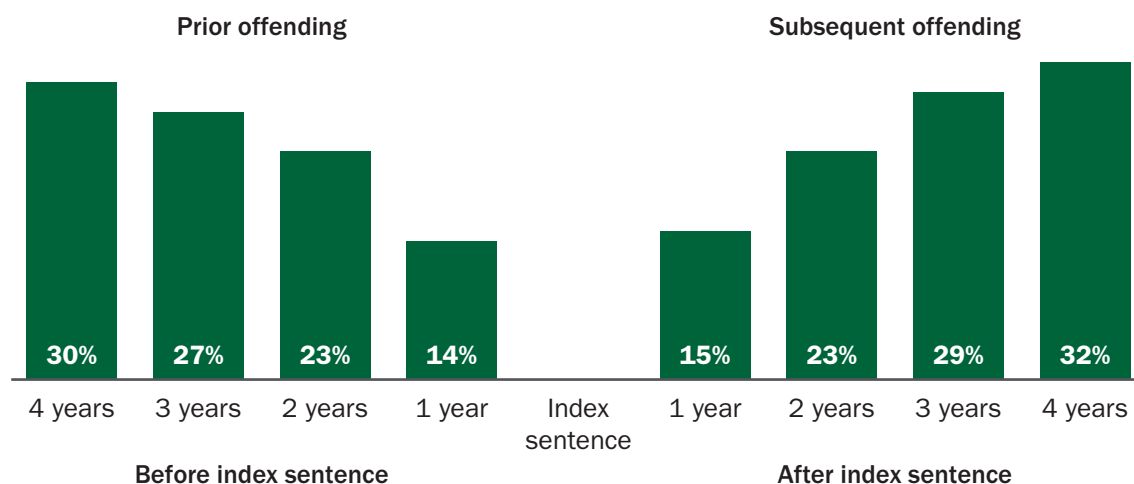
161. Sentencing Advisory Council (2016), above n 138.

162. Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016).

163. Sentencing Advisory Council (2015), above n 160, 3. The database was initially developed in 2011.

164. See for example, Mariel Alper and Joshua Markman, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014)* (2018).

Figure 22: Rate of prior and subsequent offending (of any kind) for the 271 animal cruelty offenders sentenced in 2012 and 2013, all Victorian courts



- 8.6 Within one year of their index sentence, 15% of animal cruelty offenders (40 of 271) had been sentenced again for further offending. A similar proportion (14%) had been sentenced in the one year prior to the index sentence. Within four years after the index sentence, nearly one-third of offenders had been sentenced for subsequent offending (32%), and a similar proportion had been sentenced for prior offending in the preceding four years (30%).
- 8.7 Table 12 compares different types of offenders who had been sentenced for prior or subsequent offending within four years of an index sentence, drawing on the Council's previous studies. Notably, animal cruelty offenders reoffended at a lower rate than any category of offenders previously studied by the Council, including *all* sentenced offenders. While 34% of all offenders were sentenced for further offending within four years, that number was 32% for animal cruelty offenders. The difference is even more noticeable when comparing animal cruelty offenders with family violence offenders who were sentenced for contravening intervention orders (48% reoffended within four years) and children and young people (54% reoffended within four years).

Table 12: Proportion of offenders sentenced for prior or subsequent offending in the four years before and after an index sentence, by select offenders

Category of offender	Sentenced for prior offending within four years (%)	Sentenced for subsequent offending within four years (%)
All sentenced offenders ^a	–	34%
Animal cruelty offenders (all)	30%	32%
Animal cruelty offenders (deliberate cruelty only)	44%	46%
Contravention/breach offenders (family violence) ^b	54%	48%
Children and young people (aged 10–20 years) ^c	–	54%

a. Sentencing Advisory Council, *Reoffending Following Sentence in Victoria: A Statistical Overview* (2015) 8.

b. Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (2016) 26, 33.

c. Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016) 20.

- 8.8 The likelihood of an animal cruelty offender being sentenced for prior or subsequent offending does, though, seem to be connected with the type of animal cruelty for which they were sentenced. Of the 271 animal cruelty offenders sentenced in 2012 and 2013, 41 were sentenced for at least one deliberate cruelty offence (contrary to section 9(1)(a) of the *Prevention of Cruelty to Animals Act 1986* (Vic) (the 'POCTA Act')). Of those 41 offenders, 44% (18) had been sentenced at least once in the four years immediately before the index sentence, and 46% (19) had been sentenced at least once in the four years immediately after the index sentence.

