



Draft Animal Care and Protection Bill

Submission of the
Australian Veterinary Association Ltd

March 2024

The Australian Veterinary Association (AVA)

The Australian Veterinary Association (AVA) is the national organisation representing veterinarians in Australia. The AVA consists of members who come from all fields within the veterinary profession. Clinical practitioners work with companion animals, horses, farm animals, such as cattle and sheep, and wildlife. Government veterinarians work with our animal health, public health and quarantine systems while other members work in industry for pharmaceutical and other commercial enterprises. We have members who work in research and teaching in a range of scientific disciplines. Veterinary students are also members of the Association.

The Australian Veterinary Association (AVA) appreciates the opportunity to contribute to reforming Victoria's animal care and protection laws.

Registered veterinarians promote and are regulated to protect animal welfare to ensure that animals owned by and/or controlled by people receive adequate scientific, evidence based veterinary care as directed by the standards set by the Veterinary Practitioners Board of Victoria and under the Veterinary Practice Act 1997.

AVA policy: [Philosophy on animal welfare and the veterinarian](#)

AVA Statement of principles with respect to Animal Welfare¹

Animals are sentient beings that are conscious, feel pain, and experience emotions^{2,3}. 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.

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

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

³ 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.



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

This reform has been a long time in the making and represents a significant step forward for animal welfare in Victoria, highlighting a shift towards proactive measures and encouraging modern standards.

Starting from October 2020 with the release of a Directions Paper, consultation has moved through several stages of engagement and the AVA has been pleased to represent the opinions of veterinarians as the regulated experts in animal welfare throughout all the stages.

The AVA commends the government for collaborating across the animal health industry to ensure the new Act reflects contemporary scientific understanding, market, and community expectations of animal welfare.

The AVA commends the acknowledgement of veterinarians in legislation and their contribution to high standards of animal welfare through their regulated obligations of veterinary registration under the *Veterinary Practice Act 1997*, where high requirements of education, skill and professional conduct are for the protection of animal welfare and public health.

The AVA acknowledges that this final round of consultation for the Bill accompanies the first round of consultations for the Regulations, in which much of the detail is included, such as exemptions from the key principles found in the Bill. We encourage the standards of animal welfare wanting to be achieved through the Act, be continued in the development of the Regulations for the security of animal health and welfare and Victoria's reputation for modern standards.

The AVA looks forward to continuing to assist in the development of modern animal welfare legislation that protects the intrinsic value of animals themselves and the security and value of the benefits the Victorian community receives from healthy animals.

Overall, the Bill reflects Victoria'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 Victoria afforded by modern standards of animal welfare.



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Discussion

The AVA is pleased to comment on the draft Animal Care and Protection Bill. The Bill is divided into several parts. In this discussion we first consider a number of broad issues and then explore specific parts of the draft bill.

Role of veterinarians in animal welfare

The AVA welcomes the acknowledgement of veterinary practitioners under the *Veterinary Practice Act 1997* and the requirement for veterinary expertise to safeguard modern standards of animal health and welfare.

It is the opinion of the AVA that the Bill adequately covers for people who do not possess veterinary registration to act under the instruction of veterinary practitioners to safeguard animals and the community. The AVA is of the opinion that all animals under the custodianship of humans should have access to appropriate and regulated veterinary services.

This responsibility should be exercised in all the human–animal relationships, from animals in the wild making brief contact with humans, to farmed, flock and herd animals, companion animals, and animals used in sport, entertainment, education, and research.

Veterinary practitioners are accountable to the Veterinary Practitioners Registration Board of Victoria, requiring standards of education, professional conduct and behaviour as determined by this statutory body. This safeguards the modern standards of animal health, welfare and public health required in Victoria particularly for restricted or controlled procedures by persons who are not required to have demonstrated levels of competency (ongoing), or to be held accountable for their actions. This is imperative for animal and public safety.



Recommendation 1:

- All animals under the custodianship of humans should have access to appropriate and regulated veterinary services.

Exemptions for veterinarians

Throughout the Bill there are a series of exemptions for veterinarians. These are generally worded in the form that a registered veterinary practitioner does not contravene the relevant clause or part of the Act if:

- (a) *in the opinion of the practitioner, it is necessary to carry out the activity for therapeutic purposes; and*
- (b) *the practitioner does not contravene any requirements of this Act or the regulations as to the manner and the method carrying out the activity.*

The issue pertains to the use of the word ‘therapeutic’. The dictionary definition for ‘therapeutic’ states:

...of, for, or contributing to the cure of disease.⁴

It is important that the term (or terms) that are used properly describe the range of activities that the veterinarian would be undertaking. While this term could be interpreted broadly, the AVA recommends that additional wording is included to further anchor the interpretation. As such, we recommend that the terms, “... therapeutic (including prophylactic therapeutic) and diagnostic...” be used.

This is particularly relevant where veterinarians are engaged in animal population health management and broader biosecurity disease surveillance.

In various sections, these exemptions are further extended to how veterinary students act under the supervision of a registered veterinarian or other persons acting in accordance with the instructions of a registered veterinarian.

Recommendation 2:

- Exemptions for registered veterinarians are appropriate due to regulation under the Veterinary Practice Act 1997.
- Exemptions for registered veterinarians are appropriate for both diagnostic and therapeutic purposes.

