



South Australia Animal Welfare Bill 2024

Submission of the
Australian Veterinary Association Ltd

May 2024

The Australian Veterinary Association

The Australian Veterinary Association (AVA) is the national organisation representing veterinarians in Australia. Our members come from all fields within the veterinary profession. Clinical practitioners work with companion animals, horses, livestock, and wildlife. Government veterinarians work with our animal health, public health, and quarantine systems while other members work in industry, research, and teaching. Veterinary students are also members of the Association.

AVA Statement of principles with respect to Animal Welfare¹

Animals are sentient beings that are conscious, feel pain, and experience emotions². Animals and people have established relationships for mutual benefit for thousands of years.

Humans have a duty of care to protect animals. Where a person does not meet his or her obligations to animals in his or her care, animals may suffer. When this happens, the law must be able to adequately intervene to enforce compliance and prevent suffering.

Animals have intrinsic value and should be treated humanely by the people who benefit from them. Owned animals should be safe from physical and psychological harm. They need access to water and species-appropriate food and shelter and should be able to fulfil their important behavioural and social needs. They must receive prompt veterinary care when required and have as painless and stress-free a death as possible.

Animals can be used to benefit humans if they are humanely treated, but the benefit to people should be balanced against the cost to the animal. They should not be used in direct combat or for purposes where suffering, injury or distress is likely to be caused.

Humans should strive to provide positive experiences to promote a life worth living for the animals in their care. We should strive for continuous and incremental improvement in the treatment and welfare of animals.

Humans have a responsibility to care for the natural environment of free-living native animals. People should take steps to preserve endangered species and protect native animals from disease where possible.

¹ <https://www.ava.com.au/policy-advocacy/policies/animal-welfare-principles-and-philosophy/ava-statement-of-principles--animal-ethics/>

² Mellor DJ, Patterson-Kane E, & Stafford KJ. *The Sciences of Animal Welfare*. UFAW Animal Welfare Series. Chichester UK: Wiley-Blackwell. 2009: 34-52



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Summary

The AVA thanks the South Australian Government for the opportunity to comment on this important issue.

The Draft *Animal Welfare Bill* reflects South Australia's animal welfare legislation having matured to acknowledge the sentience of animals and the shift to expectations for the duty of care of animals. This is a significant step forward to protect animals and the reputation of South Australia afforded by modern standards of animal welfare.

There are aspects of the draft Bill that the AVA believe require further consideration, this includes definitions of animal and sentience.

Discussion

Definition of "animal"

Do you think the definition of 'animal' is appropriate?

Definition in Draft Bill

animal means—

- (a) a member of any species of the subphylum *vertebrata* other than a human being; or
- (b) a member of the class *cephalopoda* if it is being supplied, kept or used for scientific purposes; or
- (c) a prescribed animal or a prescribed animal kept or used in prescribed circumstances, but does not include an embryo, foetus, larva or other early developmental stage of an animal except as prescribed by the regulations or set out in a prescribed code of practice;

Modern animal welfare science has demonstrated that fish are sentient. Fish respond to pain with physiological responses similar to mammals. Even more importantly, fish show behavioural responses to pain which indicate they can learn, remember, and make behavioural changes in response to aversive stimuli, which is an indicator of consciousness and sentience.³ This is why the OIE has guidelines on humane handling, management and slaughter of farmed fish in their Aquatic Code. This is also true for some of the invertebrates including Cephalopods and at least the Malacostraca class of Crustacea and is reflected in legislation in other Australian jurisdictions (e.g. ACT and QLD).

The expansion of the definition of animal to include some cephalopods is a positive development in the legislation. However, the AVA questions the limitation on cephalopods being classified as animals to only when "*being supplied, kept or used for scientific purposes*". We request that all Cephalopods and Crustacea, as outlined above, are provided the protection of animal welfare legislation in any and all circumstances where they interact with humans, not limited to their use for scientific purposes.

