

Animal Welfare Legislation Amendment Bill 2019

RSPCA Australia comments

8 February 2019

1. Proposed changes to Animal Welfare Act 1992

4A Objects of Act - Strongly support

RSPCA Australia strongly supports the recognition of animals as sentient beings with inherent value. If passed, this will make the ACT the first jurisdiction in Australia to expressly recognise the sentience of animals in law. Stating that a main objective of the Act is to recognise “that animals deserve to be treated with compassion and have a quality of life that reflects their intrinsic value”, will help frame the Act in a modern way that reflects contemporary community attitudes towards animals. The [RSPCA charter](#) also reflects the language used in this section, further strengthening the argument that recognising the inherent value of animals is good for animal welfare.

6A Definition of cruelty - Support with amendments

Modern animal welfare law generally defines animal cruelty as causing an animal unnecessary pain. The terms ‘unjustifiable’ and ‘unreasonable’ in the Bill are largely superfluous. If the pain is unnecessary, it is unjustifiable and unreasonable. We recommend the reference to ‘unjustifiable’ and ‘unreasonable’ be deleted.

There is significant case law available to the courts to assist it in determining what is necessary or unnecessary pain in the circumstances,¹ however, to provide further guidance, modern animal welfare legislation prescribes certain relevant considerations for the court to take into account in making this assessment.

For instance, section 4 of the UK’s *Animal Welfare Act 2006* provides the following considerations:

The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—

- (a) whether the suffering could reasonably have been avoided or reduced;*
- (b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment;*

¹ The methodology was first set out in the case of *Ford v Wiley* (1889) 23 QBD 203 and is still followed by Australian courts today.

- (c) *whether the conduct which caused the suffering was for a legitimate purpose, such as—*
 - (i) *the purpose of benefiting the animal, or*
 - (ii) *the purpose of protecting a person, property or another animal;*
- (d) *whether the suffering was proportionate to the purpose of the conduct concerned;*
- (e) *whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.*

These considerations effectively codify key aspects of the common law in determining whether pain caused to an animal is unnecessary therefore amounting to animal cruelty. We would recommend including an equivalent subsection in the definition of animal cruelty within the Bill.

Finally, we believe it is very important to include an additional element to the definition of cruelty that captures those acts or omissions that are likely to cause unnecessary pain. This could be effected through an additional paragraph, such as:

- (d) any act or omission likely to cause the animal unnecessary pain.

This would bring the ACT's legislation into line with that operating in Victoria and Tasmania.

Recommendations:

1. Delete reference to 'unjustifiable' and 'unreasonable'.
2. Codify key aspects of the common law's approach to determining unnecessary pain by incorporating relevant considerations for the court to have regard to.
3. Expand definition to include acts or omissions likely to cause unnecessary pain.

6B Failure to provide appropriate care - Strongly support

This provision is comprehensive and should address the broad scope of animal welfare issues faced by inspectors and authorised officers on a daily basis.

6C Failure to provide water or shelter - Strongly support

This is a much welcomed addition to the suite of duties that owners owe to animals under their care and control.

6D Failure to provide hygienic environment

We strongly support this requirement but question whether it is not already provided for in proposed s.6B(1)(e).

6E Failure to properly groom and maintain

We strongly support this requirement but question whether it is not already provided for in proposed s.6B(1)(f).

6G Abandoning an animal - Support with amendments

This section does not currently provide guidance on timeframes for when the offence of abandonment may be said to arise. We would recommend the section incorporates the duty of providing appropriate care outlined in s.6B to provide some context to the requisite timeframe. This could be accommodated with the following amendment:

- (i) no other person is able to provide the appropriate care for, or consents to providing the appropriate care for, the animal.

Including the same terminology as that used in s.6B will make it clearer that the offence is activated at the time at which the animal is not provided with the appropriate care.

For consistency, we would also recommend this section uses the word 'premises' rather than 'place'.