Exceptions for activities regulated by other Acts

Throughout the draft Bill a series of exemptions are made for activities undertaken under other pieces of legislation. Typically, this takes the form of:

⁴ Australian Oxford Concise Dictionary 3rd Ed



- (a) *the person—*
- a. *(i) carries out the activity for the purpose of controlling pest animals; and*
 - b. *(ii) is authorised or permitted to do so under any provisions of the Catchment and Land Protection Act 1994 or any regulations under that Act;*
- (b) *the person is authorised or permitted to carry out the activity under any provisions of the Fisheries Act 1995 or any regulations under that Act;*
- (c) *the person—*
- a. *(i) carries out the activity for the purpose of hunting, taking, killing, controlling or disturbing wildlife or game; and*
 - b. *(ii) the person is authorised or permitted to carry out the activity under any provisions of the Wildlife Act 1975 or any regulations under that Act.*

The AVA understood that following previous discussions in the development of the draft Bill, that exemptions for activities regulated by other Acts were to be removed from the Bill and it is clear that they have remained.

Other Acts such as the *Catchment and Land Protection Act 1994*, *Fisheries Act 1995*, and *Wildlife Act 1975* do not have a focus on animal welfare or the modern animal welfare standards trying to be achieved in this review of animal welfare legislation.

Wildlife, pest species and fish species are sentient, and this is indeed acknowledged in the definition of sentient animals this Bill. Exemptions for blanket activities regulated by other Acts exempts large groups of sentient animals from the protection of animal welfare legislation and permits human behaviour not allowed by this new legislation.

The AVA recommends that Regulations are specific for this Act, a licence is required by the regulations to kill, wound or capture animals for a specified reason and that exemptions for activities regulated by other Acts are removed from the Bill to ensure that there are acceptable animal welfare standards occurring in these groups of animals.

Where exemptions or licences occur, there must be accepted industry Standards, Guidelines and Codes of Practice.

Recommendation 3:

- That Regulations requiring a licence to kill, wound or capture animals for a specified reason are specific for this Act.
- Exemptions for activities regulated by other Acts are removed from the Bill.

Part 1 – Preliminary

Purpose & Object

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



Commencement and development of regulations

With any new Bill passed by Parliament, there is a significant amount of subsequent work required in the development of subordinate legislation. The delay between the passage of the Bill and its commencement is essential for this work to be undertaken and for the community to prepare for the implementation of the new legislation. This is even more so with contemporary trends in legislative drafting that sees an increasing proportion of legislation effectively delegated to the Minister of the day to decide through Regulations.

The AVA appreciates that the realities of Parliamentary process timeframes and Government resourcing of legislative development work are used as rationale for shifting legislation from Acts to Regulations (i.e. it is quicker and easier to update regulations than an Act).

In commenting on this, the AVA is emphasising two key points. Firstly, that there needs to be a thorough public consultation on the development of the Regulations, and secondly, the Government needs to hold an effective public education campaign ahead of the commencement of the Act to assist in the community being aware of and complying with the new legislation.

Recommendation 4:

- Thorough public consultation is required for the development of the Regulations.
- An effective public education campaign occurs prior to the Act commencing.

Definitions

Animal

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.⁵ 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. ACT).

The expansion of the definition of animal to include some cephalopods is a positive development in the proposed legislation. However, the AVA questions the limitation of both cephalopods and decapod crustaceans to only include adults. We note that the Queensland *Animal Care and Protection Amendment Act 2022* does not make this distinction and recommend that Victoria follows in that regard. Further, the definition of crustacean should not be limited to lobster, crab and crayfish.

Failure to more broadly include cephalopods and 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.

Relevant AVA policies:

⁵ Broom and Fraser (2011) *Domestic Animal Behaviour and Welfare*, 4th Edition, DM



- [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 5:

- Definition of animals be broadened to include:
 - Juvenile rather than just adult crustaceans and cephalopods
 - Include all cephalopods
 - Include all malacostraca class of crustacea (including prawns)

Euthanasia

The term 'Euthanasia' is used several times throughout the Bill, as such it is important to have a clear definition. The Dictionary definition is, "the bringing about of a gentle and easy death in the case of incurable and painful disease". This definition is very anthropocentric and too narrow for use in animals.

The AVA recommend that the below definition is used (which is consistent with AVA policy: [Euthanasia](#))

'Euthanasia is the act of inducing a humane death with the minimum of pain, fear or distress to the animal involved.'

The necessary killing of animals for other reasons (see below) should not be confused with euthanasia, although the methods used and the principles to apply are the same.

Euthanasia is used when pain, distress or suffering are likely to exceed manageable levels when the health or welfare of animals is irredeemably compromised; this can include animals affected by drought or other natural disasters.

Humane killing for other reasons is used in research, to provide tissues for scientific purposes, or at the end of studies (NHMRC 2013), when animals are no longer required for breeding or other specific purposes, for control of vertebrate pests, for slaughter of stock at abattoirs, for strays and unwanted pets that cannot be rehomed.

Relevant AVA policies:

- [Euthanasia](#) (2007)
- [Euthanasia of injured wildlife](#) (2019)
- [Humane slaughter of livestock](#) (2018 - UNDER REVIEW)



- [Marine mammal euthanasia](#) (2010)
- [Use of euthanasia drugs by non-veterinarians](#) (2010)
- [Collection, euthanasia and disposal of the cane toad, *Rhinella marina*](#) (PS, 2016)

Docking

The definition of ‘docking’ in the draft Bill states:

docking means the amputation, removal or shortening of the tail of an animal, other than the shortening of the tail hairs of an animal;

Firstly, the AVA is seeking clarification to ensure that amputation, removal or shortening of the tail, regardless of method, is encompassed within the definition. In particular, that delayed amputation (for instance by rubber rings) is included.

Secondly, for absolute clarity to the community, we recommend that the practice of ‘tipping’ is specifically included in the definition.

