



# Northern Territory Animal Protection Act 2018 2024 Review

Submission of the  
Australian Veterinary Association Ltd

September 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.

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## AVA Statement of principles with respect to Animal Welfare<sup>1</sup>

*Animals are sentient beings that are conscious, feel pain, and experience emotions<sup>2</sup>. 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.*

## Summary

The AVA thanks the Northern Territory government for the opportunity to comment on this important issue.

The AVA provided a considered submission in 2022 to the consultation conducted at that time on the *NT Animal Protection Act 2018*. Recommendations made by the AVA in that submission will be re-presented in this submission, along with additional input.

Recommendations in this submission includes for renaming the legislation to the "Animal Welfare Act," integrating 'sentience' and its definition into the law, establishing a Duty of Care to promote animal welfare, and broadening the definition of 'animal' to encompass all live non-human vertebrates, cephalopods, and Malacostraca Crustaceans.

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<sup>1</sup> <https://www.ava.com.au/policy-advocacy/advocacy/improving-animal-welfare/>

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



## Title and Objectives of the Act

While we appreciate the rationale for changing the name of the legislation from the *Animal Welfare Act* to the *Animal Protection Act*, the AVA favours the retention of the original title.

In recent decades most jurisdictions have shifted from 'Prevention of Cruelty to Animals' to 'Animal Welfare', part of the reason for this is a recognition that the welfare of animals requires not just the absence of harm, but a positive consideration of the animals' welfare. This is reflected in many of our animal welfare standards (including those adopted under this legislation).

We also support the inclusion of an animal welfare statement and a statement on sentience in the objectives of the legislation. More information is provided in answer to Q6 below.

The AVA recognises that humans should strive to provide positive experiences to promote a good life for the animals in their care. We should strive for continuous and incremental improvement in the treatment and welfare of animals.

### *Recommendation*

- The title be amended to, 'Animal Welfare Act'

## Sentience and a Duty of Care

Part 3 of the Act deals with

### *Obligations*

22 (1) A person in control of an animal must provide a minimum level of care to the animal.

22 (2) A person must not be cruel to an animal.

### *Minimum level of care*

23 (1) A person commits an offence if: (a) the person is in control of an animal; and (b) the person intentionally engages in conduct; and (c) the conduct results in the animal not being provided with at least the minimum level of care and the person is reckless in relation to that result.

### *Cruelty to an animal*

24 (1) A person commits an offence if:

(a) the person intentionally engages in conduct; and

(b) the conduct results in the suffering of an animal, or additional suffering of an animal, and the person is reckless in relation to that result; and (c) the suffering is unjustifiable, unnecessary or unreasonable and the person is reckless in relation to that circumstance.



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.

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 Domains<sup>3</sup> 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*).

Animals are sentient beings that are conscious, feel pain, and experience emotions. Animals that are known to be both conscious and sentient include all of the vertebrates, and some classes of invertebrates such as cephalopods and at least some crustacea. Ongoing research may lead to inclusion of additional groups within this definition.

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<sup>3</sup> Mellor & Beausoleil (2015)



While they are not used for the primary interpretation of the legislation, objectives do provide a guidance in the broader intent.

### **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 situation<sup>4</sup>.

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’s position is that sentience and a formal definition of it should be formally incorporated into the legislation. The definition used by the initial Australian Animal Welfare Strategy would be recommended<sup>5</sup> <sup>6</sup>. 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.

### **Recommendation**

- Both ‘sentience’ and a formal definition of ‘sentience’ be incorporated into the legislation, including in its objectives.

### **Duty of Care requirements**

The AVA strongly supports the inclusion of a duty of care in the legislation. The AVA encourages care requirements to provide for the health and welfare of animals rather than only focus on cruelty.

In preparing care requirements, sufficient detail should be included in the legislation and supporting documentation to avoid individual interpretation of what is acceptable welfare and to provide guidance for enforcement, legal entities and education of those responsible for the care and wellbeing of animals.

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<sup>4</sup> PROCTOR, H S, CARDER G & CORNISH A R. Searching for Animal Sentience: A Systematic Review of the Scientific Literature. *Animals*, 2013: 3, 882.