Recommendations:

1. Include reference to 'the appropriate' care in the offence.
2. Replace 'place' with 'premises'.

7A Penalties for aggravated cruelty

We would recommend the maximum penalties for aggravated cruelty be increased from 3 years to 5 years to bring the ACT into line with equivalent maximums in NSW and WA.

Recommendation: Increase maximum penalty for aggravated animal cruelty to 5 years imprisonment.

7C Hitting or kicking animal - Support with amendments

Whilst we agree with the addition of the new section, we believe it is unfortunate that an explicit exemption has been made for hitting horses with whips during racing. It should not be an exemption to inflict pain and distress on an animal which would be protected if it did not belong to the racing industry. Institutionalising cruelty of this nature is illogical and we strongly recommend this exemption is removed.

Furthermore, the offence is only enlivened in the event that the hitting causes or is likely to cause the animal injury, pain or stress. The horse racing industry is adamant that whipping horses does not cause pain, injury or stress. It therefore follows that, based on the industry's own advice, the exemption is entirely unnecessary.

Recommendation: Remove the exemption for whipping horses in the racing industry.

10(2) Alleviation of pain - Support with amendments

It is heartening to see the time required to report an injured animal has been reduced to two hours in this section. However the exclusion of all non-mammals from the reporting criteria is

unfortunate. Animal welfare science has clearly demonstrated that animal groups such as birds, reptiles and amphibians feel pain and suffer as a result.

Ideally, at least birds would be included in the notification criteria for this section, as they are the most commonly injured animal presented to wildlife carers and veterinarians, indicating the need to provide treatment to this group is very high. Delayed or absent treatment can result in significant suffering and poor animal welfare.

Additionally, it is recommended that the system for notification of an animal accident is improved. Currently in the ACT if a member of the public has found an injured mammal, they call Access Canberra. However they are not connected with a ranger. They have to go through the generic call prompter, talk to a customer service representative, provide their number and hope that the ranger has received all the correct information. It is strongly recommended that TCCS seek to improve this process and make it easier for the public to report animal accidents.

Recommendation: Replace 'mammal' with 'animal'.

11 Unlawful release of animal

As currently drafted, this offence is more about animal management than it is about animal welfare. We recommend that the provision include a third element - 'and the release endangers, or is likely to endanger, the welfare of the animal' to make the offence fall more within the jurisdiction of animal welfare.

In addition, we do not believe that cats should be exempt from this section. Stating that 'release of the cat is consistent with the reasonable management and control of the cat' is a misnomer, as it is impossible to adequately control a cat that has been 'released'. In order to protect the health and welfare of domestic cats, as well as the health and welfare of free-ranging wildlife, cats should not be exempt from this section. The RSPCA encourages the containment of cats in an enclosed area, such as within an owner's property boundaries. This protects cats from disease and injury and reduces any disturbance to neighbours from wandering cats.

Recommendations:

1. Include a third element to the offence - 'and the release endangers, or is likely to endanger, the welfare of the animal'.
2. Remove the exemption for the release of domestic cats.

13 Electrical devices

We support making the application of an electric shock collar to dogs a specific offence. However we believe this should be extended to include any aversive collars. Collars which deliver an aversive sound or scent, such as 'ultrasonic' or citronella collars, use punishment to modify the behaviour of a dog and result in distress. Additionally, physically aversive collars such as prong and pinch collars as well as choke chain collars should also be banned. These collars inflict pain, involve punishment and can be used to abuse animals. Alternatives exist, such as reward based training and behaviour modification with a qualified dog trainer, therefore there is no justification for the continuing use of these aversive collars.

Recommendations: Expand the section or enact a new section to ban the use of other aversive collars such as ultrasonic, citronella, pronged, pinch, chock chain, and other aversive collars.

17 Violent animal activities - Strongly support

The RSPCA strongly supports the amendments proposed for this section and the framing of these activities as violent.