Relevant AVA policy:

- [Tail docking of cattle](#)
- [Cosmetic surgery to alter the natural appearance of animal \(ava.com.au\)](#)

Pin-firing

The definition should remove reference to ‘on an animals’ leg’ and be broadened to ‘firing (or thermocautery)’, which encompasses pin-firing.

Recommendation 6:

- The definition of ‘euthanasia’ be included and distinguished from ‘humane killing’.
- Increased clarity for the definition of ‘Tail docking’.
- The definition of ‘pin firing’ be broadened.

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 situation⁶.

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

⁶ PROCTOR, H S, CARDER G & CORNISH A R. Searching for Animal Sentience: A Systematic Review of the Scientific Literature. *Animals*, 2013: 3, 882.



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 recommended⁷ ⁸. 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 Victorians towards animals and in protecting Victoria's reputation for protecting the care and welfare of animals.

Recommendation 7:

- Both 'Sentience' and a formal definition of 'sentience' be incorporated into the new legislation.

Part 2 – Ministerial Guidelines

No comment on this section.

Part 3 Animal care and protection obligations

Care requirements

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

In preparing care requirement, 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.

It is important to recognise that the minimum care requirements can vary between species. The minimum standards need to take into account the animal's:

- Species
- Environment

⁷ SCOTT L. Australian Animal Welfare Strategy Final report: Animals in the Wild Sector Review of Existing Animal Welfare Arrangements. 2011: 38.

⁸ [achievements of the aaws - AAWSAAWS \(australiananimalwelfare.com.au\)](https://www.australiananimalwelfare.com.au/achievements-of-the-aaws-aaaws)



- Behavioural needs
- Age

The Bill uses the term ‘appropriate’ to assist giving meaning to the types and levels of care needed. The interpretation of this needs to be science based and be determined in consultation with veterinarians and persons expert in the care of that species. Clause 17(3) notes this in stating:

17(3) Without limiting this section, in determining whether care is appropriate for an animal, the following must be considered—

- (a) the animal's species;*
- (b) the animal's environment and circumstances;*
- (c) the animal's health and wellbeing;*
- (d) the best available scientific evidence relating to the animal's species.*

We are unsure of the intent of the wording, “Without limiting this section...” in this clause. The AVA suggests that stronger wording be included to ensure that interpretation of care requirements remains evidence-based through being informed by science.

Further, consideration should be given to including reference to accepted Codes and Standards of animal welfare as an inclusion in this clause.

Recommendation 8.

- That clause 17(3) be amended to elevate the importance of evidence-based decisions informed by science as underpinning appropriate care requirements.
- That clause 17(3) be expanded to include:
 - (e) the currently adopted Standards and Codes for animal welfare

Acts of cruelty

The AVA strongly supports the graded levels of cruelty offences. Cruelty and elevated aggravated cruelty offences are a well-established part of animal protection legislation across the country. The addition of a higher penalty for intentional cruelty is a welcomed addition to this.

Guiding principles

The AVA welcomes and congratulates the inclusion of the Guiding principles to acknowledge the significant inter-relationships of animals and humans and the social impact of animal cruelty.

Relevant AVA policy:

- [Animal abuse](#) (2013)



Codes of Practice and Animal Welfare Standard

In the current legislation, there is a specific exemption or defence from offences of cruelty where an action was carried out the activity in accordance with a code of practice. This is not specifically detailed in this Part of the new Draft Bill.

Acts of husbandry or routine procedures and emergency acts are necessary to be performed by persons who are not registered Veterinary Practitioners and sometimes these are invasive or painful.

There needs to be clarification within the regulations on what invasive or painful procedures are appropriate to be done under the exemptions in regulations and not by a registered veterinary practitioner, or under the instruction of a registered veterinary practitioner, and therefore not accountable under the Veterinary Practice Act 1997.

Further, the regulations need to clarify the education, training, and experience requirements for undertaking these procedures.

Relevant AVA policy:

- [The diagnosis and treatment of animals by non-veterinarians](#)
- [Restricted acts of veterinary science](#)

Recommendation 9:

- That Regulations are specific in detailing which invasive or painful procedures are exempt and therefore not accountable under the Veterinary Practices Act 1997.
- That the regulations clarify the specific requirements to undertake these procedures; such as for competency (education, training, and experience).

Part 4 – Control and regulation of certain uses of animals and related practices

Division 2—Restricted procedures

Division 2 of the draft Bill details those practices that may only be undertaken by a registered veterinarian. Clause 36 states:

36 Offences for restricted procedures

(1) A person who is not a registered veterinary practitioner, must not perform a procedure that involves entering a body cavity of an animal and that ordinarily involves pain relief, sedation or local or general anaesthesia unless—

(a) the procedure is of a kind prescribed by the regulations; or

(b) the procedure is carried out in circumstances prescribed by the regulations.

(2) A person who is not a registered veterinary practitioner, must not perform a procedure that involves cutting, removing or damaging tissue that contains nerves from an animal unless—

(a) the procedure is of a kind prescribed by the regulations; or



(b) the procedure is carried out in circumstances prescribed by the regulations.

AVA Policy: [Restricted acts of veterinary science](#)

“The AVA position is that a formal degree in veterinary science, registrable within Australia, is the minimum acceptable knowledge base and skill set necessary to perform acts of veterinary science competently. This minimum standard is in place to protect animals and the community and is supported by the majority of Australian state and territory veterinary practitioner boards. The veterinarian is uniquely qualified to make evidence-based diagnoses, to manage patients before, during and after procedures, and to understand the systemic impacts of medical or surgical interventions on the individual patient. This level of knowledge and expertise is essential in order to minimize adverse welfare consequences and yield successful outcomes for the patient.

