



Review of the *Animal Care and Protection Act* 2001

Submission from the
Australian Veterinary Association
May 2021

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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 over 8000 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.

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Review of the *Animal Care and Protection Act 2001* – May 2021

Submission to the Queensland Department of Agriculture and Fisheries (QDAF) from the Australian Veterinary Association

Summary of Recommendations:

The Australian Veterinary Association (AVA) makes the following specific recommendations. More general discussion of options is in the text.

Recommendation 1. That reporting of animal welfare concerns is not mandatory for veterinarians. Where complex social situations exist, it is recommended that the government create positions of “veterinary social workers” who could be separated from the legal arm of the government and who could coordinate services to the person in need. It is acknowledged that inspectors have the option to have an educative approach but the fact that there is an inspector immediately would have a negative effect.

Recommendation 2 That reporting of animal welfare concerns is not mandatory for veterinary nurses. There is a wide range of training and qualifications of this group and most would not have the full understanding of the range of medical conditions that could present as potentially neglect.

Recommendation 3 That veterinarians play a facilitatory educational role to address animal welfare concerns. Where the situation is one of ignorance but with good intentions, there would be a greater benefit if the veterinarian were able to educate the client through the process rather than report them. In severe cases, veterinarians already voluntarily report abuse if they believe it to be necessary. If they felt that they would be ineffective in this facilitatory process and there was cruelty involved, it would be referred to inspectors in the great majority of cases.

Recommendation 4 That the list of prohibited traps be expanded to include opera house traps and steel jawed traps.

Recommendation 5 That both externally appointed inspectors and government inspectors be subject to an independent body for complaints made against them.

Recommendation 6 That the government make it legal for veterinarians to euthanase animals where they are injured or sick to the extent where it is cruel to keep them alive and the owners are not known or cannot be contacted.

Recommendation 7 That the Queensland Government adopts the Model Codes of practice for the humane control of pest animal species to ensure that the control of feral animals is done with the least suffering as possible. A regulation should provide for mandatory provisions in particular the prohibition of 5 inhumane measures). Currently other states have adopted these codes and there are alternatives for these 5 measures. Additionally the use of glue boards or drowning for rodent control should be prohibited.



Introduction

The Australian Veterinary Association welcomes the opportunity to input into the review of the *Animal Care and Protection Act 2001* (ACPA). The ACPA is essentially an excellent act and the first in Australia to include duty of care provisions as well as cruelty. Continuous improvement is the hallmark of excellence and the AVA welcomes the opportunity to review how it can be improved.

The AVA's response will address the discussion points in the discussion paper and also include other areas that the AVA feel can be strengthened.

Discussion Paper Areas

Purpose of the ACPA

While this is a reasonable purpose, with advances in science, many husbandry methods could do more to minimize pain. Practices such as cattle speying (internal surgery without anaesthetic) and mulesing (taking large volumes of skin off where the pain receptors are more concentrated) inflict significant pain on individual animals. While it is acknowledged that it is preventative to minimise further welfare impacts, perhaps rather than the purpose being to provide a balance, it could have a phrase at the beginning saying:

The purpose of the ACPA is to protect animals from pain while acknowledging that there is a balance between the welfare needs of animals and the interests of the people whose livelihood is dependent on the animals.

Prohibited events

The AVA agrees with the current list of prohibited events.

Reporting of animal welfare concerns by veterinary professionals

As frontline professionals called in to treat animals that are impacted by animal welfare situations, veterinarians play a pivotal role in ensuring good animal welfare through the treatment of animals, education of the client and if severe, reporting of the situation to authorities.