³ Broom and Fraser (2011) Domestic Animal Behaviour and Welfare, 4th Edition, DM



Failure to include cephalopods more broadly and at least the *Malacostraca* class of Crustacea in a modern review of animal welfare legislation does not reflect current animal welfare science and would be a missed opportunity to bring this legislation into the 21st century.

Although we acknowledge and commend the inclusion of fish in the definition of “animal”, we are concerned by the extensive exemptions regarding fish included in the draft Bill. We provide further information regarding this later in this submission when addressing the exemptions for fishing question.

Relevant AVA policies:

- [Fish welfare](#)
- [AVA Statement of principles – animal welfare and ethics](#)
Animals that are known to be both conscious and sentient include all of the vertebrates, and some classes of invertebrates such as cephalopods and some crustacea. Ongoing research may lead to inclusion of additional groups within this definition. Sentience is the capacity to experience emotions: pain, suffering, negative and positive affective states.

AVA Recommendation:

The AVA strongly recommends that the definition of ‘animal’ in the Act should include fish, cephalopods and at least the *Malacostraca* class of Crustaceans and that animal welfare legislation clarifies its application to an animal’s life stages and throughout the animal’s involvement with all human activities. Consideration could be given to include wording used to define ‘animal’ in the [Queensland Animal Care and Protection Amendment Act 2022](#).

Scientific Purposes

Do you think the wording of 'scientific purposes' is appropriate?

The AVA believes wording for “scientific purposes” that is aligned with the [Australian Code for the care and use of animals for scientific purposes](#) is appropriate.

Definition in Draft Bill

scientific purposes, in relation to an animal—

- (a) means all activities conducted with the aim of acquiring, developing or demonstrating knowledge or techniques in all areas of science, including teaching, field trials, environmental studies, research (including the creation and breeding of a new animal line where the impact on animal wellbeing is unknown or uncertain), diagnosis, product testing and the production of biological products; or
- (b) if there is an inconsistency between paragraph (a) and the definition of **scientific purposes** in the Code—has the same meaning as in the Code;

Relevant AVA policies:

- [Role of veterinarians in the care and use of animals for scientific purposes \(2023\)](#)
- [Use of animals for teaching in veterinary schools \(2023\)](#)



Principles and Objects; Duty of Care and Sentience

Do you think the principles and objects are appropriate?

Do you think the duty of care provision is appropriate?

The AVA strongly supports the modernisation of current animal welfare legislation to focus on the care requirements of animals in addition to enforcement for offences for breaches or risks to animal welfare.

Duty of Care requirements

Modern animal welfare legislation was initially developed with a focus on prohibiting harm to animals.

This is reflected in the historic titles of the legislation, 'Prevention of cruelty to animals acts'. Most jurisdictions have in recent decades moved away from this in favour of the term 'Animal Welfare', which recognises that society's responsibility to animals goes beyond simply refraining from cruelty and includes the concept of the more proactive 'duty of care'.

Different jurisdictions started to include either broader definitions of cruelty or specific additional offences relating to ensuring the welfare of animals. These were broadly aligned with the 'Five Freedoms', these being:

- Freedom from hunger and thirst
- Freedom from discomfort
- Freedom from pain, injury or disease
- Freedom to express normal behaviour
- Freedom from fear and distress

However, since the identification of the Five Freedoms, there has been significant development in our understanding of biology. The Five Freedoms are generally focused on alleviating negative states, whereas the Five Domains⁴ move towards also providing positive states for animals, as well as assessing the combined impact of each domain on the animal's overall experience. These Five Domains are:

- Nutrition
- Environment
- Physical health
- Behaviour
- Mental state

Domains 1 – 4 assess the likely impact of physical components or restrictions on how the animal *functions*, and domain 5 assesses the likely integrated impact of the first four functional domains on the animal's mental state (how the animal *feels*).

The AVA strongly supports the inclusion of a duty of care or minimum standard of care in the legislation.