Legislation varies across Australian states and territories as to which procedures are restricted to registered veterinary surgeons. Of particular concern are invasive procedures with the potential for serious animal welfare or health implications, such as use of animals in research, use of power tools in equine dentistry, pregnancy testing of cattle, and cattle spaying.”

The AVA welcomes the acknowledgement that procedures that enter a body cavity or cut, remove or damages innervated tissue impacts the welfare of animals and requires particular treatment in the legislation.

However, the AVA recommend that the scope of this clause is broadened. Rather than defining a procedure that involves entering a body cavity **and** requires pain relief or sedation, these should be separated. This would mean that the clause broadens to include procedures that involve entering a body cavity **or** those that ordinarily involve pain relief or sedation.

The determination on when pain relief or sedation is **ordinarily** used is problematic. There are instances where current practices are undertaken by some lay practitioners without pain relief, that, in general veterinary opinion should use pain relief.

This includes situations like small animal dentistry. The scaling and polishing of companion animals' teeth are services offered by most veterinary clinics. While it is not necessary for all tasks of small animal dentistry to be delivered by the veterinarian directly, they should ordinarily occur on only anaesthetised animals and under direct veterinary supervision. Scaling to remove tartar is done using specialised powered tools and very sharp hand instruments and it is essential that this is done under general anaesthesia. Even the slightest head movement by the patient could result in injury to the patient's mouth.

Notwithstanding this, there are non-veterinary operators in some jurisdiction who offer small animal dentistry without anaesthesia. Not only is the risk of injury high, the resulting 'cleaning' is likely to be very superficial as access to subgingival areas (the hidden surfaces) of every tooth is impossible in unanaesthetised animals. The removal of tartar from only visible dental surfaces has little effect on an animal's health. Owners of animals can be misled into thinking this procedure is of benefit to the animal, when in reality it offers only a cosmetic clean.



See AVA Policy: [Anaesthesia-free dentistry in dogs and cats \(ava.com.au\)](http://ava.com.au)

Many patients also require the administration of analgesics and antibiotics after scaling and polishing to provide pain relief and for infection control. It is unclear from the draft Bill as to whether this practice would be included. The AVA would argue that it needs to be. The broader wording suggested by the AVA would encompass this, where all procedures that enter a body cavity are captured (unless specifically detailed as an exemption in regulations).

The ACT Veterinary Practice Regulation 2018 requires that tooth cleaning of companion animals be carried out under anaesthesia. The tooth cleaning may be performed by a qualified veterinary nurse under the direction of the veterinarian and the veterinarian is present to administer the general anaesthetic.

In addition to the pain caused that needs to be managed, procedures themselves carry risk. Formalised training or evidence of competency is required to reduce the risk of animal injury to maintain animal welfare standards and preventing the spread of disease (biosecurity and zoonosis).

In addition to the use of pharmaceuticals for pain relief, sedation or local or general anaesthesia, the expertise of veterinary practitioners is required for procedures that enter a body cavity as this contains risk, (such as infection, perforation and trauma, disease spread, biosecurity risk, and death) in addition to the discomfort or pain of invasive procedures. An example is endoscopic procedures which may not use analgesia but enter a body cavity.

Veterinary practitioners are accountable to the Veterinary Practitioners Registration Board of Victoria, requiring standards of education, professional conduct and behaviour as determined by this statutory body. This safeguards the modern standards of animal health, welfare and public health as required in Victoria.

Many husbandry procedures will not fall into the definition of what is covered because they don't involve cutting tissue that contains nerves (such as shearing, hoof trimming), or because they enter a body cavity that would not ordinarily require pain relief (such as pulling calves, drenching). However, if done incorrectly, or without any veterinary support, may cause animal welfare concerns and potentially death (e.g. perforation of the rectum in pregnancy testing).

The AVA requests involvement in the development of the Regulations detailing the kind of procedure and circumstance for people performing procedures who are not registered with the Veterinary Practitioners Registration Board of Victoria and therefore without the protections that the Veterinary Practice Act 1997 offers. Prohibiting or managing restricted or controlled procedures by persons who are not accountable under the Veterinary Practice Act 1997 is imperative for animal and public safety.

Recommendation 10:

- That rather than defining a procedure that involves entering a body cavity **and** requires pain relief or sedation, these should be separated. This would mean that the clause broadens to include procedures that involve entering a body cavity **or** those that ordinarily involve pain relief or sedation.
- There needs to be specific exemptions in the Regulations to allow 'assisted birth' by non-veterinarians, particularly in production animals.



Exemptions for veterinary students, veterinary nurses and veterinary technicians

The Clause also includes an exemption for veterinary science students:

36(3) A veterinary science student does not contravene subsection (1) or (2) if the student performs a procedure specified in subsection (1) or (2) under the supervision of a registered veterinary practitioner.

This allows a veterinary student to undertake these procedures under supervision. Subject to the level of training and experience of the student and the nature of the activity undertaken, supervision may take a number of forms. It is recommended that the term used here be broadened to include both direct and indirect supervision.

Modern veterinary practice sees a broader range of veterinary staff working under the direction or supervision of a veterinarian on procedures that may contravene this part of the Bill. A further exemption should be added to this section for veterinary nurses or technicians who are operating under the direction and supervision of a registered veterinarian.

