



Australian Veterinary Association

Submission

Animal Welfare Act - Victoria

December 2020



The Australian Veterinary Association (AVA)

The Australian Veterinary Association (AVA) is the only national association representing veterinarians in Australia. Founded in 1921, the AVA today represents 9000 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.

The Australian Veterinary Association is grateful for the opportunity make a submission to the Directions Paper for “*A new Animal Welfare Act for Victoria*” that intends to modernise current legislation by replacing Victoria’s *Prevention of Cruelty to Animals Act 1996*. We acknowledge that the new Act is intended to safeguard animal welfare in line with both scientific understandings and community expectations. We understand this is the initial stage in the process to seek feedback on a range of policy proposals and that further consultation on technical reforms will occur in the future, once the key aspects of the new Act are settled.

Preamble

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 in addition to striving for continuous and incremental improvement in the treatment and welfare of animals.¹

Theme 1: Safeguarding Animal Welfare

1.1 Animal Sentience

Animals are sentient beings that are conscious, feel pain, and experience emotions.² Animals that are known to be both conscious and sentient include all of the vertebrates, and some classes of



invertebrates such as cephalopods and probably some crustacea. Ongoing research may lead to inclusion of additional groups within this definition. Sentience is the capacity to experience emotions: pain, suffering, negative and positive affective states. AVA agrees that it is important for the new legislation to acknowledge this.

Further, the AVA recommends that the principles of the Five Domains are enshrined in the new legislation.³ The Five Domains looks at animals' needs in five "domains" of potential welfare compromise, and the degree to which those needs are - or are not, met. The first four physical domains are nutrition, environment, health and behaviour. The fifth "mental" domain describes how those negatives (and positives) in the physical domains combine to affect an animal's experience. Contemporary animal welfare science aims for a reduction or elimination of the negative experiences, and a predominance of positive states in each domain, so that an animal experiences a "life worth living."

[Option 2](#) is preferred as including sentience as one of the new Act's principles means that this is a consideration in interpretation of the Act and guides decision makers in the exercise of powers and in the drafting of subordinate legislation. Limiting the use of the term to the definition of animals does not achieve this.

1.2 Minimum Standards of care

AVA supports the inclusion in the new Act for a requirement for people to provide a minimum standard of care to all animals. This is critical to clearly distinguish the new Act from the dated 'prevention of cruelty' focussed legislation.

It is essential that the physical, social and welfare requirements of the animal are considered before they are acquired, not just the needs and wants of the owners. This commitment and duty of care remains throughout the life of the animal. Comprehensive and harmonised companion animal legislation between states and territories is desirable.⁴

This is best framed in the context of a 'universal' duty of care. However, it will be important that there are clear guidelines or standards that make it very clear what that minimum standard (or duty) of care is, and how it can be met. For many people this requirement of itself will be difficult to interpret. Clearly different standards of care (a higher duty of care) applies to people who own, use, breed and race animals - and this will need to be set out.

The Queensland Animal Care and Protection Act 2001 (ACPA) includes duty of care provisions and these have been successfully applied in that state – the AVA suggests that the ACPA provisions are perused and considered by Animal Welfare Victoria.

Consideration could be given to adopting the 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)⁵ and 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 animal.



1.3 Prohibited Acts

The specification of a fixed list of actions/behaviours that constitute cruelty is a feature of the current POCTA Act and was common in the ‘older’ cruelty-focused legislation.

The proposal to have a set of escalating offences is supported in principle, but we would like to see more detailed examples of the offence provisions via appropriate consultation. We also note that this area is related to considerations under Theme 3. An over-reliance on prosecution for offences (mostly after the fact) to regulate behaviour is not effective, particularly given the intention (which we support) to broaden the scope and focus of the new Act to deal with that part of the animal welfare spectrum that is about promoting and achieving good standards of care and welfare as against simply preventing cruelty or taking action after it has occurred. This is also consistent with the contemporary and widely accepted ‘affected states’ paradigm for animal welfare.

It may be beneficial that prohibited acts that are considered cruel and listed in the Act (or Regulations) provide an explanation of why and the situations when these acts are considered unnecessary, unreasonable and unjustifiable, 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.

Appropriate enforcement and penalties for animal cruelty must be in line with community expectations – currently they are not.

1.4 Controlled procedures

The proposal to have three types of controlled procedures is noted, and in general, supported. As most of the detailed prescription is intended to be in Regulations, we would clearly reserve the right to comment more fully when regulations are being drafted.

Retaining prohibited procedures is important and will presumably largely mirror current prohibitions.

Scientific procedures – including the use of animals for teaching – are comprehensively dealt with under the national Australian Code for the care and use of animals for scientific purposes (currently 8th Edition 2013). AVA strongly advocates that Victoria’s regulation of the use of animals for scientific purposes adopts or closely conforms to provisions in the Australian Code. This also ensures national consistency and facilitates the movement of scientists, scientific projects, and ethics committee members between institutions in different states/territories of Australia.