In preparing minimum standards, sufficient detail should be included in the legislation and supporting documentation to avoid individual interpretation of what is acceptable welfare and to provide

⁴ Mellor & Beausoleil (2015)



guidance for enforcement, legal entities, and education of those responsible for the care and wellbeing of animals.

It is important to recognise that the minimum care requirements can vary between species. They should be science based and be determined in consultation with veterinarians and persons expert in the care of that species.

Generally, the minimum standards need to take into account the animal's:

- Species
- Environment (including a dynamic climate)
- Behavioural needs
- Age

Included in Draft Bill:

s4—Principles and objects of Act

- (3) The objects of this Act are—
- (a) to protect the welfare of animals; and
 - (b) to take a proactive approach in preventing harm to, and the ill treatment of, animals; and
 - (c) to improve the level of community awareness about the responsibilities of animal ownership; and
 - (d) to ensure the Minister receives appropriate advice in relation to animal welfare matters.

AVA Recommendation:

The AVA recommends that wording for the principles and objects of the Act be adopted from the [Australian Capital Territory Animal Welfare Act 1992](#).

4A

- (1) The main objects of this Act are to recognise that—
- (a) animals are sentient beings that are able to subjectively feel and perceive the world around them; and
 - (b) animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value; and
 - (c) people have a duty to care for the physical and mental welfare of animals.
- (2) This is to be achieved particularly by—
- (a) promoting and protecting the welfare of animals; and
 - (b) providing for the proper and humane care, management and treatment of animals; and
 - (c) deterring and preventing animal cruelty and the abuse and neglect of animals; and
 - (d) enforcing laws about the matters mentioned in paragraphs (a), (b) and (c).



Principle of sentience

Recognition of the sentience of animals appreciates that animals can have negative or positive emotions and be conscious of their environment and situation⁵.

While animal wellbeing is sometimes defined as the absence of pain or distress in an animal, it is also more broadly defined as a state of being in which ‘an animal is in a positive mental state and is able to achieve successful biological function, to have positive experiences, to express innate behaviours, and to respond to and cope with potentially adverse conditions’. (‘Australian code for the care and use of animals for scientific purposes’, National Health and Medical Research Council).

The AVA position is that sentience and a formal definition of it should be formally incorporated into the new legislation. The definition used by the initial Australian Animal Welfare Strategy would be recommended⁶ ⁷. This defines it as:

...a sentient animal is one that has the capacity to have feelings and to experience suffering and pleasure. Sentience implies a level of conscious awareness.

The United Kingdom parliament has recently passed the Animal Welfare (Sentience) Act 2022. The objective of this Bill is to make provisions for an Animal Sentience Committee with functions relating to the effect of government policy on the welfare of animals as sentient beings. In Australia, the ACT Animal Welfare Act now recognises sentience.

The AVA commends the Bill for acknowledging of the sentience of animals in legislation as an essential step forward for the welfare of animals, to guide the behaviour of South Australians towards animals and in protecting SA’s reputation for protecting the care and welfare of animals.

Reform 2 acknowledges the need for animal sentience to be addressed:

Better recognise animal sentience – to acknowledge that animals experience feelings, both positive, such a pleasure, or negative, such as pain and fear.

While not using the word ‘sentience’, the clause 4 of the Draft Bill expresses some recognition of it in stating:

4 (1) Animals are recognised as living beings that can feel, perceive, and experience positive and negative states.

This is a significant step forward for the health and wellbeing of animals in South Australian legislation and aligns with expectations of the considerate treatment of animals in other jurisdictions and will help to secure South Australia’s relationships and markets.

However, although reference to sentience is included in Reform 2, no definition has been included in the draft Act which the AVA requests should be included using the Australian Animal Welfare Strategy wording:

⁵ PROCTOR, H S, CARDER G & CORNISH A R. Searching for Animal Sentience: A Systematic Review of the Scientific Literature. *Animals*, 2013: 3, 882.

