

3rd October 2024

Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Canberra ACT 2600

Via email - legcon.sen@aph.gov.au

Dear Committee

Re: Family Law Amendment Bill 2024

RSPCA Australia greatly appreciates the opportunity to provide comments on the Family Law Amendment Bill 2024. It is acknowledged that stronger laws regarding the protection of animals affected by domestic and family violence (DFV) is an urgent priority. Thus, it is pleasing to see some legislative reforms occurring at the Federal level.

The proposed amendments to the *Family Law Act* via the Bill are commendable. However, there is a vital need and opportunity to strengthen the law by including provisions to protect companion animals, of any species, who are considered important members of Australian families. We have provided several recommendations on how this can be achieved.

Most State/Territory-based RSPCAs have special programs to help support those affected by domestic and family violence through provision of emergency animal boarding and other services. The RSPCA has developed strong linkages and networks in the community with key responder organisations and government agencies. The RSPCA also recognises the valuable work by Lucy's Project, a not-for-profit organisation, which focuses on raising awareness and providing essential support to communities affected by domestic and family violence with animals being integral.

There is an increasing body of evidence which demonstrates that animals are used by perpetrators to control and manipulate victims of DFV and that this is a key risk factor, including the National Risk Assessment Principles for Domestic and Family Violence¹ and other publications². It is also recognised that sentient animals experience mental distress, fear and anxiety if living in a violent or abusive environment.

Animals are commonly considered family members in Australian homes, providing emotional support, comfort, stability, unconditional companionship and adding to overall quality of people's life. Australia has one of the highest rates of companion animal ownership in the world, with an estimated 28.7 million companion animals sharing the homes of around 69% of domestic households³. Animals play a key role in the lives of people, especially children, those who are homeless and the elderly. Animals provide comfort, companionship, opportunities for social connection and stability.

¹ Toivonen C & Backhouse C (2018) National Risk Assessment Principles for domestic and family violence (ANROWS Insights 07/2018). Sydney, NSW: ANROWS.

² Kotzmann J, Bagaric M, Wolf G, Stonebridge M (2022) Addressing the impact of animal abuse: the need for legal recognition of abused pets as sentient victims of domestic violence in Australia. UNSW Law Journal 45(1):184-208. Women's Safety NSW, Animal Abuse and Domestic and Family Violence (Report, 27 August 2020).

³ Animal Medicines Australia (2022). [Pets in Australia: A national survey of pets and people](#). Accessed online October 2024.

RSPCA Australia

ABN 99 668 654 249
ACN 163 614 668

P 02 6282 8300
F 02 6282 8311
E rspca@rspca.org.au
W rspca.org.au

PO Box 265
Deakin West ACT 2600



Recent research shows that this is especially relevant in times of crisis including recovering from serious illness, personal hardship, mental illness and in DFV situations⁴. When fleeing a violent crisis situation, companion animals can be very important in helping those affected with coping with trauma as well as help support recovery. Keeping families together including their companion animals is critical. Likewise, the mental as well as physical health of companion animals in families affected by DFV must be considered in terms of orders that are made in respect to that companion animal. Removing an animal from domestic and family violence, especially those subjected to intimidation and abuse, must be addressed in Family Law to protect the animal's health and welfare.

RSPCA's recommendations

Companion animal mental health

It is essential that both the physical health and the mental health of companion animals are considered and protected by Family Law.

Recommendation 1: That the Family Law Amendments include the mental health, in addition to physical health and safety, of companion animals.

Companion animal definition

The term 'companion animal' should be based on the nature of the relationship between a human and an animal, that is the human-animal bond, rather than being specific to any animal species. The NSW Companion Animals Working Party defined a companion animal as '*any animal which is kept for the mutual welfare and benefit of the animal and its carer*'⁵. While cats and dogs are commonly considered companion animals in Australian homes, other animals such as horses, birds, fish, and farm animals are also sentient and should be considered companion animals under the law.

Recommendation 2: That all species of animals should be considered companion animals based on the positive mutual relationship with the affected party(ies) in the amendments including those animals who have monetary value.

Surrendering companion animals

Proposed new subsection 79(6)(b) that the companion animal be sold.

It is acknowledged that if neither party is able to retain and care for the animal that some course of action needs to be taken to protect the animal's health and welfare. However, it is unclear why a third option could not be to surrender the animal to a family member/friend or a reputable animal rescue/welfare organisation. Animals subjected to abuse or even being in proximity to violent behaviour are generally distressed and often require special care and, in some cases, specific rehabilitation.

Recommendation 3: Modify point 79(6)(b) to include that the animal can be surrendered to a family member, friend or registered animal welfare charity/rescue organisation.

⁴ Oosthuizen K, Haase B, Ravulo J, et al (2023) The role of human-animal bonds for people experiencing crisis situations. *Animals*, 13(5), 941.

⁵ Swain M (1998) Companion Animal Legislation. NSW Parliamentary Library Research Service. <https://www.parliament.nsw.gov.au/researchpapers/Documents/companion-animal-legislation/01-98.pdf>

Animal ownership/custody

Proposed new subsection 79(7) includes eight considerations in respect to ownership. The following clauses are problematic in relation to a perpetrator being able to demonstrate these whilst in many instances a victim is prevented from being able to demonstrate these criteria, particularly where financial transactions and/or documentation is involved:

- (a) the circumstances in which the companion animal was acquired;*
- (b) who has ownership or possession of the companion animal;*
- (c) the extent to which each party cared for, and paid for the maintenance of, the companion animal;*

These 'criteria' do not consider the relationship and emotional bond between a companion animal and a member of a household affected by DFV, especially where children are involved. Ownership evidence alone does not ensure that the future care of that animal will be in their best interests.

As animals can be used as an object of coercive control, DFV perpetrators may contend ownership/custody of an animal. Similarly, financial independence is unlikely for many victims of DFV. Therefore, the law should recognise that claims of primary ownership should not be solely based on who has possession of the animal or who has paid for the care and maintenance of the animal. Rather, the law must consider ownership/custody of the animal based on the human-animal bond as well as the safety and welfare of the animal. One way to determine the relationship between parties would be to have the animal assessed by a qualified veterinary behaviourist in the presence of the parties. In our experience, animals may display behavioural signs consistent with fear and anxiety in the presence of someone who has abused them. We acknowledge that this would not identify past instances of threats of animal abuse made to victims.

Recommendation 4: Where there is disagreement over ownership/custody of a companion animal, the law should require independent behavioural assessment of the animal with the respective parties.

Recommendation 5: With regard to clauses (a), (b) and (c) above, it is recommended that consideration must be given to the capacity for any of the parties to access bank accounts to pay for health and other related costs associated with keeping a companion animal.

We trust that these recommendations will help ensure stronger protection for families and their companion animals affected by DFV into the future. We would be delighted to provide additional information should the Committee wish and welcome further contact via Dr Di Evans, RSPCA Australia's Senior Scientific Officer, at devans@rspca.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Suzie Fowler'.

Dr Suzie Fowler
Chief Science Officer
RSPCA Australia