

Review of the Northern Territory Animal Welfare Act



From the Australian Veterinary Association Ltd

10 April 2014

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Executive summary

The Australian Veterinary Association (AVA) is the national organisation representing veterinarians in Australia. Its 8000 members 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.

Background

Animal welfare legislation traditionally consists of four elements:

1. Rationale
2. Objectives
3. Standards
4. Enforcement

Each of these can then be broken down further. The rationale is:

When humans make use of animals, or alter in any way their natural environment, a level of care should be established that befits human dignity as rational and compassionate beings.

Such care should be humane, which implies empathy with the animal, an avoidance of unnecessary stress, and the demonstration of compassion towards a fellow creature.¹

The 'Five Freedoms' should be used as the basis for of all animals in human care. Freedom from hunger and thirst, freedom from pain, injury and disease, freedom from discomfort, freedom to express normal behaviour, and freedom from fear and distress.

The other three elements each have two parts:

Element		
Objectives	Prevention of cruelty	Sustainable improvement of welfare
Standards	Offences	Guidelines
Enforcement	Educative	Punitive

¹ Australian Veterinary Association policy, "Philosophy on animal welfare and the veterinarian"
<http://www.ava.com.au/policy/11-philosophy-animal-welfare-and-veterinarian>

Further, the whole structure needs to align with other jurisdictions to give the maximum possible national consistency, and it also needs to be flexible enough to allow for sustainable improvement of welfare standards as understandings of animals increases.

Recommendations

The need for a new Act and objectives

There have been several recent changes to the Northern Territory's approach to animal welfare in recent years. This was largely sparked by the incidents at Mataranka Station and the subsequent Ombudsman Investigation and the Parliamentary Inquiry. A number of the recommendations of these have been implemented, however a large number remain unaddressed. Further, there are a number of recommendations from the 2007 Kanzen Partners review of the Act that were never implemented – some of which may have mitigated the errors that occurred at Mataranka.

Some of the recommendations from these reviews that remain unimplemented include:

- improved national consistency through the adoption of national standards
- definition of 'Animal' be amended to include fish
- standards and Codes of Practice to be adopted through regulations under the Act
- creation of an offence in relation to non-compliance with a Standard
- provision for the imposition of a 'corporate' penalty as well as a penalty for an individual (note that this should be included for all offences under the Act)
- provide for the issue of 'improvement notices' by the Authority on the recommendation of an inspector.

The use of objects in legislation varies across states and territories. While they are not used for the primary interpretation of the legislation, they do give some guidance in situations where the specific meaning of the legislation is unclear.²

Of the jurisdictions that currently include objects (or purposes) in their legislation, Victoria could be considered to have a light touch approach. While it includes a statement of preventing cruelty to animals, the remainder of the section use soft language to, "encourage the considerate treatment of animals", and "improve the level of community awareness about the prevention of cruelty to animals".³

The relevant clause in the Queensland Act specifically addresses the issue of balancing the economic value of production animals against animal welfare outcomes. Section X(b)(ii) notes that the use of animals should, "achieve a reasonable balance between the welfare of animals and the interests of persons whose livelihood is dependent on animals".⁴

The wording used in NSW and WA could be considered to be the most strongly worded.

NSW	The objects of this Act are: (a) to prevent cruelty to animals, and (b) to promote the welfare of animals by requiring a person in charge of an animal: (i) to provide care for the animal, and (ii) to treat the animal in a humane manner, and (iii) to ensure the welfare of the animal.
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² NT – *Interpretation Act*

³ Victorian – *Prevention of Cruelty to Animals Act 1986*

⁴ Queensland – *Animal Care and Protection Act 2001*

Qld	<p>Purposes of Act</p> <p>The purposes of this Act are to do the following—</p> <ul style="list-style-type: none"> (a) promote the responsible care and use of animals; (b) provide standards for the care and use of animals that— <ul style="list-style-type: none"> (i) achieve a reasonable balance between the welfare of animals and the interests of persons whose livelihood is dependent on animals; and (ii) allow for the effect of advancements in scientific knowledge about animal biology and changes in community expectations about practices involving animals; (c) protect animals from unjustifiable, unnecessary or unreasonable pain; (d) ensure the use of animals for scientific purposes is accountable, open and responsible.
Vic	<p>Purpose</p> <p>The purpose of this Act is to—</p> <ul style="list-style-type: none"> (a) prevent cruelty to animals; and (b) to encourage the considerate treatment of animals; and (c) to improve the level of community awareness about the prevention of cruelty to animals.
WA	<p>3. Content and intent</p> <ul style="list-style-type: none"> (1) This Act provides for the protection of animals by — <ul style="list-style-type: none"> (a) regulating the people who may use animals for scientific purposes, and the manner in which they may be used; and (b) prohibiting cruelty to, and other inhumane or improper treatment of, animals. (2) This Act intends to — <ul style="list-style-type: none"> (a) promote and protect the welfare, safety and health of animals; (b) ensure the proper and humane care and management of all animals in accordance with generally accepted standards; and (c) reflect the community's expectation that people who are in charge of animals will ensure that they are properly treated and cared for.