<sup>5</sup> SCOTT L. Australian Animal Welfare Strategy Final report: Animals in the Wild Sector Review of Existing Animal Welfare Arrangements. 2011: 38.

<sup>6</sup> [achievements of the aaws - AAWSSAWS \(australiananimalwelfare.com.au\)](https://www.aawssaws.com.au/achievements-of-the-aaws)



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

### *Recommendation*

- A further objective be added that reflects a Duty of Care aligned to the [5 Domains of Animal Welfare](#). This would state 'to promote the welfare of animals by requiring a person to take reasonable steps to ensure the welfare of the animal and provide for its needs'. The AVA recommends the NT could adopt provisions similar to the duty of care provisions in the [QLD Animal Care and Protection Act 2001](#).

## Animal Definition

Part 5 of the Act deals with the **Meaning of animal**;

5 (1) An animal is a live:

- (a) member of a vertebrate species, including an amphibian, bird, mammal and reptile; and
- (b) fish in captivity or dependent on a person for food; and
- (c) crustacean if it is on premises where food is prepared or is offered for retail sale

Different jurisdictions offer different definitions of animals and specific exemptions and conditions for specific classes of animal. The main area of difference appears to be in regard to fish. Currently the NT Act includes only captive fish.

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 and remember and make behavioural changes in response to aversive stimuli, which is an indicator of consciousness and sentience.<sup>7</sup> 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 states (e.g. the ACT).

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<sup>7</sup> Broom and Fraser (2011) Domestic Animal Behaviour and Welfare, 4<sup>th</sup> Edition, DM



Further to this, controversy over the maiming and culling of sharks highlights the need for the extension of these protections to aquatic environments. A further example is the treatment of a puffer fish that has previously made NT News headlines<sup>8</sup>.

Failure to more broadly include cephalopods 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 21<sup>st</sup> century.

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.*

#### Recommendation

- The AVA strongly recommends that the meaning of ‘animal’ in the Act should use the wording ‘any live non-human vertebrate, that is, fish, amphibians, reptiles, birds and mammals, encompassing domestic animals, purpose-bred animals, livestock, wildlife; as well as the Cephalopods and the Malacostraca Crustaceans.

## Question responses

**Q1. Do the penalty provisions in the *Animal Protection Act 2018* reflect community expectations?**

**Q2. Should the NT penalty provisions be amended?**

**Q3. In your opinion is there a particular jurisdiction representing best practice penalty provisions?**

No comment for Q1 -Q3

**Q4. Are there factors unique to the NT that should be taken into account in determining penalties?**

Consideration may need to be given to geographical and cultural factors, as well as the access or availability of veterinary services to provide the required care.

**Q5. Should a minimum level of care be a strict liability offence?**

No comment for Q5

**Q6. Would amending the elements of an offence in the *Animal Protection Act 2018* better meet the objectives of the Act?**

<sup>8</sup> [www.ntnews.com.au/lifestyle/fishing/angler-taunts-puffer-fish-before-kicking-it-into-ocean-before-shocked-tourists/story-fnkchy3h-1226877010283](http://www.ntnews.com.au/lifestyle/fishing/angler-taunts-puffer-fish-before-kicking-it-into-ocean-before-shocked-tourists/story-fnkchy3h-1226877010283)





As outlined in the information provided earlier in this submission relating to “Sentience and a Duty of Care”, the AVA strongly supports the inclusion of a duty of care provision in the legislation. The AVA encourages proactive care requirements to provide for the health and welfare of animals rather than only focussing on cruelty.

In preparing care requirements, sufficient detail should be included in the legislation and supporting documentation to avoid individual interpretation of what is acceptable welfare and to provide guidance for enforcement, legal entities and education of those responsible for the care and wellbeing of animals. See the duty of care provisions in the [QLD Animal Care and Protection Act 2001](#) as an example of this.

To align with the *5 Domains of Animal Welfare* it is important that the objectives include reference to sentience and a duty of care, and the elements of an offence are then consistent with these.

**Q7. Do you have a view regarding the impact on business if immediate entry was permitted under the Act?**

Any disruption that may occur if immediate entry was permitted is justified if the concern has warranted the need to enter the premises ie Animal Welfare risk should outweigh potential disruption to business.