Recommendation 11:

- The exemption for veterinary students should be amended to replace, 'supervision' with 'direct or indirect supervision'.
- Exemption needs to be made in either the Act (preferably) or the Regulations for veterinary nurses and technicians to undertake a defined range of activities under the direction and/or either direct or indirect supervision of a registered veterinarian.

Exemptions for lay practitioners

There are a range of procedures that people other than veterinarians, veterinary students, veterinary nurses and veterinary technicians will need to undertake for the promotion and maintenance of animal health and welfare. This is particularly the case if the broader definition in 36(1), that the AVA is recommending, is adopted.

These will range from relatively simple things like giving oral medications to dogs and cat, through to more complicated primary production animal husbandry practices. Similarly, the risk associated with these will vary and the additional regulation around how they are conducted should similarly vary. For example, verbal instructions from a veterinarian or veterinary nurse is adequate for a person to then give oral medication to their dog or cat, but more extensive training and formal relationships or oversight by a registered veterinarian may be needed for undertaking higher risk husbandry procedures.

AVA policy:

- [Use of analgesia for routine husbandry procedures](#) (2017)
- [Restricted acts of veterinary science](#) (2017, UNDER REVIEW)



- [The diagnosis and treatment of animals by non-veterinarians](#) (2008)

Division 3—Controlled procedures

This Division of the draft Bill sets out a range of procedures that may only be performed by a registered veterinarian for therapeutic reasons. The procedures listed are:

- (a) declawing of a cat; or
- (b) removing the venom sac of a snake or other reptile; or
- (c) cropping the ears of a dog; or
- (d) docking the tail of a dog, horse or cow; or
- (e) pin-firing a horse or dog; or
- (f) force feeding an animal that is poultry; or
- (g) fasting an animal that is poultry to induce moulting; or
- (h) depriving an animal of iron for the purpose of livestock production for meat; or
- (i) live-plucking of an animal that is poultry; or
- (j) clipping or trimming the teeth of a sheep using an electrical or motorised device.

The AVA agrees and welcomes the inclusion of ‘Controlled procedures’ to reduce the risk of serious breaches of animal welfare for specified reasons. The AVA agrees with the structure where a registered Veterinary practitioner is able to perform or certify the occasional occurrence where a controlled procedure is required for therapeutic purposes. Such as a tumour on the ear, tail or nail bed.

Pin-firing a horse or dog

The AVA policy is that,

Thermocautery (firing) must never be used as a treatment in any animal as there is no scientific evidence for its efficacy and it causes unnecessary pain. All regulatory authorities across Australia must ban this practice. (<https://www.ava.com.au/policy-advocacy/policies/horse-health-and-welfare/thermocautery-of-horses/>)

Thermocautery has a long and controversial history as a treatment for lameness in horses and in the past has also been used to treat racing greyhounds. Thermocautery causes the death of cells in treated tissue and damage to the structurally important collagen fibres eliciting a tissue repair response resulting in scar tissue formation similar to healing of other wounds. Thermocautery is painful and is normally performed under anaesthesia. The procedure can cause post-surgical pain or discomfort with ongoing sore skin and soft tissue swelling.

Use of electrical or motorised tools on animal teeth

The health and welfare concerns around the use of electrical or motorised on animal teeth are broader than just their use in sheep. There is significant risk to the welfare of other animals by the use of power tools (such as by equine lay “dentists”) who are not registered veterinarians. As such, the AVA recommends that this clause is broadened.

Tooth trimming, tooth clipping or tooth grinding in sheep is opposed as these procedures have been shown scientifically to have no benefit to the welfare or productivity of the animal and therefore cannot be justified or recommended.



Electrical or motorised devices should not be permitted to be used on the teeth of any animal, except by veterinarians or under the supervision of veterinarians (such as a veterinary nurse directly supervised by a veterinarian to scale and polish teeth) and while the animal is under appropriate sedation or general anaesthesia.

AVA Policy:

[Thermocautery \(firing\) of horses and racing greyhounds](#)

[Equine dentistry](#)

[Sheep dentistry, including tooth trimming](#)

Recommendation 12:

- That item (a) on the Controlled Procedures list is changed to; (a) declawing of an animal (cat or dog or ferret)
- That the Bill remove any exemptions for 37(e) pin-firing a horse or dog
- That in the Bill, “37(j) clipping or trimming the teeth of a sheep using an electrical or motorised device”, is replaced with, “36(j) using an electrical or motorised device on the teeth of an animal”.
- That the Bill additionally include:
 - (k) Paralysing the tail of an animal for the purpose of paralysing the tail.
 - (l) declawing and de-crowning of non-commercial poultry.
 - (m) anal sacculotomy in ferrets

Division 4—Heritable defects

The Bill continues the current prohibition on the breeding of animals with defined heritable defects, along with the prohibition on selling these animals without sharing the information about their defects. The AVA supports the continued inclusion of this in the Act, but requests that the criteria be expanded to include any known heritable disorders with the potential to cause health and welfare problems. The specific heritable defects included will be detailed in regulations. In Victoria, they currently are:

- Dogs
 - Von Willebrand’s Disease
 - Progressive Retinal Atrophy
 - Neuronal Ceroid Lipofuscinosis
 - Collie Eye Anomaly
 - Hereditary Cataract
- Cats
 - Polycystic Kidney Disease
 - Mutations causing aplasia or hypoplasia of any long bone
 - Folded ears due to osteochondrodysplasia

In addition to this list, there are a number of other heritable defects that the AVA would like to see included:



Breeding of dogs with exaggerated physical features commonly causes these animals to suffer health and welfare problems, with examples being brachycephaly, chondrodysplasia, vertebral body abnormalities and excessive skin folds.

