



2023 Review of the *Animal Welfare Act 1985*

Submission of the
Australian Veterinary Association Ltd

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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.

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.

Discussion

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

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



- 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 Domains³ 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*).

Purposes and objects of the Act

Do you agree that the current purpose of the Act provides a good understanding of the general aims and principles of the legislation?

Should the Act include specific objects? If so, what might they be or what themes should the objects reflect?

Recognition of the sentience state of animals appreciates that animals can have negative or positive feelings and emotions and be conscious of their environment and situation⁴.

The AVA position is that sentience and formal definition of it should be formally incorporated into the new legislation. It would be helpful to include a definition of sentience in the legislation. The definition used by the Australian Animal Welfare Strategy would be a good start. 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

- That the Act be amended to include specific objects.
- That reference to sentience be made in the objects of the Bill.

³ Mellor & Beausoleil (2015)

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



Definitions and interpretation

Do you agree that the definition of ‘animal’ included in the Act is appropriate? If not, what should it be?

Do you agree that the definition of ‘harm’ in the Act provides adequate protections for the welfare of animals when used in the context of ill treatment?

Do you agree that the definition of ‘serious harm’ in the Act provides adequate protections for the welfare of animals when used in the context of ill treatment?

Are there any other terms that should be included or amended in the ‘interpretation’ section of the Act to provide greater clarity in understanding or applying the Act? If so, what are they and how should they be defined?

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.

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 conscious awareness of the aversive stimuli⁵. 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 (eg ACT).

Failure to include fish, 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 21st century.

Recommendation

- The AVA strongly recommends that the definition of ‘animal’ in the Act should include fish, cephalopods and the Malacostraca Crustaceans.

The Animal Welfare Advisory Committee

Do you agree that the administrative arrangements and functions of the Animal Welfare Advisory Committee, established by the Act, support the promotion of animal welfare?

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.

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



Recommendation

- That AWAC be retained.

Ill treatment of animals

Do you agree that the Act adequately prohibits the ill treatment of animals through the activities described in Section 13?

Under the Act, there are two key offences relating to ill-treatment of animals. Section 13(2) creates the base offence and 13(1) details an aggravated form of the offence. The penalties for the two offenses are scaled on that basis. This is the approach that generally taken in legislation across Australia and allowed stronger penalties to be applied in cases where death or serious harm is committed in a reckless manner.

The AVA supports this approach.

Responsibilities of owners and minimum standards of care

Do you agree that the Act sets out appropriate requirements for owners' care of their animals?

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 guidance for enforcement, legal entities and education of animal owners.

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

Prohibited activities and items

Do you agree that the prohibited activities (Section 14) and items (Section 14a) listed in the Act adequately protect animals, that may be subjected to these activities, from harm?

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.



Teaching and research involving animals & Animal Ethics Committees

Do you agree that the provisions of Part 4 relating to the use of animals for teaching and research enable the ethical, humane and responsible use of animals for teaching and research?

Do you agree that the structures and functions of Animal Ethics Committees provide appropriate arrangements and oversight for the use of animals for teaching and research?

There must be appropriate legislation and enforcement in all states and territories to ensure that the welfare of animals used in research, field trials and teaching is adequately protected. The principles in the *Australian Code for the Care and Use of Animals for Scientific Purposes* as amended from time to time should form the basis of the regulatory control of animal experimentation as a minimum.

We have some concerns on the allowances (both in this Act and the *Veterinary Practice Act*) for use of animals for scientific purposes. This largely rests on how the legislation is implemented. Licensing should be conditional upon the institutions employing sufficient numbers of appropriately experienced veterinarians to adequately supervise procedures being performed on animals by lay operators.

There are two main roles for veterinarians in the oversight of use of animals for scientific purposes:

- As a member of an animal ethics committee (AEC)
- As an institutional or facility veterinarian

Veterinarians in either capacity must be registered with an Australian veterinary board.

In the case of facility veterinarians, these must be employed in sufficient numbers to adequately supervise animal interventions. Facility animal welfare officers (AWOs) should also be veterinarians.

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.

AVA policy is that the facility veterinarian should directly assess the competence of researchers and technicians to undertake invasive or potentially painful procedures on animals. This will include direct assessment and approval of surgical technique, as well as anaesthetic and peri-operative analgesic protocols.

Recommendation

- That there is a requirement to ensure adequate veterinary staffing to directly assess and certify competence of researchers to perform acts of veterinary science, including anaesthesia, analgesia and surgical protocols. There must be ongoing presence of facility veterinarians at a sufficient level to adequately supervise animal interventions and monitor the peri-operative welfare of the animals involved.

Enforcement

Do you agree that the compliance powers set out in Part 5 of the Act are appropriate for the administration and enforcement of the Act, regulations and codes of practice?



No comment

Penalties and expiation

Do you agree that the penalties and expiations for contraventions are appropriate to discourage offending under the Act?

No comment

Shared enforcement or co-regulation

Do you agree that the provisions of the Act that enable this model of shared enforcement are appropriate?

No comment

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