Question 1: Do we need a new Animal Welfare Act? If so, why?

For the reasons detailed above, the Australian Veterinary Association recommends that a new Animal Welfare Act is needed in the Northern Territory.

Question 2: What should the principle objectives of the Act be?

That objectives based on the NSW model be adopted.

Definition of Animal

While some jurisdictions around the world are experimenting with shifting the property paradigm with which society deals with animals to one more akin to guardianship, the legal definition of animals as personal property predominates, certainly within Australia. Domesticated animals are considered personal property of individuals (whether companion or production). Wildlife has been deemed, through common law, to be the property of the state.

The law has also recognised the special nature of animals through state-based animal welfare legislation, which generally imposes a duty of care upon the owner of an animal and a general prohibition of acts of cruelty to animals.

Different jurisdictions offer different definitions of animals and specific exemptions and conditions for specific classes of animal. The main area of difference appears to be in regard to fish.

Currently the NT Act includes only captive fish. The question raised in the discussion paper considers whether wild fish should be included within the definition of animal.

The Australian Animal Welfare Strategy Aquatics Working Group were committed to the inclusion of fish in this definition⁵. They stated,

*Currently science cannot definitively answer the question of whether fish feel pain. However, both sides of the scientific divide indicate that, regardless of the ability of fish to perceive pain, nociceptive stimuli have the ability to induce robust stress responses in fish that, uncontrolled, are harmful to the overall wellbeing of the animals and that more research is required to identify appropriate welfare criteria.*⁶

Further to this, the current controversy over the maiming and culling of sharks highlights the need for the extension of these protections to aquatic environments. A further example is the recent treatment of a puffer fish that made the front page of the NT News⁷. While there may be some impact on fishing activities, these can be addressed through a code of practice. This will be discussed later in this submission.

Question 3: What definition of “animal” should be used in the Act?

The Act should use the same definition of animal as included in the Code, that being:

any live non-human vertebrate, that is, fish, amphibians, reptiles, birds and mammals, encompassing domestic animals, purpose-bred animals, livestock, wildlife, and also cephalopods such as octopus and squid.

Animal Welfare Authority

Jurisdictions administer their animal welfare inspectorates in different ways. South Australia engages the RSPCA to perform the role and hence leverages the added independence and funding that the RSPCA brings to the role. A number of other states also outsource the role to various welfare organisations.

In addition to this, there are some differences in where the relevant animal welfare units sit within government. Generally this is in the Department of Primary Industries (or equivalent), but may also be the Department for the Environment or Local Government.

Wherever the unit rests, there is a need to ensure a degree of independence from other sections of the government. This is most pronounced with the Department of Primary Industries where conflicting operational cultures may make the work of the inspectorate difficult.

⁵ www.australiananimalwelfare.com.au

⁶ Johnston and Jungalwalla (no date) “Aquatic Animal Welfare Guidelines”, National Aquaculture Council.

⁷ <http://www.australiananimalwelfare.com.au/app/webroot/files/upload/files/AA%20welfare%20guidelines.pdf>

⁷ <http://www.ntnews.com.au/lifestyle/fishing/angler-taunts-puffer-fish-before-kicking-it-into-ocean-before-shocked-tourists/story-fnkchy3h-1226877010283>

As detailed in the Discussion Paper, the name of the Animal Welfare Authority is somewhat misleading in its independence. There is little reason for this to be maintained, however the animal welfare unit should be at such a level within the Department that it reports directly to the Chief Executive of the Department and not indirectly through another animal-related section.

Question 4: Would it be better to abolish the Animal Welfare Authority so that it is clear and transparent that the Chief Executive responsible to the Minister for the operation of the Act?

The Animal Welfare Authority can be abolished, provided the animal welfare unit is at such a level within the Department that it reports directly to the Chief Executive of the Department and not indirectly through another animal related section.

Authorised officers

Operations of authorised officers under the Act are essential for the effective enforcement of the legislation. They need to have sufficient powers, training and appropriate police clearances to effectively administer the Act.

It is also important to note that in some cases the powers afforded to authorised officers under the Animal Welfare Act are strong. This is particularly in the case of access to private property where there is a suspicion that an animal is in immediate danger. For this reason it is essential that training of officers is to a high standard.

There are a number of differences in the way that research facilities are licensed under the Act. Inspection of these facilities often requires specialised knowledge and as such, most jurisdictions deal with authorised officers for these purposes differently to general inspectors. It also allows the Inspectorate to engage persons with specific expertise in these roles without also having them as general inspectors. Further, there is a current requirement for these officers to be registered veterinarians – this requirement should remain in place.