⁶ SCOTT L. Australian Animal Welfare Strategy Final report: Animals in the Wild Sector Review of Existing Animal Welfare Arrangements. 2011: 38.

⁷ [achievements of the aaws - AAWSAAWS \(australiananimalwelfare.com.au\)](https://www.aawsaaws.com.au/achievements-of-the-aaws)



...a sentient animal is one that has the capacity to have feelings and to experience suffering and pleasure. Sentience implies a level of conscious awareness.

AVA Recommendation:

That clause 4(1) of the Bill formally uses the word 'sentience' and explicitly recognises the sentience of animals as defined by the Australian Animal Welfare Strategy.

Penalties

Do you think the penalties for ill treatment offences are appropriate?

The AVA believes the penalties for ill treatment offences are appropriate.

We have identified part of the draft regarding animals in an unconscious state being a defence when an animal is killed. A recommendation is provided below to minimise unintended consequences of this aspect of the legislation.

Included in Draft Bill:

Part 2 – Animal welfare offences

6—Ill treatment of animals etc

(3) (f) unless the animal is unconscious, kills the animal by a method that does not cause death to occur as rapidly as possible; or

AVA Recommendation:

With regard to this offence, it should be included that the animal should be killed quickly, because:

(a) consciousness can be difficult to judge, and the animal should not regain consciousness in the process of being killed, and

(b) the defence of an animal being unconscious during the act of killing it should not enable the possible sadistic treatment of an animal.

Prohibit Items or Activities

Do you think the ability to prohibit items or activities in the future is appropriate?

The Act currently sets out a series of activities and items that are specifically prohibited, these include:

- organised animal fights
- live baiting
- releasing an animal from captivity for the purpose of it then being hunted or killed (whether by a person or otherwise)

The AVA supports the continued inclusion of these offences in the Act and we support the ability of the Minister to include additional activities or items via regulation following appropriate consultation.

Mandatory reporting

Do you agree with the inclusion of mandatory reporting for the greyhound industry?

The primary concern of the Australian Veterinary Association is the health and welfare of the dogs involved in the Greyhound racing industry. The management of these animals must be optimised to ensure achievement of positive welfare outcomes in each of the '5 Domains' throughout the entire life of the Greyhound.

Exemptions for fishing

Do you think that the exemptions for fishing activities will enable normal practices to continue?



The AVA does not support blanket exemptions from duty of care or cruelty offences for recreational or commercial fishing. There are many new developments that can result in a better welfare outcome for fish that are caught, including barb-less hooks, and methods to quickly stun and kill fish following capture, to avoid prolonged suffering. For example, the Ike Jime method whereby the fish is quickly stunned or killed by a blow or spike to the brain respectively. The previous Australian Animal Welfare Strategy (AAWS) developed very useful resources for anglers and commercial harvesters to use.

See:

<https://www.frdc.com.au/sites/default/files/products/2012-507-DLD.pdf>

Also: <https://www.dpi.nsw.gov.au/fishing/recreational/fishing-skills/humane-harvesting>

<https://www.frdc.com.au/aquatic-animal-welfare>

Animal Welfare Advisory Committee

Do you think the skills-based composition of AWAC is appropriate?

The Animal Welfare Advisory Committee (AWAC) fulfils an important role. The Australian Veterinary Association strongly supports the existence of the Committee and to have it continue as a statutory body under the Act. By incorporating it in legislation the community will be assured that the committee could not be dissolved without the approval of Parliament.

Not only does the body allow the Government to access the expertise of a range of organisations within SA, but it also provides an important communication mechanism with key stakeholders important to the animal welfare sector.

Included in Draft Act:

The Animal Welfare Advisory Committee established by the Minister under this Part must consist of members appointed by the Minister with experience, skills or qualifications in any of the following areas:

- (a) animal welfare;
- (b) enforcement of any relevant legislation;
- (c) livestock production and management;
- (d) fishing or aquaculture;
- (e) wildlife management;
- (f) veterinary science;
- (g) scientific use of animals;
- (h) government administration;
- (i) other experience, skills or qualifications as determined suitable by the Minister, and at least 1 member must be a person from the Royal Society for the Prevention of Cruelty to Animals (South Australia).