The AVA has concerns however about making reporting mandatory for animal welfare concerns. Issues include:

- Compliance usually begins with **an educative approach** before progressing to prosecution if the educative approach fails. While it is acknowledged that inspectors have these options, the act of referral of a 'concern' to inspectors will upset clients and can almost guarantee that that client will not return.
 - They feel their trust in the veterinarian has been broken – they are coming to fix a situation and then get reported for doing the right thing by the animal. **There is then a worse welfare outcome for the animal.**



- An opportunity will have been lost for the veterinarian to apply an educative supportive approach without blame.
 - The mandatory requirement to report creates a conflict of interest for veterinarians who are paid to assist their clients, then they must turn around and police them.
- As indicated in the discussion paper, **domestic violence (DV)** can be linked with animal abuse.
 - Persons living in a household where an animal is abused are at an increased risk of dying due to DV
 - However, animal abuse, and indeed DV, may be difficult to detect and it may be challenging to impossible for veterinarians to collect definitive evidence that this has occurred.
 - Veterinarians and their staff could potentially be put at risk from DV partners who could threaten and commit violence against them. DV is a complex social problem which requires a sensitive and coordinated approach from agencies. If the DV partner knows that there will be reporting, they are highly unlikely to take their animal to the vet as they will fear that their actions will cause repercussions for themselves from violent partners who will probably blame them for the situation. If reporting were to be required vets would need training to:
 - Recognise the signs of animal abuse
 - Elicit a history sensitively from clients; *and also be:*
 - Supported by appropriate, responsive authorities
 - Reasonably protected from legal recriminations *and have:*
 - Funding to perform the necessary diagnostic tests (Fawcett 2016)
 - There are situations where there is a likelihood of higher welfare issues where reporting would greatly reduce the likelihood of the veterinarian returning to the place. This is most likely to occur where there are **multiple animals and there are uneducated, unskilled or under resourced caregivers**. Situations could include animals in drought, mentally impaired or ill carers, the animal lover who has accumulated animals beyond their capacity (the overwhelmed caregiver) and indigenous communities where the dynamics of animal ownership is not one of intentional cruelty. These situations require a different approach and reporting by veterinarians in these situations is not likely to help the situation and indeed could possibly make the situation worse.
 - The current discussion paper indicates that animal welfare concerns would be reported by veterinarians and veterinary nurses. If this were to become law, then **potential unintended and unworkable consequences** may result. In particular,
 - there is likely to be an avalanche of reporting if every obese dog's owner was referred to the authorities because they were considered to be overfeeding and under exercising their dog. Note that rates of obesity in Australian dogs are very high.



- Also on a daily basis, veterinarians encounter owners who cannot afford the surgical and medical treatment the animal might need. Veterinarians generally make do with a lesser option or no option if the client refuses to the detriment of the animal. There are various shades and degrees of concern which potentially would mean vets would be reporting every day if the scope was not defined to a reasonable level.
- Veterinary nurses qualifications range from none to cert 4 level to degree level (vet technologists) of training and nurses might feel obliged to report situations where the vet has decided it is not a welfare issue but they think it is. An example might be a cat with kidney disease where the cat is losing weight where the vet nurse may not be unaware of the diagnosis but feels compelled to report it. This would put conflict between the vet and the vet nurse. If reporting were to be introduced, veterinary nurses should not be included.
- To make reporting mandatory for vets would create all sorts of problems for the relationships between vets and their clients, for problems within veterinary practices and, most of all, for the welfare of animals.

In summary, the AVA recommends:

- Veterinarians and veterinary nurses should not be subject to mandatory reporting.
- Where complex social situations exist, it is recommended that the government create positions of “veterinary social workers” who could be separated from the legal arm of the government and who could coordinate services to the person in need. It is acknowledged that inspectors have the option to have an educative approach but the fact that there is an inspector immediately would have a negative effect.
- Where the situation is one of ignorance but with good intentions, there would be a greater benefit if the vet were able to educate the client through the process rather than report them. Veterinarians would exercise their judgement and as they do now, if they felt that they would be ineffective in this process and there was cruelty involved, it would be referred to inspectors in the great majority of cases.

Regulated surgical procedures

The AVA agrees with the list of regulated procedures.

Supplying an animal that has undergone a procedure without a veterinary certificate.

The AVA is concerned that if an animal cannot be rehomed because of an illegal surgical procedure without a veterinary certificate, then the animal becomes the victim twice over. For example if a dog has its ears cropped, is the only option euthanasia or for the owner to keep the animal. It is understood that allowing rehoming may encourage more surgical procedures but perhaps the penalty might be increased for the owner and the animals could be surrendered to an inspector who could determine rehoming options.