There are also current provisions in the Act for all registered veterinarians to alleviate suffering. Section 22 of the Act states:

22 Power to alleviate suffering

- (1) If a veterinarian is of the opinion that:
 - (a) an animal is so severely injured, diseased or in such a poor physical condition that it is cruel to keep it alive; and*
 - (b) the animal:
 - (i) is not about to be destroyed; or*
 - (ii) is about to be destroyed in a manner that will inflict unnecessary suffering on it,***the veterinarian may destroy the animal, or cause it to be destroyed, in a manner that causes it to die quickly and without unnecessary suffering.**
- (2) In exercising a power under subsection (1), a veterinarian may first remove the animal to a place he or she considers appropriate for the purpose.*
- (3) A veterinarian who exercises a power under this section is entitled to receive from a person in charge of the animal the reasonable costs incurred in exercising the power and may recover those costs in a court of competent jurisdiction as a debt owed to the veterinarian.*

This power should be retained in the updated Act.

Question 5: Should there be just one category of authorised officer with powers appropriately specified upon appointment?

There should continue to be two principal types of authorised officer, however the terminology should follow that used in Western Australia (ie General Inspector and Scientific Inspector) in order to be clearer about their respective roles. The requirement for Scientific Inspectors to be registered veterinarians should be maintained.

Question 6: Are the powers mentioned above sufficient?

The powers detailed in the discussion paper are adequate. The AVA would however highlight a number of principles that should be in place in regard to the determination of these powers. In detailing these, the AVA recognises that these powers currently exist:

- Where inspectors are required to access private property without consent of the owner this should only occur under a warrant or in situations where the inspector has a genuine reason to believe that an animal is in immediate risk of harm.
- Transfer of ownership or disposal of an animal without the owner's consent can only occur through an order of the court unless, in the opinion of a veterinarian, the animal should be euthanised to alleviate suffering.

Question 7: Who should appoint authorised officers?

If the Animal Welfare Authority is abolished, then it is reasonable that authorised officers are appointed either by the Chief Executive or by the Minister.

AWAC

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 the NT, but it also provides an important communication mechanism with key stakeholders important to the animal welfare sector.

The composition of the committee should be defined within the Act and representing bodies should be limited to peak bodies rather than individual or privately owned businesses. The AVA strongly recommends that it remain as a representative on the committee.

Question 8: Should the Committee be a non-statutory body similar to NSW, Victoria and WA?

AWAC should continue to be a statutory body that consists of representative bodies defined in the Act (including the AVA) and a Chair elected from within the committee.

Definition of cruelty and offences

The Australian Veterinary Association supports recent changes to the Act that separated offences to:

- Duty of care
- Cruelty
- Aggravated cruelty

The duty of care should be based on the Five Freedoms. These are well understood and used by governments and animal welfare organisations worldwide.

- Freedom from hunger and thirst
- Freedom from pain, injury and disease
- Freedom from discomfort
- Freedom to express normal behaviour
- Freedom from fear and distress

The 'Five Freedoms' ensure good welfare standards as defined by good physical and mental health.

In addition to cruelty and aggravated cruelty, there should be a listing of other offences to address specific prohibited practices. While these would not be exhaustive, nor would they in any way limit other offences under the Act, they would provide clarity about the illegality of specific activities.

Question 9: Should the actions that amount to cruelty or aggravated cruelty be expanded in more detail? If so, what should be included?

The current provisions in the Act are sufficient.

Question 10: Should any offences be added to those that exist in the Act?

Other offences that should be added are:
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| <ul style="list-style-type: none">• Performance of any surgical procedure for other than legitimate medical reasons is unacceptable (Surgical alteration to the natural state of an animal is acceptable only if it is necessary for the health and welfare of the animal concerned).• Use and possession of prong collars• The use of dogs to attack and bring down feral pigs |
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Exemptions

Exemptions to animal welfare legislation are most often raised in regard to fish. The AVA believes that,

... when fish are farmed, kept in aquaria or captured from the wild for commercial or recreational purposes all efforts must be taken to minimise suffering of the fish.

The Australian Veterinary Association (AVA) should be actively involved in the development and review of regulatory and advisory frameworks for fish welfare.⁸

⁸ Australian Veterinary Association policy, "Fish welfare" <http://www.ava.com.au/policy/143-fish-welfare>

Specifically, in relation to wild fish the following should be adhered with:

Handling of live fish

Any handling of live fish should be undertaken in a manner that avoids damage and stress to the fish. Prolonged handling (e.g. for health checks, veterinary treatment, artificial reproduction etc) should be undertaken using an anaesthetic approved and appropriate for the species and numbers of fish involved.

