



Australian Veterinary Association

NSW Division

Submission on 'NSW Animal Welfare Reform - Issues Paper'

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The Australian Veterinary Association (AVA) is the only national association representing veterinarians in Australia. Founded in 1921, the AVA today represents 9500 members working in all areas of animal science, health and welfare.

Veterinary roles extend far beyond caring for the health and welfare of our pets and production animals. Veterinarians are the pathologists, field officers and inspectors that secure the safety of our food, ensure market access for our exports, and help to safeguard the human population from zoonotic diseases.

Background

The NSW Animal Welfare Reform paper seeks feedback on issues relating to the principles and core concepts of animal welfare legislation and has been developed based on prior knowledge and consultations with key stakeholders.

We understand this paper is focused primarily on the high-level principles guiding the reform, and so not every issue has been included. There were several specific issues identified that will be considered in the review of the Regulations or Standards (rather than the Act), or through non-legislative options. We appreciate this is a complex reform process.

The AVA is very pleased to be included and to be able to provide feedback to improve animal welfare as this is very much in line with our profession. The AVA look forward to further participation as reform process progresses.

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.

Issues and Discussion

1. Is there anything additional to the current objects that should be included in the objects of new animal welfare laws?

It is insufficient to equate prevention of cruelty or harm as an adequate approach to ensuring the welfare of an animal.

The Animal Welfare legislation addressing the existing three Acts covering prevention of cruelty, animal research and exhibited animals should include in its objects the following:

- Recognition of the sentience of animals. All animals can have negative or positive feelings and emotions and be conscious of their environment and situation³
 - Obligations of a duty of care for a person or persons in charge of an animal as set out in the OIE 2019 guidelines (Terrestrial code; Aquatic code) incorporating the Five Freedoms of Animal Welfare or preferably the Five Domains of Animal Welfare which incorporate a rating of the Five Freedoms and the positive state of the animal⁴
 - Appropriate enforcement and penalties for animal cruelty in line with community expectations
2. Do you have any comments on the interactions between the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?
 - It is pleasing to see there is a view to work towards harmonisation of legislation across jurisdictions. Animal welfare should be a common priority across the three Acts with all animals to be considered sentient and either the OIE 2019 guidelines or guidelines based on the Five Domains of Animal Welfare as baseline. There may be exclusions to cover the conduct of research, but these must be ethically justifiable if they result in compromised welfare for the animals involved.
 3. Should additional species be included in the definition of 'animal' and therefore covered by animal welfare provisions (for example, cephalopods, crustaceans in all situations, other species)? Why?
 - Any animal that is conscious of its environment and has the neural capacity to determine pain or discomfort should be included in the definition of animal in the legislation. This would include cephalopods, crustaceans and fish and not be limited by inclusions as occurs in the present legislation i.e. crustaceans in restaurants. The animal welfare legislation in Queensland also includes the prenatal states of animals and this consideration of the welfare of animal before birth should be included in all NSW animal welfare legislation. Chicken embryos reportedly can experience pain after 15 days gestation.
 - 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. It is therefore important that fish remain covered by welfare conditions. 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).

- Failure to 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 21st century.
- The definition of animals should be reviewed when legislation/ regulation is reviewed as future research may identify other species of invertebrates as sentient.

4. Should a consistent definition of 'animal' be used across the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986? Why?

The definition of animals should be consistent across all animal welfare legislation. All animals may be included in research or exhibition, if not at present but possibly in the future.

5. Do you have any comments on how 'cruelty' is currently defined within the Prevention of Cruelty to Animals Act 1979?

- Acts considered cruel should be listed in the Act but the explanation of why and the situations when these acts are considered unnecessary, unreasonable and unjustifiable should accompany their listing, outlining clearly when some acts are escalated as aggravated cruelty. This would assist interpretation by enforcement and legal agencies and assist in education of animal owners.
- Some listed acts are actions performed on individual animals - for example tethering, riding animals not fit to be ridden, performing certain procedures, tail nicking and firing or groups of animals for example abandoning animals, poisoning animals, baiting and animal fighting, bull fighting, trap shooting, selling severely injured animals and setting certain traps. Some of these acts should be reviewed as to whether they are still relevant. However, there may be other acts that could be considered cruel that have not been listed.
- Other prohibited acts are banned activities in NSW which may be allowed in other states and territories; for example, game parks, steeplechasing and hurdle racing, certain animal catching activities and using certain electrical devices on animals. The reason why these acts are considered prohibited in NSW and not in other jurisdictions should be examined.
- The listing of procedures that can only be conducted by a veterinarian should be listed and include both the current exclusions in the present POCTA and the acts of veterinary science that can only be conducted by a registered veterinary practitioner. This list requires extensive consultation with veterinarians. Consideration should be given whether the current exclusion allowing animal owners and non-veterinarians involved in research to perform acts of veterinary science on their own animals or research animals should be removed as this can result in adverse welfare for the animal. If animals are sentient beings, they should not be treated as chattels by their owners or objects of research. With regard to research animals, veterinary supervision and provision of training by veterinarians to researchers should be included in the legislation. Veterinary supervision should be ongoing.