However, the AVA does recommend that there should be much greater veterinary oversight of invasive and painful procedures conducted by non-veterinary researchers, including training and assessment of competency by suitably experienced veterinarians. This is over and above veterinary presence in Animal ethics committees – the Code requires that a practical “program of veterinary care” is implemented in each institution. AVA advocates that this should not be merely a token presence but that the facility veterinarians should play an active role in direct assessment of competence of researchers to undertake invasive and painful procedures, including direct



assessment and approval of anaesthetic and peri-operative analgesic protocols as well as surgical technique, and ongoing monitoring of outcomes.⁶

With respect to the use of animals in teaching, there are some current exemptions – such as private pre-school learning centres and kindergartens - that should be reviewed when the new legislation is being drafted, and we look forward to further opportunity to comment at that time.

Restricted Procedures

The performing of acts of veterinary science must be restricted to registered veterinary practitioners, in order to protect the health, safety, and welfare of animals.⁷ The AVA supports the proposal to regulate/restrict certain activities or procedures by specifying the qualifications, skills and/or competencies required to perform them. Some of these procedures will be outside of any definition of ‘acts of veterinary science,’ but require demonstrated skills or competencies in those people performing them.

An ‘act of veterinary science’ means services which form part of the practice of veterinary surgery and medicine, and includes:

- the diagnostic confirmation of, treatment of, and provision of management advice for infectious disease, physiological dysfunction, psychological dysfunction and injury in animals;
- performing invasive or surgical procedures on animals;
- administering anaesthetics to animals;
- the exercise of prescribing rights for veterinary chemicals, medicines or poisons which may be restricted by scheduling or registered label; and
- the provision of veterinary certificates.

It will be important that the current protections – for instance to livestock producers carrying out animal husbandry and care procedures in accordance with agreed standards/codes remain.

The AVA have lobbied government for many years to reinsert ‘restricted acts of veterinary science’ into legislation. Victoria is currently the only state or territory in Australia to not have ‘restricted acts of veterinary science’ embedded in legislation. This poses an unacceptable risk to animals in Victoria, of poor animal welfare outcomes as a result of unqualified persons undertaking potentially painful and invasive procedures on animals.

The AVA therefore supports the proposal to limit certain procedures to registered veterinary practitioners and note that it is intended that specific details of these procedures will be set out in Regulations. AVA supports this, as there needs to be flexibility to review and change these provisions should practices change, new equipment, technology or drugs become available, etc. Clearly, we will have much more to contribute once a Bill, and thereafter draft Regulations, are available for comment.



Theme 2: a simplified and flexible legislative framework

2.1 Consistency of the framework

The current approach in the POCTA Act to exempt a range of situations where animals are managed in accordance with another Act, is confusing, and entirely inappropriate. This is particularly so as the current approach is to exempt compliance with the whole POCTA Act – setting up the potential for a person to be abjectly cruel to an animal simply because they have some form of permit under another Act, or are handling animals in a licenced abattoir for instance.

While the original intention of this approach was not unreasonable (providing protection against a charge of cruelty when doing something lawful under an Act such as a regulated pest animal trapping program or processing of livestock at an abattoir in accordance with regulated standards), the provisions are very confusing - even to those accustomed to administering legislation. This resulted in the potential for unintended negative consequences. Recreational activities like hunting and fishing should never exempt a person from meeting a minimum standard of care for the welfare of animals hunted and fished, simply because they have a licence.

The AVA supports [Option 2](#), with appropriate exceptions for specific lawful activities, set out in Regulations. AVA notes that implications have arisen and contributed to poor animal welfare in other jurisdictions whereby actions against animals were able to be justified by such exemptions and we therefore seek detailed information on how exemptions will be implemented.

2.2 Clarity of the framework

The AVA favours [Option 1](#), whereby there would be a limited set of Regulations, with mandatory Codes of Practice that would, in effect, set out what a minimum standard of care (duty of care). 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

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 AVA supports complementing this framework of mandatory provisions with best practice guidelines. This would assist to remove the almost total and inappropriate focus of the current Act on regulation, enforcement and prosecution of offences. While a contemporary legislative framework should require compliance with a mandatory minimum standard, it should equally encourage better or best practice by animal owners and animal industries when it comes to animal care. Best practice guidelines would/could not be regulated/mandatory, but it would be of value to have the mandatory minimum standards and the best practice standards, co-existing. The latter also provides opportunities for industries to adopt best practice into industry programs such as farm quality assurance.

The AVA also supports a framework that provides incentives for animal owners and industry schemes to adopt mandatory welfare standards into independently audited assurance programs.



The Livestock Management Act makes provision for this, and the new Animal Welfare Act should be designed to have complementarity with that legislation.

2.3 National Codes of practice, Standards and Guidelines

The AVA supports the adoption of [Option 1](#) in the new legislative framework. National standards are developed under an appropriate process with government and stakeholder inputs. Although States and Territories have principal legislative responsibility for the regulation of animals and animal welfare, animal regulation is intended to reflect Commonwealth policy initiatives. The Commonwealth also conduct Regulatory Impact Statements to facilitate adoption of mandatory national welfare standards into law across the country.