Possession of certain traps and spurs

The AVA agrees with the current provisions but more should be added.

In particular **opera house traps** (for catching yabbies) which also trap and kill platypus and other non-targeted air breathing native fauna should be banned. While Queensland as regulated reducing the size of the entrance hole of traps being used east of the Great Dividing Range, platypus and other animals continue to be drowned. As there are alternative nets on the markets, there is no need for this to continue to be allowed.

<https://wildlife.org.au/national-approach-yabby-nets/>

Also **Steel jawed traps** should be banned. These traps are set mainly for dingoes/wild dogs and foxes. The traps inflict excruciating pain on these target animals, as well as many non-target animals, including kangaroos, wombats, possums, birds and lizards.

In Australia the steel-jaw trap is banned in the ACT and NSW, although it is still widely used in other states. It is also banned in 68 countries around the world, and in some states of America.

Steel-jaw traps don't kill - they snap shut on the leg or other body part when the victims stand on them. Unless trappers very regularly check their traps and kill trapped animals, the victims will die slowly of dehydration, starvation or infection. In one study, 10% of dingoes died in the trap of exposure, exhaustion and shock. (1)

https://www.wlpa.org/steel_jaw_traps.htm

Dogs

The AVA agrees with the proposals in the discussion paper. While unrestrained dogs in utes are regulated under the Transport Act, the AVA feels it better belongs in the ACPA.

Consideration would need to be given to working dogs on properties if restraints would interfere with the work they do by jumping on and off the truck frequently for property work.

With regard to extending this to open windows, the AVA would support this if the dog were restrained within the car so that a fall was not possible. The AVA does not think outlawing dogs being able to put their heads out of vehicle windows is necessary unless the window opening is such that the dog is at risk of falling out.

Using animals for scientific purposes

The AVA understood that under the current provisions that the current code is adopted regardless of changes.

The *scientific use code* means the 'Australian code for the care and use of animals for scientific purposes 8th edition (2013)', published by or for the National Health and Medical Research Council, including each new edition, as in force from time to time.



Therefore aligning the new provisions of the code to include creation and breeding of new animals is somewhat conflicting.

The AVA agrees in principle, however, has the following concerns:

- Unsure what this will impact – does this mean designer dog breeding will require ethics approval? It is agreed that using animals for diagnosis and product testing should require ethics approval, however what is the scope of biological products. Does this mean that animals providing colostrum or blood transfusion or tick antisera products will require ethics approval. The question is should animals that are part of production chain be dealt with under normal ACPA provisions of duty of care or cruelty or require ethics approval through an ethics committee.
- The Scientific Code deals with animal activities where new knowledge is gained (research) or imparted (teaching). Production deals with established techniques and boundaries are put around these through provisions in the Act.. An ethics committee decides if the potential new information gained or imparted can justify pain. The distinction between these new scenarios need to be carefully thought out.
- Ethical decisions are based on accepted values of right and wrong and differ from laws that are based on measured scientific consequences that are unacceptable. There is more rigor in the latter and larger consequences. Ethical approvals are based on a small committee of individuals where opinions may vary. For animals in established production lines that are not developing or teaching new knowledge, this seems out of scope for obtaining ethics approval.

Other provisions in the ACPA relating to the scientific use of animals are appropriate

- The AVA agrees in principle but is aware that the decisions of ethics committees are behind closed doors and that the experimental animal has no advocate for its welfare. In the clinic situation, the owner is the advocate for the animal.
- This discussion paper says that the purpose of the ACPA is to ensure that any use of animals for scientific purposes is accountable, open and responsible (section 3). In the Scientific Use Code, only the ethics committee is aware of what is happening and if there is an adverse or cruelty consequence, there is no investigation by government appointed inspectors but it is investigated by the ethics committee and maybe the institution. The ethics committee does not have training in investigative matters and in many cases the complexity of what they are approving may not be understood by all members of the committee. There is no way for the public to judge what is happening in the research arena – however teaching as a scientific purpose is more open and available for scrutiny. There also does not seem to be any consequence for an individual or institution to be accountable for cruelty as the most the ethics committee can do is to not approve future ethics applications for this individual. In other words, you can neglect to feed animals in an experiment resulting in death and you may not be subjected to normal prosecution processes with very heavy penalties including jail.
- The AVA would like transparency and accountability to be the pillars of the legislation.