- Animal husbandry procedures on animals that are painful and have been permitted if an animal is less than a certain age should be re-evaluated with the introduction of S5 topical anaesthetic and antiseptic pain relief solution available to the animal owner. Young animals should not be considered different from adult animals in their perception of pain. Carrying out painful procedures such as castration, dehorning or disbudding, lamb tail docking and mulesing without pain relief should be considered as future cruelty offences. Note that in Victoria, as of 1 July 2020, mulesing sheep without administering pain relief is now prohibited.
 - There is scope to prohibit the use of animals to coerce or control another person (given the extent of literature linking animal abuse to domestic violence).
 - Failure to provide a stimulating, enriching environment could constitute cruelty. Social animals kept in isolation or in a restricted environment for a long period may be detrimental to the welfare of that animal. For example, a dog kept alone in a backyard or a parrot in a small cage.
6. Would you support introducing a minimum standard of care into the new animal welfare laws?
- A minimum standard of care should be included into the legislation to avoid individual interpretation of what is acceptable welfare and to provide guidance for enforcement, legal entities and education of animal owners. The minimum care requirements can vary between species and these should be determined in consultation with veterinarians and persons expert in the care of that species.
7. Do you have any comments on using existing 'fail to provide' provisions under the Prevention of Cruelty to Animals Act 1979 as a basis for a minimum standard of care?
- The current 'fail to provide' provisions are insufficient to ensure appropriate animal welfare as they require interpretation. For example, proper and sufficient shelter is vague as to what is required compared to the Queensland definition of appropriate accommodation or living conditions. The accommodation etc should be appropriate for the animal species, both terrestrial and aquatic.
 - The current provisions do not address that an animal must be able to display normal patterns of behaviour.
 - The minimum standard of care should include the requirements set out in the OIE animal welfare standards.
8. Do you have any suggestions about how the definition of pain could be updated?
- The current definition of pain is based on limited physical circumstances that are likely to cause severe pain or suffering in animals and may be relevant for some terrestrial species but not for all animal species. There is no consideration of psychological pain in the current definition. Ledger and Mellor provide specific examples of pain and suffering which would be useful in updating this definition.⁶

9. Do you have any comments on the definition of 'person in charge', particularly with regard to circumstances where multiple people may have responsibility for, or control over, an animal?

- The definitions for a person or persons in charge of an animal described in the Queensland animal welfare legislation could be considered as a template for the NSW legislation. There should be an allowance that multiple people may be in charge of an animal, in which case they should have shared responsibility. One situation not previously considered is identifying the persons responsible for community owned animals.

10. Are there any activities currently considered as research or teaching activities under the Animal Research Act 1985 that should be excluded? If so, why?

Activities that do not directly affect an animal, its physiology or its environment and there is no direct interaction between the researcher and the animal or animals under research should be excluded i.e. where there is virtually no contact between the researcher and animal and nothing has been done to affect the animal or its environment during the research, such as observing whales from a boat, placing cameras to observe animal movements at night. These activities are low risk for animal welfare and don't need the complex paperwork currently required for an animal research authority.

- Activities where animals are not used for a scientific purpose. For example, socialisation training such as puppy and kitten preschools.
- animal cadavers for teaching purposes such as anatomy where the carcasses are obtained legally. The carcasses are not from animals used previously in animal research and may still be covered by a research protocol that determines what happens to it after the research is done.

11. Are there any additional activities that should be considered as research or teaching activities under the Animal Research Act 1985? If so, why?

- Research/teaching conducted in veterinary clinics on private and non-owned (wild) animals.

12. Are there any activities currently included in the definition of 'exhibit' in the Exhibited Animals Protection Act 1986 that should be excluded? If so, why?

- No comment.

13. Are there any additional activities that should be included in the definition of 'exhibit' under the Exhibited Animals Protection Act 1986? If so, why?

- Petting zoos should be included. These exhibits normally involve young animals that are more prone to disease and stress. They are monitored for risk to human health (hand washing before and after animal handling) but they are not monitored for impacts on animal welfare.