Brachycephaly (a short skull or flattened face) and chondrodysplasia (dwarfism) and associated vertebral body abnormalities are particular areas of concern seen very commonly; they can be life threatening and expensive and difficult to rectify. Both the Queensland and ACT legislation specify these as examples of defects which should not be bred, and the AVA strongly recommends them for inclusion in the Regulations in Victoria.

Excessive skin folds bred into certain dog breeds purely for appearance also commonly give rise to chronic debilitating skin and eye diseases, causing pain and suffering and requiring medication and surgery to treat.

Examples in other species include dwarfism in cats (“Munchkins”) Jaguar (JAG) carpet pythons with neurological abnormalities, satin guinea pigs with osteodystrophy, and “fainting” goats (congenital myotonia).

Clarity is also sought on whether any potential liability sits with a veterinarian who is presented with an animal that has a heritable defect and does not desex it because the owner does not request the procedure, The offence should sit with the owner, rather than the veterinarian.

Recommendation 14:

- That Brachycephaly, chondrodystrophy/chondrodysplasia, vertebral body abnormalities and excessive skin folds be added to the list of examples for dogs.
- It is recommended that the prohibition be expanded to include any breeding of animals exhibiting or known to carry heritable defects likely to result in health or welfare impacts for themselves (eg inability to whelp naturally) or in their offspring. The list should be a list of examples, rather than a limited/exhaustive list.
- It is recommended that commercially produced tests, where available, are used to screen breeding animals for genetic diseases prior to breeding. This is already strongly recommended in the Victorian Code of Practice for Racing Greyhounds, for example. It should also be noted that many heritable disorders may not have a direct test or may be multigenic in nature. Decisions around phenotypic or genotypic screening of animals for heritable defects prior to breeding should occur in consultation with veterinarians or animal geneticists.

AVA policy:

- [Genetic defects in domestic animals](#) (2023)
- [Brachycephalic dog breeding](#) (2023)

Division 5—Trap shooting, fighting, baiting and luring

The AVA supports the inclusion and expansion of this within the Draft Bill.

Notwithstanding this, we do seek clarity around the wording used in clause 45 with respect to lures. Two questions are raised:

- Does the definition of prohibited animal inadvertently prohibit the general ownership of species like rabbits?



- Does the wording lead to a potential loophole when a non-usual species is kept and used as a lure?

Recommendation 15:

- Clarity of the wording in clause 45.

Division 6—Electronic shock devices and traps

This Division of the Bill deals with the regulation of electronic shock devices and traps. It sets out three types of electronic shock devices:

- Prohibited – devices that cannot be used
- Regulated – devices that require a licence for use; and
- Permitted use – devices that must be used in accordance with regulation rules

The specific devices in each category will be determined in the regulations along with specific conditions on licences and use. Regulation needs to cover both the device and also components to stop international ordering of components and their subsequent assembly in Australia.

The AVA requests involvement in the development of the Regulations for electronic shock devices.

The use of various electronic devices may cause animal welfare concerns (Behaviour modifying collars in dogs, some cattle prodders, rectal probes) or conversely some electronic devices are used for diagnostic or therapeutic procedures.

Increased interest in virtual fencing has potential significant impact on animal welfare. Careful consideration is needed in the development of the circumstances and conditions of use.

AVA policies:

- [Use of behaviour-modifying collars on dogs](#) (2022)
- [Electroejaculation of bulls, rams, and bucks](#) (2024)

Similarly, the AVA is keen to be involved in the development of the Regulations for Traps and reinforces that pest animals are sentient and that their control must be humane.

Relevant AVA policy:

- [Considering welfare of target and non-target animals in planning vertebrate control programs](#) (2019)

Recommendation 16:

- Acknowledgement that pest animals are sentient, and that control of pest animals must be humane.

Part 5 – Control and regulation of specified classes of conduct

This part of the draft Bill enables the adoption of regulations to either licence specific activities or set the rules around persons undertaking certain activities. This includes:

- Killing, wounding or capturing an animal
- Using animals in demonstrations of products



- Carrying out certain procedures on animals
- Administering certain substances to animals
- Showing or exhibiting animals or using animals for entertainment
- Keeping an animal in an intensive environment
- Animal transporting
- Activities and events involving animals

This Part will rely greatly on regulations. The AVA would like to be heavily involved in the development of these regulations.

Codes of Practice and Animal Welfare Standards

Given that compliance with Codes of Practice and Animal Welfare Standards are not referenced as a defence in Part 3 of the Bill, they should be adopted through regulations in this Part. The Codes and Standards are an important mechanism to achieve a harmonisation of animal welfare standards across the country.

Procedures on animals for therapeutic reasons

At the start of this submission, we discuss the need to broaden the use of 'therapeutic' reasons to also include diagnostic reasons. As such, we recommend that clause 67(b) and 72(b) be amended to also include 'diagnostic' reasons.

Procedures on animals for cosmetic reasons

Division 3 of this Part deals with the regulation and licensing of certain types of procedures. The AVA is greatly concerned that procedures performed for cosmetic reasons are included in the Bill. There is a history of animals being subjected to unnecessary and harmful procedures for purely cosmetic reasons. Fortunately, many of these have been prohibited for some time. Tail docking and ear cropping of dogs are illegal in all states and territories of Australia. Performing any surgical procedure for other than legitimate medical reasons is unacceptable. Examples of these procedures include testicular prosthesis implantation in dogs and facial fold surgery purely for the show ring.

As such, surgical procedures performed on animals for purely cosmetic reasons should be prohibited under all circumstances.