Inspectors

The AVA agrees that powers are sufficient to effectively deal with animal welfare incidents.

Externally appointed inspectors: RSPCA inspectors are subject to the same standards as government inspectors. However, complaints against RSPCA inspectors are usually handled internally within the RSPCA inspectorate and the government has limited oversight of the way they are conducting their duties. Government also investigates their own complaints. This has the potential for abuse of powers to go without correction. An independent group should investigate all complaints against inspectors, both RSPCA and Government.

Compliance and enforcement

The AVA agrees that the current suite of compliance options is suitable. However, if veterinarians are required to report suspect cases of concern, there would be ideally be an educative element which had no connection to compliance whereby veterinarians could send owners for assistance rather than scrutiny of their actions.

PINS benefits would be reduced compliance costs and possibly more prosecutions. The disadvantage is that it would be easier for an inspector to issue a PIN and miss the opportunity for long term education for future prevention. Lower grade animal welfare incidents may be better managed with PINS and in the case of an owner just being lazy in their duty of care (as opposed to deliberate cruelty), it may be an effective way to smarten up their responses to ensure that the animal is looked after properly.

Managing seized animals

It is acknowledged that there are some situations whereby animals get impounded that cannot be fostered out such as aggressive dogs. The problem may be that the animal is impounded for months sometimes years before the court situation is known. However, there is a presumption of innocence until proven guilty and this should be upheld if at all possible. If it is deemed that the animal cannot be impounded for the length of the investigative time for its own welfare and fostering options are exhausted, any decision to euthanase or rehome should be authorised at the highest level of government with a defensible case to be presented to the Chief Veterinary Officer. The problem is at its base the length of time for court proceedings to proceed. Consideration could be given to shorten this process in the interests of the animal's welfare.

A bond would be a good way to minimise costs for the government and RSPCA, however, the amount should be reasonable and not regarded as extra revenue for the parties involved.



Other issues not in the discussion paper

The legal authority for a veterinarian to euthanase an injured or diseased animal where the owner cannot be contacted or is unknown

All other states and territories except Western Australia give veterinarians the legal authority and indemnity against prosecution to euthanase injured or sick animals where it is deemed cruel to keep them alive. The AVA has been in discussion for many years to change this situation in Queensland. Recently the AVA has written guidelines for veterinarians for due diligence when making this decision to give the public confidence that sufficient effort has been made to contact owners and that the decision to euthanase is based on animal welfare grounds.

The current situation is that seriously suffering animals are not allowed to be euthanased by veterinarians unless they have the owners permission. While there has been some interpretation that the duty of care provisions provide an obligation for treatment, the term treatment is not defined and is widely interpreted as helping an animal get better, not killing it. The situation is not clear as it is in other jurisdictions where veterinarians are given specific permission in the act to euthanase animals where it is cruel to keep it alive but the owner cannot be contacted or is unknown. Animals suffer unnecessarily by a delay in getting an inspector to give permission as they do have those specific powers and authority. Ironically, the inspector often seeks the veterinarians opinion before

Recommendation: That the government make it legal for veterinarians to euthanase animals where they are injured or sick to the extent where it is cruel to keep them alive and the owners are not known or cannot be contacted. Guidelines have been developed by the AVA for veterinarians who are faced with these situations.

SEE APPENDIX: GUIDELINES FOR VETERINARIANS FOR THE EUTHANASIA OF INJURED OR SICK ANIMALS WHERE AN OWNER CANNOT BE IDENTIFIED OR LOCATED

Feral animal control

Recommendation: The AVA recommends the adoption of the Model codes of practice for the humane control of pest animal species to ensure that control is done with the least suffering as possible. A regulation should provide mandatory provisions relating to the Codes, in particular the prohibition of 5 inhumane measures outlined below. In addition, The use of glue boards or drowning for rodent control is also inhumane and should be prohibited.