It is frustrating for many people and businesses working nationally, including veterinarians, that despite national standards having been agreed in the past, they are often revised and edited as part of state legislative development processes and there can be no certainty that national standards (as written), apply consistently in every part of the Federation. In addition, by adopting standards (as written) by referencing, they can be more rapidly put into place.

This approach does, of course, mean that Victoria must be strongly engaged in the national processes that review and draft the various national welfare standards.

AVA supports adoption of national standards by including a mechanism to reference them in the new legislation. The *Australian code for the care and use of animals for scientific purposes* should be similarly adopted by referencing.

2.4 The role of co-regulation in the framework

The AVA supports allowance for the recognition of appropriate co-regulatory schemes in the new Act. This would allow for the recognition of industry best-practice standards for welfare in place of direct government regulation, when they meet or exceed regulated standards.

A number of industries have adopted comprehensive animal welfare standards into their quality assurance programs. These include the pig and poultry industries, while the grazing industries have made a start through the Livestock Production Assurance (LPA) program - though not yet so far as to adopt the relevant national standards and guidelines per se. A co-regulatory framework needs to provide incentives for industry programs to adopt regulated standards in their independently audited Quality Assurance programs through, for example, having participants subject to a different compliance/enforcement regime if part of an “approved” industry program. This is the type of approach that the Livestock Management Act was brought in to allow, though it is not clear how much the Act has been actually used for this purpose.

The AVA also believes that the use of co-regulatory mechanisms should be considered beyond the livestock industries in area such as the use of animals in sport and recreation, the racing, hunting, rodeo and other such activities that present considerable potential risk to the welfare and wellbeing of the animals involved



2.5 The role of science in the new framework

AVA supports the formalisation of a role for scientific knowledge and expert opinion to inform decisions and underpin evidence-based standards for animal welfare, particularly when those standards are mandatory.

With respect to the Options presented, it is AVA's view that science should underpin or inform all decisions, be they under the Act or Regulations, and the setting of mandatory standards/codes under the Act. The AVA also supports formalising a role for an expert (scientific) advisory committee, which is not likely to be the same model as the current Animal Welfare Advisory Committee - which is more representative of key stakeholders. In that sense, we support some elements of each option presented.

The New Zealand approach is supported by which the legislation includes explicit reference to factors that must be considered when developing Codes of Practice, including good practice and scientific knowledge, available technology and if relevant, practicality and economic impacts.

Theme 3: a better compliance and enforcement model

3.1 Monitoring compliance

While it is accepted that a shift to requiring people to meet minimum standards in the care of animals will require a more pro-active approach to monitoring compliance, it is important that this is considered in the context of regulatory burden, compliance costs and the need to weigh impacts on privacy. The limited circumstances for which proactive monitoring powers would be used as outlined in the Discussion paper seem not unreasonable.

The AVA looks forward to seeing more detail about how more pro-active monitoring is actually proposed in the Bill for the new Act, and also in the subordinate legislation. Co-regulation arrangements can assist to offset regulatory burden as discussed in 2.4 above.

The Queensland Animal Care and Protection Act 2001 includes the capacity to establish animal welfare monitoring programs, which have the potential to identify areas of concern and have these addressed proactively. This better protects animal welfare by preventing poor outcomes and reduces the need for prosecutions and associated costs to the community. The Queensland monitoring programs also have capacity to embrace co-regulation through recognition of industry Quality Assurance programs. It is recommended that the Victorian legislation adopt a similar mechanism.

3.2 Permissions and restrictions

The AVA supports the introduction of a risk-based framework for permitting certain types of activities as an alternative to the current complex arrangements with permits for a range of activities.



The criteria to be used to classify activities based on risk need careful consideration. Those criteria presented in the Directions paper are reasonable (ie. the potential for unreasonable harm, pain or distress, the competence, experience and qualification of the persons involved, and the type of equipment that would be needed).

3.3 Managing seized animals

The AVA supports changes to the current, often unworkable arrangements for the management of animals seized under the Act. The ability to sell animals, transfer ownership, or euthanase them needs to be readily available within a framework that allows the owner reasonable rights, and these options need to be available - even in the face of legal proceedings.

References

1. [AVA – Statement of principles](#)
2. [Mellor DJ, Patterson-Kane E, & Stafford KJ. The Sciences of Animal Welfare. UFAW Animal Welfare Series. Chichester UK: Wiley-Blackwell. 2009: 34-52](#)
3. [Operational Details of the Five Domains Model and Its Key Applications to the Assessment and Management of Animal Welfare](#)
4. [AVA Policy - The responsible ownership of dogs and cats and the human–animal bond](#)
5. [OIE 2019 guidelines – Terrestrial Animal Health Code](#)
6. [Role of veterinarians in the care and use of animals for scientific purposes](#)
7. [AVA Policy – Restricted Acts of Veterinary Science](#)

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