Number of prior and subsequent sentences

- 8.9 The majority of animal cruelty offenders were not sentenced on any other occasion in the four years before or after their sentence for animal cruelty (57% or 156 of 271 offenders). The remaining 43% (115 offenders) had at least one prior or subsequent sentence. The total number of prior and subsequent sentences each offender had is outlined in Table 13. Of the 115 offenders, 82 had at least one prior sentence, 87 had at least one subsequent sentence and 54 had at least one of each. Among a small group of particularly prolific offenders were 10 offenders who were sentenced for other offending on five or more occasions in the four years *before* their index sentence, and eight who were sentenced on five or more occasions *after* their index sentence.

Table 13: Number of offenders sentenced for prior or subsequent offending in the four years before and after an index sentence

		Number of prior sentences (total)						Total
		0	1	2	3	4	5+	
Number of subsequent sentences (total)	0	156	16	6	4	1	1	184
	1	21	10	7	1	0	0	39
	2	6	5	7	0	1	3	22
	3	2	1	2	3	0	2	10
	4	3	1	0	1	1	2	8
	5+	1	1	1	1	2	2	8
	Total	189	34	23	10	5	10	271

How many animal cruelty offenders committed violence against the person?

- 8.10 The Council further analysed the offence types that animal cruelty offenders were sentenced for both before and after they were sentenced for animal cruelty. The purpose of this analysis is to contribute to an understanding of whether animal cruelty offending is a warning sign for certain offence types, especially violence against the person.
- 8.11 The 87 offenders with subsequent offending were sentenced in 200 cases. The most common offence types in those cases were justice procedures offences (68 cases) and driving-related offences (63 cases). Acts intended to cause injury were sentenced in 43 cases (22%) for 28 offenders; that is, 10% of all animal cruelty offenders sentenced in 2012 and 2013 were sentenced within four years for a violent offence against the person.

- 8.12 The 82 offenders with prior offending were sentenced in 191 cases. The most common offence types in those cases were driving-related offences (87 cases) and theft-related offences (50 cases). Acts intended to cause injury were sentenced in 40 cases (21%) involving 25 unique offenders; that is, 9% of all animal cruelty offenders sentenced in 2012 and 2013 had been sentenced for violence against another person in the four years prior to their index sentence for animal cruelty.
- 8.13 Animal cruelty offenders were therefore almost equally as likely to be sentenced for violent acts against another person *after* they were sentenced for animal cruelty (10%) as they were to be sentenced for violence in the four years *before* their sentence for animal cruelty (9%).
- 8.14 This could suggest that, rather than being an indicator of a particular order in which animal cruelty offenders engage in violent activities (that is, animals first, persons second), animal cruelty may actually be better classified as part of a broader pattern of antisocial behaviour by certain offenders.

Recidivist animal cruelty offenders

- 8.15 The 998 unique animal cruelty offenders were sentenced in 1,115 cases between 2008 and 2017. While the reoffending population examined above was sentenced for a variety of offences, animal cruelty was not prevalent among prior or subsequent sentenced offending. Of the 953 offenders sentenced in the Magistrates' Court in the 10-year reference period, 22 had multiple sentences for animal cruelty offences. The time between sentences for animal cruelty offences for those 22 offenders ranged from less than one year (five offenders) to more than four years (six offenders).
- 8.16 For animal cruelty offenders who did reoffend with an animal cruelty offence, their first sentence was most commonly for aggravated cruelty (27 charges), causing or endangering pain or suffering (24 charges), failing to provide food, drink or shelter (20 charges) and failing to provide treatment (20 charges). At the first subsequent sentence, three of these offences were still the most common animal cruelty offences: aggravated cruelty (20 charges), failing to provide food, drink or shelter (17 charges) and failing to provide treatment (15 charges). The one difference was that no recidivist animal cruelty offender was resentedenced for causing or endangering pain or suffering contrary to section 9(1)(c) of the POCTA Act.
- 8.17 Only two offenders were sentenced for animal cruelty on more than two occasions during the reference period. One of those offenders was sentenced in 2009, 2013 and 2014 (their offending is outlined at [3.33]). The other, a 40 year-old male offender, was prosecuted by RSPCA Victoria and sentenced to 70 days' imprisonment in October 2009 for five charges of failing to provide food, drink, shelter or treatment. He was then prosecuted by a local council and sentenced to a \$1,000 fine in April 2010 for two charges of failing to provide treatment. On a third occasion, he was again prosecuted by RSPCA Victoria and sentenced to a one-month wholly suspended sentence in June 2010 for one charge of failing to provide treatment.