Control of native and introduced animals causing damage to agriculture or habitat

All control must be consistent with the *Model codes of practice for the humane control of pest animal species* and these codes should be adopted into all State government animal welfare legislation.



Control programs must have a firm scientific basis and take account of animal welfare. Methods should be rigorously evaluated and subjected to community consultation before being implemented and should be specific for the target species.

Control programs should aim to identify and minimise the unwanted impact of the pest species rather than simply controlling the species itself. The number of animals culled is not an indication of outcomes. Programs must be subject to monitoring and assessment of outcomes, including any unintended consequences, with a view to reassessing and updating controls accordingly. This in order to ensure efficacy and compliance with humane principles at all times.

Where possible, programs should be planned around seasonal breeding to minimise welfare impacts on unweaned offspring.

Decisions about the method of control should be guided by the *Model for assessing the relative humaneness of pest animal control methods (Sharp and Saunders, 2008)*

It is noted that rodent control is not covered in this model and there are no Codes of Practice or Standard Operating Procedures for rodents. Therefore, the AVA advocates the development of guidance documents for rodents.

Methods used to kill animals must be rapid and humane; participants in harvesting and/or culling operations must be adequately trained and demonstrate competency and methods used must have minimal effect on non-target species. Operators should also be aware of and take precautions against diseases that can be transmitted from feral animals to humans or domestic animals (e.g. *Brucella suis* can be transmitted to humans or domestic dogs). Landholders should be encouraged to undertake control programs in conjunction with neighbouring landholders (including crown lands) to maximise the effectiveness of the control program.

Biological control agents must have minimal effect on the normal behaviour and demeanour of the animal (unless such effects are part of the control objective). Where agents will cause death of some animals, death should be as rapid and as free from pain, apprehension or disorientation as possible. The level of these undesirable effects should be comparable with, or less than, effects caused by non-biological control agents. Individuals that recover should be minimally affected.

There are five methods of control currently available that have been assessed as inhumane (Sharp and Saunders 2008) and should not be used in Australia. These are

- CSSP (yellow phosphorus) for pig control
- Strychnine bait for dogs, foxes and cat
- Unmodified serrated jawed traps
- Warfarin bait for pigs
- Chloropicrin fumigation for rabbits



Currently other states have adopted these codes and there are alternatives for these 5 measures as shown below.

CSSP (yellow phosphorus) for pig control	Sodium Nitrite HogGone ®
Strychnine bait for dogs, foxes and cat	PAPP
Unmodified serrated jawed traps	Foot hold modern traps or modified serrated jawed traps
Warfarin bait for pigs	Sodium Nitrite HogGone ®
Chloropicrin fumigation for rabbits	Phosphine fumigation

The use of glue boards or drowning for rodent control is also inhumane (Mason and Litten 2003) and should not be used.

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APPENDIX

GUIDELINES FOR VETERINARIANS FOR THE EUTHANASIA OF INJURED OR SICK ANIMALS WHERE AN OWNER CANNOT BE IDENTIFIED OR LOCATED

Guidelines for veterinarians

Aim:

These guidelines provide assurances for the government, the public and veterinarians that due diligence is being followed to ensure a reasonable decision is made when taking the decision to end an animal's life in circumstances where contact with the owner cannot be established or when the animal has been deemed unowned.

Definition of animal:

This includes all animals except for protected, international or prohibited animals as defined in the Nature Conservation (Animals) Regulation 2020 where separate authorisations exist.

Background:

Veterinarians in Queensland do not have a legal obligation to attend to seriously injured or sick animals where the owner is unknown or cannot be contacted. However, once an animal has been admitted into a veterinary clinic, they become the person responsible for that animal and have an obligation under the *Animal Care and Protection Act 2001* (ACPA) to provide adequate and timely care to the animal to reduce suffering.

Procedure

This is to be followed when the veterinarian forms a professional opinion that an animal should be euthanased due to its assessed situation being that the animal is suffering and it is cruel to keep it alive.



Attempt to contact the owner

With critical animals or animals in significant pain this may be done by another staff member concurrently or may have to be done once the animal is stabilised. Attempts to contact the owner should be made BEFORE euthanasing any animal (but not before that animal is stabilised and/or received pain relief).