14. Are there any other terms or concepts used in the existing animal welfare legislative framework that require new or amended definitions?
- No comment.
15. Do you support aligning compliance powers and enforcement tools across the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986? Why?
- The compliance and enforcement powers should be aligned as the overall aim is the protect the welfare of animals in all activities. The background knowledge required for different areas would differ i.e. research and exhibition.
16. Should Penalty Infringement Notices be made available under the Animal Research Act 1985?
- Yes, this will provide an immediate penalty for an offence which is non-compliant with the Act, regulations or conditions imposed by an animal ethics committee. This will be a useful tool for enforcement authorities that will provide immediate intervention and decrease lengthy legal proceedings. What offences may constitute a penalty infringement to be issued must be made clear in the legislation.
17. Do you have any comments on providing authorised inspectors with powers and tools (for example, being able to check compliance with an existing direction) to provide proactive support to help prevent adverse animal welfare outcomes?
- This would improve animal welfare outcomes and reduce prosecution. It would also ensure compliance. For example, there may be a direction to seek veterinary care for an animal. There are cases where veterinary advice is sought but not proceeded with by the animal owner – unresolved dystocias, injuries considered too expensive to treat, not euthanasing an animal in extremis because of the cost.
 - Prosecutions are more likely to succeed if they are required, as the animal owner should be fully aware of their responsibilities under the Act if they have been provided with support and information.
18. Should the current provisions that require inspectors under the Animal Research Act 1985 to be public servants who are also qualified veterinarians be retained, or should they be amended to allow for a more risk-based approach? Please explain your answer.
- A risk-based approach would be able to determine if the inspector was determining compliance with administrative issues or with assessment of animal welfare parameters such as procedures undertaken, environment under which the animals are kept and physical appraisal of animals. In the former case, veterinary knowledge would not necessarily be a prerequisite but access to veterinary expertise should be readily available for consultation. In the latter case, qualified veterinarians should be involved but they may not necessarily be public servants. Species experts who are not necessarily veterinarians could also be involved as the public servant or veterinarian may not have the necessary background in the behaviour of the species inspected.

19. Noting the educational focus of Stock Welfare Panels, would you support further consideration of how the Stock Welfare Panel process could be applied to support better welfare outcomes in non-agricultural cases?
- The process could be applied to animal welfare cases where hoarding of animals occurs (with possible mental health issues affecting the animal owner) and in some cases of companion animal breeding or boarding (animal rescue) enterprises where all aspects of animal welfare, especially psychological and physical health, are not addressed. This is dependent that the panel include veterinarians that are experienced in companion animals.
20. Are there any specific issues you would like to raise as we review the penalties for all offences under the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?
- There should be more serious consequences for persons who have ARAs cancelled on animal welfare grounds.
 - The current penalties are insufficient when compared to those used in other jurisdictions. Penalties for aggravated cruelty and repeat offenders should be increased compared to lesser offences to align with community expectations.
 - There should be powers of enforcement to enable animals to be removed from the care of the offender at the time of the alleged offence and not returned if an offence is proven. Currently, animals can remain with the offender until all legal avenues are exhausted. Boarding costs should also be available by enforcement agencies.
 - Educational programs and supervision for offenders may result in improved animal welfare in some cases than immediate penalties.
21. Would you support consideration of a risk-based approach to licensing under the Animal Research Act 1985 and/or Exhibited Animals Protection Act 1986, where it would not result in weakened protections for animals? Why?
- Without information on how such a risk-based approach would be performed, it is difficult to comment on the likely effect on the protection of animals. There would be a concern for potential unintended consequences.
22. Which areas within the animal welfare legislative framework could be improved to reduce unnecessary red tape or make requirements clearer?
- No comment

23. Do you have any comments on what role of panels and committee should be in supporting the new animal welfare legislative framework?

- The panels and committees should be independent, knowledgeable, well balanced and skills based rather than organisation representative based. Veterinarians should be appointed to each panel or committee to provide expert advice on animal health. If representing an organisation, they may not have the necessary skills required by the committee or panel. Animal welfare representatives should have a knowledge of welfare science and its application.
- Training should be provided for committee members and members should be adequately remunerated for their involvement.

24. Do you have any final comments about this reform?

- No comment

The AVA appreciates the opportunity to provide input into the current stage of the NSW Animal Welfare Reform Issues Paper.

References

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

² MELLOR, D J, PATTERSON-KANE, E, & STAFFORD, K J. *The Sciences of Animal Welfare*. UFAW Animal Welfare Series. Chichester UK: Wiley-Blackwell. 2009: 34-52

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

⁴ MELLOR, D. 2017. Operational Details of the Five Domains Model and Its Key Applications to the Assessment and Management of Animal Welfare. *Animals*, **7**, 60.

⁵ BROOM & FRASER (2011) *Domestic Animal Behaviour and Welfare*, 4th Edition, DM

⁶ LEDGER, R & MELLOR, D. 2018. Forensic Use of the Five Domains Model for Assessing Suffering in Cases of Animal Cruelty. *Animals*, 8, 101.

For further information please contact:

Dr Phoebe Fear
Executive Officer
Southern Region
E: phoebe.fear@ava.com.au P: 02 9431 5050

Dr Diane Ryan
President AVA NSW Division
E: doctordi1979@gmail.com P: 0417 019 878