9. Concluding remarks

- 9.1 This report has analysed the prevalence of animal cruelty offences in Victoria, the sentencing outcomes imposed on those offences and the profiles of offenders who committed those offences.
- 9.2 The report has a number of key findings:
- most sentenced animal cruelty offending is neglect-related, involving failing to provide food, drink, shelter or treatment to an animal (43%);
 - at least 15% of animal cruelty offending occurred in the context of family violence;
 - the majority of animal cruelty charges were sentenced to a fine (60%), and 4% were sentenced to imprisonment;
 - an ancillary control order was imposed in 20% of cases, placing restrictions on if, and how, offenders can own or be in charge of animals;
 - the majority of animal cruelty offenders were male (75%);
 - young offenders sentenced for animal cruelty in the Children's Court tended to be more generalist in their offending – they were co-sentenced for other offences in 84% of cases – than offenders sentenced in the Magistrates' Court (41%);
 - similarly, male animal cruelty offenders tended to be more generalist in their offending – they were co-sentenced for other offences in 49% of cases – than female animal cruelty offenders (29%); and
 - just under one-third of animal cruelty offenders were sentenced for other offending both in the four years *before* being sentenced for animal cruelty (30%) and in the four years *after* being sentenced for animal cruelty (32%).
- 9.3 Arising out of these key findings, and from discussions with stakeholders, were three key issues that may warrant further consideration: the high rate of fines for animal cruelty offending, the importance of control orders in animal cruelty proceedings and the need to develop guidance on how animal cruelty should be sentenced, with subsequent judicial education about that guidance.

High rate of fines

- 9.4 During consultation, some stakeholders indicated that fines may be appropriate in some cases of animal cruelty. However, the finding in this report that fines represented more than half of all sentences imposed for animal cruelty offending was cause for concern.¹⁶⁵ If the offender is a farmer who is struggling financially and, as a result, has been unable to water, feed or medicate their livestock, it would seem incongruous to further burden them with a monetary penalty payable to the state. Further, the harm and culpability inherent in deliberate acts of cruelty would tend to indicate that some form of offender rehabilitation is needed, rather than what one animal welfare researcher has described as a 'regulatory' response in the form of a fine.¹⁶⁶

¹⁶⁵. Roundtable Discussion Forum with Stakeholders (2 November 2018).

¹⁶⁶. Goodfellow, above n 14.

- 9.5 In addition, the Council has previously found that, of all fines imposed on individuals for all offences over a nine-year period, only 53% of fines were completely paid, 7% were partly paid and 40% were not paid at all.¹⁶⁷ A criminal prosecution resulting in the imposition of a fine (and possibly conviction) may demonstrate the court's (and the community's) denunciation of the offender's conduct, but it is difficult to see which of the other purposes of sentencing are achieved if the fine remains unpaid.¹⁶⁸

Control orders

- 9.6 One of the common themes in consultation with stakeholders was the importance of control orders in sentencing animal cruelty offending. These ancillary orders can prohibit offenders from owning or being in charge of animals, or place conditions and restrictions on their ownership and oversight of animals. Some prosecutors said that the imposition of a control order was the most appropriate outcome in many proceedings.¹⁶⁹
- 9.7 Of the 1,115 cases involving animal cruelty sentenced during the reference period, a control order was imposed in 20% of cases (228), particularly in cases prosecuted by RSPCA Victoria and DEDJTR and DELWP.
- 9.8 A low rate of control orders (<1%) were imposed in cases prosecuted by Victoria Police, however. Victoria Police identified that this was a result of a lack of awareness among police prosecutors and advised that training modules will be updated to ensure police prosecutors are made aware of control orders.¹⁷⁰

The need for sentencing guidance

- 9.9 Many of the stakeholders consulted for this report considered that a level of inconsistency exists in how courts sentence animal cruelty offences in Victoria, in terms of both sentencing outcomes and the factors taken into account in determining sentence.¹⁷¹ The Council could not test this assertion, however, because sentencing remarks are not available for cases heard in the Magistrates' Court. There is also limited case law in Victoria on the sentencing of animal cruelty offences.¹⁷²
- 9.10 Stakeholders did, however, suggest that some form of guidance for judicial officers (especially magistrates) about sentencing animal cruelty would be helpful in this regard.¹⁷³

167. Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria: Report* (2014) 36.