It would appear that the only mandated position on the AWAC is a person from the RSPCA SA.

Given the focus of the committee is animal care and protection, it is essential that there are veterinarians (experts in animal health and welfare) sitting on the committee. While there is recognition of veterinary science expertise in the broad membership criteria, it is possible that the membership of the committee does not include it.

AVA Recommendation:

The AVA recommend that a suitably experienced and registered veterinarian is mandated to be a member on the AWAC, with preference for the Act to retain an AVA nominee-based model.



Licenses, Permits and registrations

- Do you think the separation of licences is appropriate?
- Do you think it is appropriate to have a nominated person for a licence?
- Do you think the ability to create permits is appropriate?
- Do you think it is appropriate to have registered activities/entities?

The AVA believes the above matters related to licences, permits and registrations are appropriate providing any newly prescribed licences or permit creation have undergone a suitable consultation process.

Animal Ethics Committees

- Do you agree that animal ethics committees should be registered and require a nominated person?

The AVA supports the registration of animal ethics committees and compliance with the Code which requires a veterinarian to be at least one of the 4 members appointed.

Authorised Officers' powers

- Do you think that the updated powers for authorised officers are appropriate?

The AVA believes that the updated powers for authorised officers are appropriate.

However, there are aspects of the abilities and powers of authorised persons, and the impacts on veterinarians, that the AVA would like to highlight and have consideration given.

The AVA identifies two areas for further consideration. Firstly, training, qualification and competency in decision making around euthanasia which has impact on health, welfare, biosecurity and workplace health and safety. Secondly, the recovering of costs for veterinary procedures.

1. Requirements as to euthanasing an animal

Where Authorised Officers have the power to approve the euthanasia of an animal under certain circumstances, there needs to be clear direction for the circumstances in which this occurs. Where the decision to euthanase involves questions of the health and welfare of the animal, given that communications technology is readily available, the Authorised Officer should take reasonable steps to consult a registered veterinarian prior to approving, or undertaking, euthanasing of the animal.

Recognising that the majority of veterinary services are provided through private businesses, it is important that the employing agency of the Authorised Officer has a contractual arrangement with a veterinary business to provide their services, including the providing of advice regarding animal welfare decisions.

AVA Recommendation:

An Authorised Officer should consult a registered veterinarian prior to approving the euthanasing of an animal and contractual arrangements should be in place with a veterinary business to provide veterinary services, including advice on animal welfare decisions.

2. Power to provide payment for care or treatment of an animal.

Where an Authorised Officer takes a seized animal to a registered veterinarian for care or treatment, there are often circumstances where the owner is unable to pay or refuses to pay for the veterinary care. It is important that, while undertaking a role in caring for seized animals that the registered veterinarian or veterinary business is not left without payment. As such, the AVA strongly recommends



that veterinary costs are paid by the enforcement agency and that the agency acts to recover those costs from the owner or person responsible for the animal. If the enforcement agency is not covering these costs to veterinarians, then they should be reimbursed from the Animal Welfare Fund.

Relevant AVA policy:

- [Unpaid veterinary services performed for public good](#) (2023)

AVA Recommendation:

Veterinary costs incurred for care or treatment of an animal are paid by the enforcement agency and that the agency acts to recover those costs from the owner or person responsible for the animal. If the enforcement agency is not covering these costs to veterinarians, then they should be reimbursed from the Animal Welfare Fund.

Separating animals and items

Do you think separating the provisions for animals and items is appropriate?

The AVA believes that separating the provisions for animals and items is appropriate because, unlike items, animals are sentient beings with specific welfare needs. While an object can be held indefinitely, the care and welfare of an animal must be the central consideration in determining its fate after being seized.