Any captured fish that is to be released should be handled as little as possible, and if possible should not be removed from the water, to increase the chances of a successful release. The use of knotless nets and circle hooks is encouraged because such devices will minimise physical damage to the fish prior to release.

Killing of fish

The killing of any fish should be carried out promptly and by humane means suitable for the species and numbers involved, recognising that methods may vary between species and according to available technology and equipment.

Question 11: Should there be exceptions or exemptions in relation to the application of the Act and if so, what for?

There should not be any exemptions from the Act, however the development of a Code of Practice for recreational and commercial fishing should be developed and adopted.

Question 12: Should the power of the Minister to exempt people, or a class of persons, from complying with the Act be retained?

This power should be removed.

Question 13: Should the power of the Minister to prevent the Act applying to an animal, or class of animals, be retained?

This power should be removed.

Codes of practice

The use of Codes of Practice in animal welfare legislation is well established in Australia. The Model Codes of Practice and more recently Animal Welfare Standards and Guidelines through the Australian Animal Welfare Strategy (AAWS) provide increasing national consistency in animal welfare standards and improvement in overall standards.

The Codes of Practice model allows for the improvement of standards as knowledge of animal welfare improves without needing to have Parliament constantly reopening the Act. Where national codes exist, they should be adopted in full and breaches of the Code should also be included as a specific offence under the Act.

Where national codes of practice do not exist, then NT-specific codes should be developed. This need not be onerous, as between the different state jurisdictions there is an increasing wealth of information that could be drawn upon.

Question 14: Should codes be adopted by including reference to them in the Animal Welfare Regulations rather than by Gazette notice?

In the interests of improved clarity, ideally the codes could be adopted via the Animal Welfare Regulations. This way they are consolidated in one place and are much more accessible to the public than having to search through historic copies of the Gazette. However, if this would unduly restrict the Government in adopting updated codes in a timely fashion, then Gazette notice would be an acceptable method – provided a consolidated listing of the codes and the codes themselves are readily accessible to the public.

Question 15: Should codes that have been adopted have to be clearly identified and available on the Department website?

For a similar reason to the above, access to the codes should be made available on the Department website.

Question 16: Should non-compliance with an adopted code be an offence?

Non-compliance with the adopted codes should be an offence under the Act.

Scientific research

The current system in the Northern Territory for licensing research involving animals is somewhat dated. In particular the licensing of individual premises does not seem to fit a research environment where activities may occur outside of traditional research facilities.

The regulation of the use of animals in research and teaching is an important part of animal welfare legislation and it makes up a substantial portion of the Act. The AVA supports regulation that is in line with the recently finalised 8th edition of the “Australian code for the care and use of animals for scientific purposes”.

The AVA supports a legislative model that sees NT move away from licensing premises. A number of other jurisdictions have models that are worth considering – each has strengths and weaknesses.

While the Queensland legislation emphasises the licensing of individuals, our understanding is that it is predominately institutions that apply under section 52(2)(b)(iv) of the *Animal Care and Protection Act 2001*.

It has also been argued that the model used in ACT, Tasmania and South Australia ensures that institutions take additional responsibility which gives support to Animal Ethics Committees (AEC). In these cases it supports the AEC and the institution to ensure compliance by researchers.

Question 17: Would it be a good idea to have a registration system like Queensland has?

The AVA supports a move away from licensing premises to one in which institutions are licensed, while also providing opportunities for individual researchers. Prior to finalising a model for the new NT legislation, the AVA recommends that the various benefits of the South Australian and Queensland models are assessed.

Question 18: Should there be fees for licensing/registration?

Yes.

Animal Ethics Committees

Animal Ethics Committees (AEC) are a very important part of the regulation of the use of animals in research. As the “Australian code for the care and use of animals for scientific purposes” states:

The primary responsibility of an AEC is to ensure, on behalf of the institution for which it acts, that all activities relating to the care and use of animals are in compliance with the Code.

It is essential that they are appropriately skilled and resourced. Because of the limited number of research and teaching institutions in the Northern Territory, there can be a substantial workload placed on those AECs that exist. In situations where AECs are servicing researchers from outside their sponsoring institution, it can lead to a difficult financial burden on the institution. Currently there is no effective way of accounting for these costs.

Question 19: Should Animal Ethics Committees be able to set their own fees to defray some of the administrative and attendance costs?

Yes.

Question 20: Should the NT require any other types of people on an AEC? For example, should there be a person with legal knowledge to help interpret the law?

The current make up of an AEC is sufficient, however the AVA does raise the question of whether a lay person is needed on these committees. In regard to other specialised skills, while the AEC should have access to legal advice if needed, this is not an adequate reason for requiring the formal inclusion of a person with legal expertise on the committee.

Pounds Act

Question 21: Is there any reason to keep the Pounds Act?

No comment.