Relevant AVA policy:

- [Cosmetic surgery to alter the natural appearance of animals_\(2018\)](#)
- [Surgical alteration of companion animals' natural functions for human convenience](#)

Recommendation 17.

- The AVA is involved in the development of the Regulations.
- Codes of Practice and Animal Welfare Standards should be adopted through the Regulations.
- Acknowledge that procedures by veterinarians are for diagnostic and therapeutic purposes.
- Surgical procedures performed on animals for purely cosmetic reasons should be prohibited under all circumstances.



Administering certain substances to animals

This Part provides the regulation around administering certain substances to animals. There is a general exemption for veterinarians and for people acting under veterinary directions. Firstly, it is unclear how this section interacts with the *Drugs, Poisons and Controlled Substances Act 1981*. Our understanding is that the rules pertaining to scheduled substances under that Act remain in effect regardless of the wording in the current Draft Bill. This provides an overarching framework for who has access and can use scheduled substances.

It is also important that the Animal Care and Protection legislation does not unnecessarily duplicate existing licensing or regulation of scheduled substances.

Given scheduled substances are covered under the *Drugs, Poisons and Controlled Substances Act 1981*, we presume that the intention of this sections is to echo the current Section 9(1)(j) of the Act to expressly make it an offence to give an animal:

- (i) a poison; or
- (ii) any other substance which, when administered to that type of animal, has a harmful effect on the animal; or

If the intention is broader than this, then further clarification and discussion is needed. In fact, if the issue seeking to be addressed is the above, it may be more effective and transparent to specify this in the Act rather than delegating it to regulations.

Recommendation 18.

- The *Drugs, Poisons and Controlled Substances Act 1981* remains in effect.
- It is an offence to give an animal:
 - (i) a poison; or
 - (ii) any other substance which, when administered to that type of animal, has a harmful effect on the animal

Humane destruction of animals in exceptional circumstances

Allowance needs to be made in regulations for any person to (humanely) kill an animal in exceptional circumstances if that is necessary under the circumstances to relieve unreasonable pain and suffering (e.g., wildlife hit by a car, caught in a fence, an animal wounded by an attack from another animal -e.g., sheep/lambs mutilated by wild dogs/foxes/a pet dog).

Division 7—Animal transporting

Exemption for veterinary businesses

It is notable that while most of the other sections in this Act have a specific exemption for veterinarians, this Division does not. Transport of animals occurs frequently within veterinary practice, and it appears that under this Division veterinary businesses may need to be licensed in this regard. The AVA suggests that this is unnecessary and may simply be an unintended consequence of the wording in the draft Bill.

The AVA recommends that a specific exemption is added in this Division for registered veterinarians and persons acting under the instructions of a registered veterinarian.

Recommendation 19



- Exemption for the transportation of animals instructed by veterinarians and persons acting under the instructions of a registered veterinarian.

Dogs on vehicles

While we recognise that the purpose of this Division is focused on commercial transport of animals, the AVA believe that additional provisions should be made in the Act to protect animals being transported in/on any vehicle (commercial or otherwise). We recommend adopting the Queensland provision in section 33 of the *Animal Care and Protection Act 2001*, which states:

33 Transporting dogs

(1)A driver must not transport a dog inside a vehicle if any part of the dog, other than its head, is able to protrude from the vehicle.

(2)A driver must not transport a dog on the tray of a vehicle or on a trailer unless the dog is secured in such a way as to prevent it from—

(a)falling off, or out of, the tray or trailer; or

(b)moving off the tray or trailer; or

(c)being injured by the movement of the vehicle or trailer.

(3)However, subsection (2) does not apply if—

(a)the dog is being transported on the tray of a vehicle or on a trailer; and

(b)the purpose of transporting the dog is to assist in the movement of livestock.

Part 6 – Licences for certain conduct controlled and regulated under Parts 4 and 5

This part deals with various licensing. It is important that the decisions on granting and renewing licenses, along with the conditions that are placed on licences, be properly informed. There should be a requirement for the Secretary to obtain advice from a registered veterinary practitioner on the potential impacts to animal welfare of granting/renewing licences.

Recommendation 20

- Granting and renewing licences should require the advice from a registered veterinarian regulated under the Veterinary Practices Act 1997.

Part 7-8 Use of animals for scientific purposes

These Parts deal with the use of animals for scientific purposes. Our understanding from the Department is that this does not substantially change the situation from the current legislation. It is important that these parts align with the Australia Code for the care and use of animals for scientific purposes.

Meaning of scientific procedure

The Act defines scientific purposes as:

Scientific procedure means any procedure, test, experiment, inquiry, investigation or study which is carried out on or in connection with an animal, in the course of which—



(a) the animal is subjected to—

(i) surgical, medical, psychological, biological, chemical or physical treatment; or

(ii) conditions of heat, cold, light, dark, confinement, noise, isolation or overcrowding to which an animal of that species is not accustomed; or

(iii) abnormal dietary conditions; or

(iv) electric shock or radiation treatment; or

(b) any tissue, material or substance is extracted or derived from the body of the animal.

The AVA is concerned that 5(1)(a)(i) is too narrow. We recommend that it be expanded to state:

5(1)(a)(i) **invasive**, surgical, medical, psychological, **observational**, biological, chemical or physical treatment; or

Further, veterinarians serving as facility veterinarians must be responsible for practical oversight of procedures on animals involving anaesthesia, surgery and other invasive or potentially painful techniques. This is to ensure competency of operators and adequacy of analgesia and other refinements to minimise distress. The facility veterinarian must also have oversight of preventative health, husbandry, diagnostic or treatment interventions, and euthanasia techniques.