Notice, enforceable undertakings and interim orders

Do you think the definition of reasonable notice for routine inspections is appropriate?
Do you think the ability to issue notices (animal welfare notice and notice to comply) is appropriate?
Do you think the inclusion of enforceable undertakings is appropriate?
Do you think the powers relating to non-compliance with a notice or undertaking are appropriate?
Do you think the ability to seek an interim order is appropriate?

No comment.

Seized animals

Do you think the ability to deal with seized animals is appropriate?

The AVA believes the ability to deal with seized animals is appropriate, provided this includes steps are taken to manage the seized animal in a timely manner, and in accordance with the 5 Domains of Animal Welfare and Duty of Care principles as outlined in previous AVA recommendations.

Costs

Do you think the ability to issue an order relating to costs is appropriate?

The AVA believes the ability to issue an order relating to costs is appropriate. Further, it is essential that veterinarians are included in the ability to recover costs for work they have undertaken to relieve pain and suffering and to fulfill any animal welfare requirements. This must include circumstances where the animal's owner is unknown, refuses to agree or accept responsibility for costs, or is unable to meet costs for the services that the veterinarian has undertaken.

AVA Recommendation:

Veterinary costs incurred for care or treatment of an animal are paid by the enforcement agency and that the agency acts to recover those costs from the owner or person responsible for the animal. If the enforcement agency is not covering these costs to veterinarians, then they should be reimbursed from the Animal Welfare Fund.



Reviews of decisions

Do you think the system of reviews of decisions is appropriate?

The AVA believes the system of reviews of decisions is appropriate, provided this includes steps are taken to manage the review process in a timely manner, and in accordance with the 5 Domains of Animal Welfare and Duty of Care principles as outlined in previous AVA recommendations.

Animal Welfare Fund

Do you agree with the introduction of an animal welfare fund?

The AVA supports the introduction of an Animal Welfare Fund and would like to see monies from this fund utilised to pay for veterinary services in circumstances where the animal's owner is unknown, refuses to agree or accept responsibility for costs, or is unable to meet costs for the services that the veterinarian has undertaken to meet animal welfare requirements.

AVA Recommendation:

That monies from the Animal Welfare Fund are utilised to pay for veterinary services in circumstances where the animal's owner is unknown, refuses to agree or accept responsibility for costs, or is unable to meet costs for the services that the veterinarian has undertaken to meet animal welfare requirements.

Interstate orders

Do you think it is appropriate to register interstate orders and enforce them in SA?

The AVA believes it is appropriate to register interstate orders and enforce them in SA.

Exemptions granting by Minister

Do you think it is appropriate for the Minister to be able to grant exemptions?

The AVA believes that is appropriate for the Minister to be able to grant exemptions, with the request that consideration is given to the AWAC having a role in assessment of such exemptions.

Amending Sentencing Act 2017

Do you think it is appropriate to amend the Sentencing Act 2017 so that the Animal Welfare Act orders could be available for offences involving animals?

The AVA believes it is appropriate to amend the Sentencing Act 2017 so that the Animal Welfare Act orders could be available for offences involving animals.

Conclusion

The AVA holds strong principles centred on the welfare and ethical treatment of animals, emphasising that animals, as sentient beings, should be treated humanely and with respect for their intrinsic value.

The AVA's views on the ethical treatment of animals focus on competence in veterinary practices and a compassionate approach to managing animal care, and ensuring their well-being is always a priority in legislative frameworks.

Animal welfare legislation needs to align across jurisdictions to give the maximum possible national consistency, and it also needs to be flexible enough to allow for sustainable improvement of welfare standards as understandings of animals increases.

The AVA commends the direction taken by the South Australian Government to encourage care requirements to provide for the health and welfare of animals rather than only focus on cruelty.



We request that the drafting of the South Australian Animal Welfare Bill incorporates the guidance provided in this submission, which is grounded in the subject matter expertise and evidence-based policies and positions of the AVA.

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