19 Medical and surgical procedures - people other than veterinary surgeons

We believe the exemptions outlined in subsection (2) for non-veterinarians performing surgical are too broad. Basing the scope of the exemptions simply on “accepted husbandry practice” effectively grants a blank cheque to the specified animal sectors to determine what they believe is acceptable and what is not. To provide greater accountability the exemptions should be linked to practices that are codified, whether they are prescribed in regulation or industry-based codes of practice or standards and guidelines adopted under the Act. This will ensure the practices have at least been subject to some level of scrutiny and will provide greater clarity to inspectors and authorised officers in the enforcement of this provision.

We are also strongly opposed to the exemption under par (d) that allows non-veterinarians to remove the dewclaws of a dog under a certain age. Science has clearly shown that neonatal animals feel pain just as acutely as adult animals. No surgery should ever be performed on companion animals by a non-veterinarian. All surgery must be done with adequate analgesia and anaesthesia. We strongly recommend the removal of the exemption which allows non-veterinarians to remove the dewclaws of puppies.

Recommendations:

1. Remove the exemption for surgical procedures performed in accordance with “accepted husbandry practice” and replace with “practice prescribed in regulation”.
2. Remove the exemption for removing dewclaws of a dog under 4 days old.

19A Medical and surgical procedures - veterinary practitioners

We recommend prohibiting the procedure of ‘debarking’ used to prevent excessive barking. Dogs that undergo debarking are still able to bark, however the surgery is incredibly risky and carries a high complication rate. The underlying motivation for the dog to bark is still present, often unrelenting boredom and anxiety, however the means for which it can express itself has been reduced. Research has shown this increased frustration in dogs with unresolved issues, leading to poor welfare for the dog. Due to the high complication rate and low success rate of the procedure, as well as the unresolved underlying issues, debarking is unjustifiable in the current environment and not supported by the Australian Veterinary Association, even as a last resort before euthanasia.

Recommendation: Include new prohibition on debarking procedure.

Part 3A Pet businesses - training of pet shop staff

Pets other than cats and dogs are commonly acquired through pet shops but their welfare is often not seen as a high priority for legislative standards. Many of these animals will never see a veterinarian in their life, particularly as there is no requirement to desex or microchip them. Therefore much of the information on the health and husbandry of these animals is obtained through pet shop advice and the internet. It is crucial that pet shop staff are adequately trained and educated so that they do not endanger the health and welfare of pets by providing incorrect information to consumers. Minimum training standards for all pet shop staff would not only improve the quality of life for these non-traditional pet species, but it would also ensure that any live animals sold in store are kept and handled in an appropriate manner.

Recommendation: Include requirements for the training of pet store staff.

81A Power to seize animals - Strongly support with amendments

RSPCA strongly supports the additional powers to seize animals connected with an offence and their dependent offspring, and to seize animals kept in contravention of an order made under the Act. However, the power to seize dependent offspring should also apply to those animals seized for being kept in contravention of an order.

Recommendation: Replace ‘under paragraph (a)’ in paragraph (b) with ‘under this section’.

81 Powers of entry

The power of entry for inspectors should include the power to enter the land around the premises without the need for a warrant or consent. Many reports received by inspectors can be attended to and closed out following a simple visual inspection of an animal in a backyard or paddock. Under the current Act, if the occupier is not home at the time of the inspector’s visit, the inspector has no power to enter the backyard or paddock to inspect the animals. This can add considerable time and expense to jobs that may be minor and routine in nature.

The Bill should introduce a new power of entry that allows inspectors to enter the land surrounding a building or a paddock without the need to obtain a warrant or expressed consent. This power is provided for in most other state and territory animal welfare Acts. For example, the Northern Territory’s new *Animal Protection Act* provides the following under s.83:

- (2) The entry is justified without the consent or warrant if:
 - (a) the entry is to the surrounding area or yard of any building, or any other place that does not constitute a building, and the officer is entering to determine whether an animal is suffering;

Recommendation: Include a power for inspectors to enter the land surrounding a building and paddocks without the need for a warrant or expressed consent from the occupier.