168. Ibid 47.

169. Roundtable Discussion Forum with Stakeholders (2 November 2018).

170. Roundtable Discussion Forum with Stakeholders (2 November 2018).

171. Roundtable Discussion Forum with Stakeholders (2 November 2018).

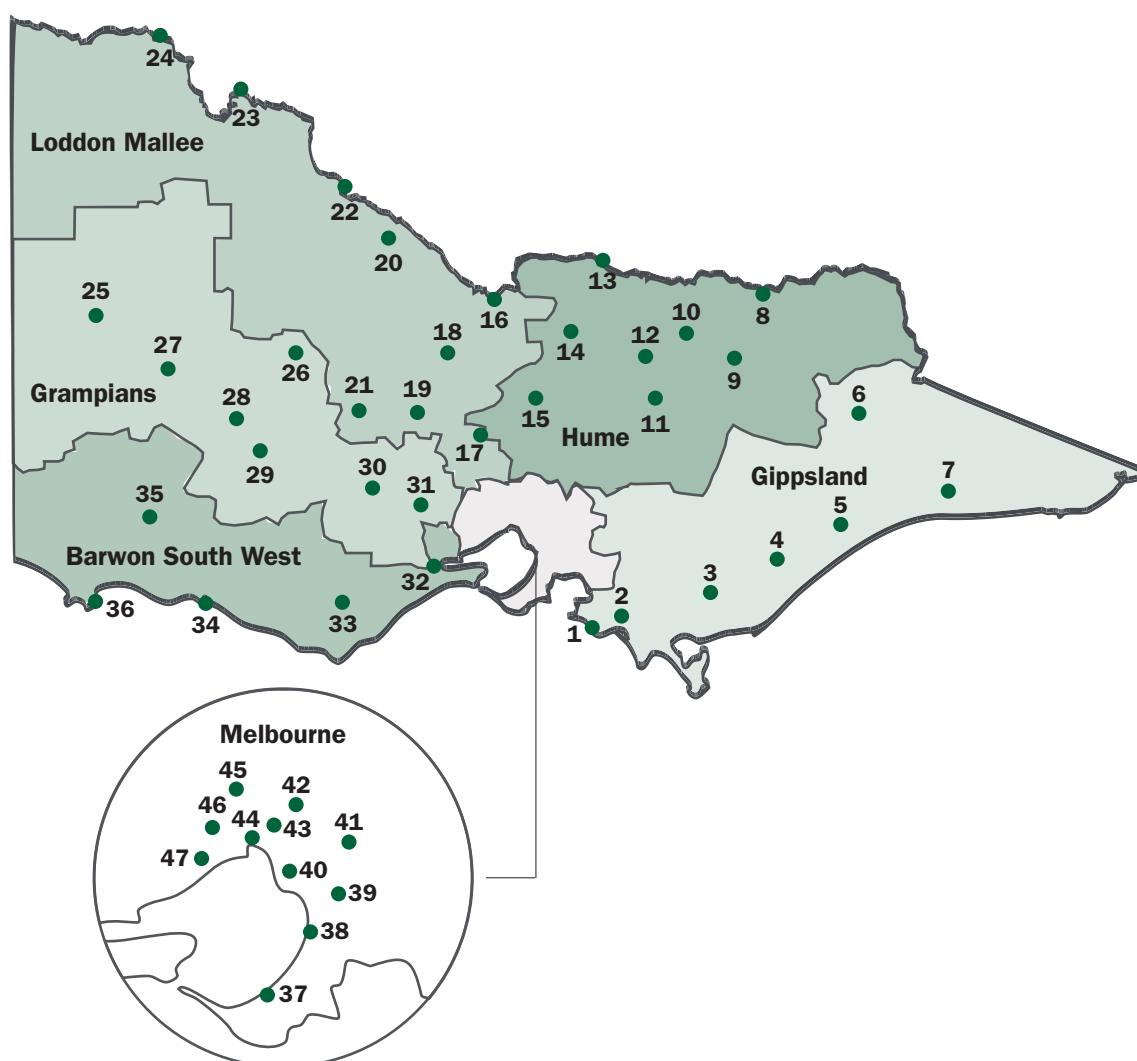
172. See *contra*, *Director of Public Prosecutions v Hunter & Ors* [2012] VCC (Unreported, Millane J, 21 November 2012), citing *Holding v Parkin* [2012] WASC 113 (30 March 2012). Some limited case law exists in other jurisdictions: see for example, *Joyce v Visser* [2001] TASSC 116 (2 October 2001); *Turner v Cole* [2005] TASSC 72 (9 August 2005); *Holding v Parkin* [2012] WASC 113 (30 March 2012).