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)

Recommendation 21:

- Requirement for the alignment with the Australia Code for the care and use of animals for scientific purposes.

Part 9—General provisions applying to licences under this Act

Licence conditions and education, training, and experience requirements will vary with the nature of the activity being licensed and its relative potential risk to animals. For higher risk activities person receiving a licence should have measurable competency in both the activity to be undertaken and for assessing animal welfare. Experience is not always a substitute for accredited qualifications and training, particularly for areas where significant changes to standard practice develops over time.

For certain activities, it will be important that the licence holder has an active relationship with a registered veterinarian to ensure that animal health and welfare is maintained to contemporary standards. Further, with respect to primary production, there is significant merit in considering licence condition that requires the licence holder (or relevant property owner) to have an annual animal health and welfare plan that has been developed by a registered veterinarian.

Recommendation 22:

- That it be recognised that experience is not always a substitute for accredited qualifications and training.
- Consideration for a requirement of licence conditions to be an annual animal health and welfare plan developed by a registered veterinarian.



Part 10 – Other regulatory processes

Approved industry arrangements

The concept of Approved industry arrangements is established in the Act. Further clarity is needed on the way in which the Government envisions them operating, however it is clear that veterinarian involvement is required to underpin the development, maintenance and assessment of them.

The AVA recommends that there is a mandated requirement for a registered veterinarian to be involved in approved industry arrangements.

Recommendation 23:

- Mandated requirement for a registered veterinarian to be involved in approved industry arrangements.

Part 11-13 – Enforcement provisions

Offences as to officers and registered veterinary practitioners

This section deals with certain protections for officers and veterinarians in undertaking their duties under the Act. Specifically, it states:

(5) *A person must not obstruct, insult, hinder or interfere with a registered veterinary practitioner, or a saleyard animal welfare officer, performing a function under this Act.*

(7) *A person must not assault, threaten or intimidate a registered veterinary practitioner, or a saleyard animal welfare officer, in the performance of the registered veterinary practitioner's or saleyard animal welfare officer's functions under this Act.*

The AVA welcomes the inclusion of veterinarians in this section. It is a positive recognition of the safety of Veterinary Practitioners when performing a function under this Act.

Part 12 Power to enter, inspect and search related matters

The AVA identifies two areas in this Part 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.

Requirements as to euthanasing an animal

Section 258 grants Authorised Officers the power to euthanase an animal under certain circumstances. In the final legislation, there needs to be increased direction for the circumstances in which this occurs. Two of these circumstances (2(a) and 2(b)) involve questions of the health and welfare of the animal. Given that communications technology is so readily available, the Authorised Officer should take reasonable steps to consult a registered veterinarian prior to euthanasing the animal.



Recognising that the majority of veterinarians are private businesses, it is important that the employing agency of the Authorised Officer has a contractual arrangement with a veterinary business to be available for and provide this advice.

Recommendation 24:

- An Authorised Officer should consult a registered veterinarian prior to euthanasing an animal.
- Contractual arrangements with a veterinary business to be available for and provide this advice.

Power to provide for care or treatment of an animal.

The Draft Bill enables an Authorised Officer to take a seized animal to a registered veterinarian for care or treatment. The Bill also provides for the owner of the animal to cover the costs of 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 Care and Protection Compliance Fund.

Relevant AVA policy:

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

Recommendation 25:

- 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 Care and Protection Compliance Fund.

Part 14-15 – Miscellaneous

Expert Advisory Committee and Special Expert Advisory Committee

The Bill establishes an Expert Advisory Committee that provides advice to the Minister on:

- (i) the care and protection of animals in Victoria;*
- (ii) current best practice and scientific knowledge in relation to animals;*
- (iii) public policy and regulatory best practice in relation to animal care and protection, including cost-benefit analysis of proposed options;*
- (iv) the review of laws relating to animals in Victoria;*

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.

The AVA recommends that the Bill be amended to require that at least 1 of the 5 members of the Expert Advisory Committee be a registered veterinarian.

Similarly, the AVA recommends that at least 1 member of any Special Expert Advisory Committee be a registered veterinarian.

An adequate number of members with appropriate expertise for the health and husbandry of particular species being discussed must be required to be present,

A good example of this requirement are Animal Welfare Advisory Committees in other jurisdictions.

The Animal Welfare Advisory Committee in the Australian Capital Territory consists of 11 categories made up of nominated appointees from a range of animal welfare organisations⁹.

Recommendation 26:

- The Expert Advisory Committee requires at least 1 of the 5 members be a registered veterinarian.
- The Special Expert Advisory Committee requires the membership of at least one registered veterinarian.
- That the Procedure of Committee be reviewed to ensure that an adequate number (more than two) members with appropriate expertise for the health and husbandry of the particular species be required to be present at a meeting.
- That there is independent regulation of the proceedings of the Expert Advisory Committee.

Conclusion

The Australian Veterinary Association (AVA) appreciates the opportunity to contribute to reforming Victoria's animal care and protection laws and supports modernising animal welfare legislation.

Modern animal welfare legislation is important for all Victorians regardless of animal ownership for the inherent value of animals themselves, to protect animal industries and ownership, and for the reputation provided by modern animal welfare legislation itself.

Registered veterinary practitioners are imperative in the function of animal welfare legislation and to protect animal health and welfare and public health.

We look forward to and appreciate further consultation in the development of the Regulations over the next 2 years.

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⁹ [Animal Welfare Advisory Committee - City Services \(act.gov.au\)](http://www.act.gov.au/animal-welfare)