**Q8. Do you have a view as to the removal of the requirements to provide 48 hours’ notice?**

The AVA would support the removal of the requirement to provide 48 hours’ notice, as we believe that the potential for concealment or destruction of relevant evidence that an offence has occurred should be mitigated, which would be better achieved without the need for this notice period.

**Q9. Should there be different considerations for power of entry between residential and commercial premises?**

Part 89 of the Act deals with Reports, where a commercial premises require a report to be written after entry.

*89 (1) If an authorised officer enters commercial premises with an occupier's consent obtained under section 84, the officer must give the occupier a written report about the inspection conducted under section 88.*

Clarification is required regarding the reporting requirement if there is a combined residential and commercial premises, which can often be the situation for veterinary premises.

**Q10. Do you have a view on the need to change the “power of entry to vehicles” provisions in the NT, to alleviate suffering?**

No comment for Q10

**Q11. Should the NT adopt similar provisions as the ACT, regarding animals locked in vehicles?**



The AVA are supportive of the NT legislation adopting similar provisions as the ACT with regard to animals locked in vehicles. Also refer to the AVA policy [Companion animals confined to vehicles](#).

**Q12. Do you have a view to amending this section to propose that a dog be properly restrained to prevent falling from a motor vehicle or be inside the passenger compartment of the vehicle?**

The AVA are supportive of amendments to wording that makes this more workable. Consideration should be given to providing more guidance regarding the acceptable methods used for “*securing in a way that prevents it from being injured by falling from the motor vehicle or trailer*”.

Dogs can become excited or reactive during transport and may not be observed or able to be attended to appropriately by the person in charge of the vehicle when the dog is not in the passenger cabin. Tethering dogs to open back trays of vehicles or open trailers may prevent falling from the vehicle, however, can potentially cause injury if the dog becomes tangled or constrained in the tethering device.

Exposure to weather conditions including heat, dust and rain, when in open trays and trailers must also be considered.

A safe and comfortable crate or cage that is of appropriate size for the dog and is securely attached to the vehicle would be recommended.

Furthermore, wording should also be included regarding the securing of dogs inside vehicle passenger compartments. For the safety of the dog, as well as the driver and passengers in a vehicle, dogs should always be secured with equipment that is designed and safe for the purpose of restraining dogs in moving vehicles.

**Q13. Is there anything further you wish to be taken into consideration in regards to Section 34(1)?**

No comment for Q13

**Q14. Do you have a view as to your preferred approach to achieve animal welfare compliance outcomes?**

The NT could consider adoption of animal welfare monitoring programs. An example exists in the [QLD Animal Care and Protection Act 2001](#), where programs can be developed to monitor compliance with compulsory codes. This allows a more proactive and preventative approach to ensuring good animal welfare outcomes, rather than merely responding to cruelty complaints after the fact. It allows for early interventions, education, and remedial actions to be put in place. It is important that it be appropriately resourced.

**Q15. Do you support regulatory compliance approaches which are predominately one of cooperation and persuasion, followed by progressively tougher sanctions depending upon the seriousness of the non-compliance and the responsiveness of the offender?**

**Q16. Would using infringement notices (fines) for more seriousness compliance breaches provide a better alternative to enforcement before initiating prosecution?**

No comment for Q15 – Q16



## Conclusion

The AVA hopes that this review of the Northern Territory *Animal Protection Act 2018* will result in the legislation being renamed the "Animal Welfare Act" to better reflect the holistic approach to animal welfare, which includes both the prevention of harm and the promotion of positive welfare states. Recognising animals as sentient beings and incorporating a formal definition of sentience into the Act is crucial.

Furthermore, the establishment of a Duty of Care provision is essential to ensure comprehensive protection and welfare for all animals, encompassing a broader definition that includes all live non-human vertebrates, cephalopods, and at least the Malacostraca class of crustaceans. These changes will align the legislation with current scientific understanding and societal expectations, ensuring that animal welfare in the Northern Territory is upheld to the highest standards.

The AVA appreciates the opportunity to contribute to this review and remains committed to advocating for the welfare and protection of all animals.

## Contact

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