- Check for owner details on the collar/tag.
- Scan for a microchip and contact agency for owner's contact details and/or alternative caretaker contact details.
- Leave a message if you cannot speak directly to the owner or alternative caregiver.
- Try as many times as would reasonably be expected in the circumstances.
- Make sure that you document all attempts to contact the owner in the patient record.
- If there is no contact information, make reasonable enquiries to try and ascertain ownership before euthanasing any animal. This may be by querying the person who brought the animal in, checking any lost and found notices on internet pages (Facebook) or contact local pound/animal shelter in case the animal has been registered as missing with them.

Assess the patient

- Perform a clinical/physical examination or triage the patient as appropriate in the circumstances.
- Establish a clinical status or diagnosis and include a prognosis (e.g. clinical assessment/status may be broad such as "Reduced consciousness, severe cardiovascular instability, likely to die" etc without an exact diagnosis)
- Provide initial treatment including pain management and first aid as would be reasonably expected in the situation
- Write detailed clinical notes in the patient record to justify decision-making

When euthanasia is the best option:

Euthanasia should be seriously considered in a number of circumstances including (but not limited to) the following.

- An animal is assessed as most likely to die from its injuries or where the conditions and pain and suffering cannot be sufficiently and effectively controlled or managed.
- The veterinarian reasonably believes that the animal is suffering to the extent that it is cruel to keep it alive
- Treatment to suffering animals requires significant resources beyond first aid and pain relief and it is assessed that the animal will likely suffer and die without ongoing treatment and care.
- If the animal is likely to cause severe injury or death to other animals or people if it is not euthanased and cannot be practically restrained or contained to prevent this outcome.
- While recognising that veterinarians have the clinical training to make a decision on their own, for increased confidence to the public and community, if there is another veterinarian available,



a second opinion from another veterinarian is recommended provided that any delay will not result in prolongation of the suffering of the animal.

- Document any second opinion in the patient record.

Euthanasing an animal

- Use a method of euthanasia that is most appropriate for the individual animal and the circumstances at the time. Euthanase the animal in a manner that causes it to lose consciousness quickly and die without regaining consciousness, while minimising fear and pain and with appropriate safeguards for the people involved with the procedure..
- For those animals that have an identification that point to an owner or carers who cannot be contacted in a reasonable time (depending on the individual case), it is important to justify euthanasia based on:
 - probability of dying with suffering
 - prevention of protracted suffering/debilitation, or
 - on other animal welfare grounds.

Alternatives to euthanasia in situations where it is not immediately necessary

- Where an animal is stable and not suffering (with or without analgesic intervention) owners should be given more time to come forward to claim their animal.
- Consider options for stable animals that are not suffering to be transferred to an appropriate shelter that is equipped to deal with any ongoing care or to a local authority
- Stable animals that are not suffering may be temporarily fostered if the council/shelter does not have appropriate facilities to hold and treat them until:
 - the owner comes forward
 - they can be relinquished to the council
- Ensure regulatory requirements are met If livestock needs to be transported.

Note: *If a veterinary surgeon wishes to transfer an animal to an RSPCA shelter, RSPCA requests that a call should be made first to discuss the case. The animal must be deemed stable enough and any pain is appropriately managed before transfer occurs.*

Records

- Ensure accurate clinical records are kept. These include:
 - actions taken to identify the owner (e.g. microchip scanning, identifying tags or markings)
 - how, when, and how often contact with the owner was attempted
 - clinical/physical examination findings, assessment and differential diagnoses and prognosis
 - second opinion from another veterinarian if practical
 - any other clinical supportive evidence such as images, or video to show the extent of the condition and timestamp these images by emailing them to yourself
 - any treatment administered or procedures undertaken
 - how the animal was euthanased
 - who was present
 - how the body was disposed of.



- For further information on the minimum standard expected for veterinary patient records can be found on the Veterinary Surgeon's Board of Queensland website at <https://www.vsb.qld.gov.au/resources/guidelines/guidelines-practitioners/veterinary-records>

If you have euthanased an animal without being able to contact the owner and the owner subsequently comes forward to pursue legal action, please contact your insurer immediately.