86A Accommodation of seized animals

It is recommended that the authority to decide to return a seized animal and to impose stated written conditions under subsection (1)(c) should also be vested in an inspector.

Recommendation: Expand power to decide whether a seized animal should be returned, and the power to impose written conditions, to ‘an inspector.’

86B Selling or rehoming seized animals

This section should also include a process for an inspector to apply to the authority for legal title of a seized animal to be transferred to a declared entity.

Recommendation: Include a process to for an inspector to apply to the authority for legal title of a seized animal to be transferred to a declared entity.

101(2)(b) Payment to a declared entity - Strongly support

RSPCA strongly supports the expansion of the court’s powers to order a defendant to pay expenses incurred in the care of a seized animal to a declared entity.

101A Permanent prohibition orders

We question why the power for courts to impose a permanent prohibition order should be limited to offences of aggravated animal cruelty. Neglect-based offences can be equally heinous and result in significant animal suffering. We recommend the power to impose a permanent prohibition order should be left to the court’s discretion and not limited to aggravated cruelty offences. Proposed s.101B provides an opportunity for setting the order aside in any event. It is ordinary practice in other jurisdictions for banning orders to be made ‘until further order’.

Recommendation: Replace ‘offence against section 7A (Aggravated cruelty)’ with ‘offence’.

113 Rescuing distressed animal in locked vehicle - Strongly support

We strongly support the inclusion of this new section. The RSPCA responds to thousands of calls about distress animals locked in hot cars around the country every year. At times, RSPCA or the police may not be in close proximity to assist in a timely manner. This immunity is entirely reasonable to protect good samaritans in the event that they need to take appropriate urgent action to prevent suffering and death.

Dictionary, definition of *pain*

The term ‘pain’ is used throughout the Act as an element in offence and power provisions. The current definition of the term simply includes ‘suffering and distress’. We recommend that this definition be expanded to make it clear that the suffering and distress can be psychological in nature to avoid courts giving the term an unreasonably restrictive meaning. This would also make the Act more consistent with its newly proposed objects of recognising the sentience of animals.

Recommendation: Expand the definition of ‘pain’ to expressly include ‘psychological suffering or distress.’

2. Proposed changes to Domestic Animals Act 2000

95 Assistance animal standard

It is strongly advised that the 'assistance animal standard' is written in close consultation with the RSPCA and other animal welfare stakeholders to ensure the welfare of the assistance animal is protected throughout the training and certification process.

97 Registration of assistance animal

We advise regular health assessments of certified assistance animals to ensure the welfare of working animals. Yearly health certificates by veterinarians should be a condition of continued registration to ensure assistance animals are fit for purpose. Working animals cannot work indefinitely, and with the guidance of a veterinarian, the health and welfare of animals can be managed until retirement. The physical and behavioural suitability of an animal for work is dynamic and impacted by many different factors. In order to protect human and animal welfare, assistance animals should be regularly reassessed for suitability for work.

99 Registrar may register assistance animal trainers

The RSPCA strongly urges that only applicants who utilise reward-based training are registered by the registrar to train assistance animals. This is because punishment based or 'mixed methods' training has been shown to cause long term harm to animals and results in animals who are more unpredictable to those who have been trained with positive, reward-based training. We recommend that consideration is given to imposing minimum qualifications, such as dog training or animal behaviour certification as a prerequisite to registration as a trainer.

103 Registrar may register assistance animal assessor

As with assistance animal trainers, assistance animal assessors should have minimum qualifications in either dog training or animal behaviour. Additionally, assistance animal assessors should not be able to assess an assistance animal they have trained. It should be explicitly outlined that assessors cannot make an assessment on dogs they have trained and should be impartial to ensure transparency.