173. Roundtable Discussion Forum with Stakeholders (2 November 2018).

Appendix A: Consultation

Date	Meeting/roundtable
20 June 2018	Meeting with Animals Australia
25 June 2018	Meeting with Professor Ron Slocombe, Chairperson of the Animal Welfare Advisory Committee
2 July 2018	Meeting with RSPCA Victoria
4 July 2018	Meeting with Department of Economic Development, Jobs, Transport and Resources
8 August 2018	Meeting with Department of Environment, Land, Water and Planning
2 November 2018	Roundtable Discussion Forum with Stakeholders

Appendix B: Court locations where animal cruelty offences were sentenced



Gippsland**86 cases, 8 control orders**

- 1. Wonthaggi:** 6 cases, 0 control orders
- 2. Korumburra:** 5 cases, 0 control orders
- 3. Latrobe Valley (Morwell):** 51 cases, 7 control orders
- 4. Sale:** 7 cases, 0 control orders
- 5. Bairnsdale:** 13 cases, 1 control order
- 6. Omeo:** 2 cases, 0 control orders
- 7. Orbost:** 2 cases, 0 control orders

Hume**91 cases, 14 control orders**

- 8. Wodonga:** 11 cases, 1 control order
- 9. Myrtleford:** 5 cases, 0 control orders
- 10. Wangaratta:** 9 cases, 1 control order
- 11. Mansfield:** 5 cases, 1 control order
- 12. Benalla:** 11 cases, 2 control orders
- 13. Cobram:** 10 cases, 1 control order
- 14. Shepparton:** 18 cases, 3 control orders
- 15. Seymour:** 22 cases, 5 control orders

Loddon Mallee**106 cases, 19 control orders**

- 16. Echuca:** 15 cases, 0 control orders
- 17. Kyneton:** 8 cases, 2 control orders
- 18. Bendigo:** 49 cases, 12 control orders
- 19. Castlemaine:** 6 cases, 3 control orders
- 20. Kerang:** 7 cases, 1 control order
- 21. Maryborough:** 5 cases, 0 control orders
- 22. Swan Hill:** 6 cases, 1 control order
- 23. Robinvale:** 1 case, 0 control orders
- 24. Mildura:** 9 cases, 0 control orders

Grampians**75 cases, 20 control orders**

- 25. Nhill:** 1 case, 1 control order
- 26. St. Arnaud:** 9 cases, 2 control orders
- 27. Horsham:** 21 cases, 8 control orders
- 28. Stawell:** 4 cases, 0 control orders
- 29. Ararat:** 5 cases, 1 control order
- 30. Ballarat:** 32 cases, 6 control orders
- 31. Bacchus Marsh:** 3 cases, 2 control orders

Barwon South West**103 cases, 16 control orders**

- 32. Geelong:** 45 cases, 2 control orders
- 33. Colac:** 14 cases, 4 control orders
- 34. Warrnambool:** 19 cases, 3 control orders
- 35. Hamilton:** 12 cases, 4 control orders
- 36. Portland:** 13 cases, 3 control orders

Melbourne**654 cases, 152 control orders**

- 37. Dromana:** 2 cases, 0 control orders
- 38. Frankston:** 76 cases, 18 control orders
- 39. Dandenong:** 103 cases, 8 control orders
- 40. Moorabbin:** 30 cases, 5 control orders
- 41. Ringwood:** 94 cases, 21 control orders
- 42. Heidelberg:** 61 cases, 12 control orders
- 43. Neighbourhood Justice Centre (Collingwood):** 4 cases, 1 control order
- 44. Melbourne:** 67 cases, 16 control orders
- 45. Broadmeadows:** 76 cases, 20 control orders
- 46. Sunshine:** 128 cases, 50 control orders
- 47. Werribee:** 13 cases, 1 control order

Appendix C: Amendments to ANZSOC offence classification

As mentioned in Chapter 6, the Council made three amendments to the ANZSOC offence classification system in reporting on offence types in this report.

First, the ANZSOC category of *offences against justice procedures, government security and government operations* was separated into three subcategories:

- bail-related offences;
- breaches of family violence intervention orders; and
- other justice procedures offences.

This was because the numbers of the first two categories (bail-related offences and breaches of family violence intervention orders) have experienced substantial increases over the last decade (as highlighted in the Council's reports).¹⁷⁴ The bail-related offences include failing to answer bail, contravening a conduct condition of bail and committing an indictable offence whilst on bail. The breaches of family violence intervention orders include both court-issued intervention orders and police-issued safety notices in the context of family violence, but they do not include personal safety intervention orders because these apply in non-familial contexts.

Second, a significant number of offences are spread across various ANZSOC offending categories that in some way relate to animals and animal welfare, but that do not constitute an animal cruelty offence for the purposes of this report. This includes behaviours such as hindering or obstructing a POCTA inspector in the course of their duties, failing to register a cat or dog, failing to maintain proper business records in the course of maintaining an animal-related business, unlawfully possessing wildlife, hunting game from a moving vehicle and many other offences. These offences have been extracted from the various categories in which they would normally be classified, in order to create a separate and distinct category of animal-related (but non-cruelty) offences. These animal-related (but non-cruelty) offences constitute the most common offence type co-sentenced alongside animal cruelty offences.

The third change is that the category of *abduction, harassment and other offences against the person* has been renamed *threats*. This is because almost all offences in this category that were co-sentenced with animal cruelty offences involved threats (to kill, to seriously injure or to damage property). The very few charges of abduction or harassment (8) have been recategorised as *miscellaneous*.

¹⁷⁴. Sentencing Advisory Council, *Breaching Intervention Orders: Report* (2008); Sentencing Advisory Council, *Sentencing Practices for Breach of Family Violence Intervention Orders: Final Report* (2009); Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention* (2013); Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: *Second Monitoring Report* (2015); Sentencing Advisory Council (2017), above n 99.

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Environment Protection Amendment Act 2018 (Vic)

Family Violence Protection Act 2008 (Vic)

Fisheries Act 1995 (Vic)

Gambling Regulation Act 2003 (Vic)

Livestock Management Act 2010 (Vic)

Prevention of Cruelty to Animals Act 1986 (Vic)

Prevention of Cruelty to Animals Amendment Act 2015 (Vic)

Prevention of Cruelty to Animals (Prohibited Procedures) Regulations 2008 (Vic)

Prevention of Cruelty to Animals Regulations 1997 (Vic)

Prevention of Cruelty to Animals Regulations 2008 (Vic)

Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2016 (Vic)

Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006 (Vic)

Primary Industries Acts (Further Amendment) Act 2005 (Vic)

Protection of Animals Act 1966 (Vic)

Racing Act 1958 (Vic)

Sentencing Act 1991 (Vic)

Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic)

Subordinate Legislation Act 1994 (Vic)

Subordinate Legislation (Prevention of Cruelty to Animals Regulations 1997 – Extension of Operation) Regulations 2007 (Vic)

Wildlife Act 1975 (Vic)

Wildlife Regulations 2013 (Vic)

Other jurisdictions

Animal Care and Protection Act 2001 (Qld)

Animal Welfare Act 1985 (SA)

Animal Welfare Act 1992 (ACT)

Animal Welfare Act 1993 (Tas)

Animal Welfare Act 1999 (NT)

Animal Welfare Act 2002 (WA)

Domestic and Family Violence Act 2007 (NT)

Domestic and Family Violence Protection Act 2012 (Qld)

Family Violence Act 2016 (ACT)

Intervention Orders (Prevention of Abuse) Act 2009 (SA)

Prevention of Cruelty to Animals Act 1979 (NSW)

Restraining Orders Act 1997 (WA)

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