

26th March 2023

Hon Susan Close MP
Minister for Climate, Environment & Water
E: OfficeOfTheDeputyPremier@sa.gov.au

Hon Clare Scriven MLC
Minister for Primary Industries and Regional Development
E: Minister.Scriven@sa.gov.au

RE: Review of SA Animal Welfare Act 1985

Dear Minister,

Animal Care Australia (ACA) is contacting you today in response to the current Review of the South Australian Animal Welfare Act 1985. ACA is aware this is the first of the process of determining which aspects of the Act are considered to be working and which ones are not. However, the use of a survey for the purpose of consultation is in our opinion insufficient. Surveys are generally either ‘specific outcome’ driven, and statistically un-balanced, or tend to be leading in their questioning and misleading in their statistical outcomes as has been seen with the Victorian Animal Welfare Act Review where certain animal rights based Parties and organisations organised campaigns to encourage their followers to respond, providing said followers with proforma responses. ACA has experienced this more than once with reporting stating “community expectation is” which is in fact false, as the outcome has not been derived from the community but rather a more vocal minority group.

ACA recognises the ease surveys provide however ACA has opted to also respond in writing to ensure our views are not lost within the statistical reporting process and in doing so providing inaccurate feedback.

ACA offers its expertise to assist as the new Act is drafted, consulted and moves through the parliamentary process.

Our concerns and discussion points are:

1. In Section 3 Interpretation a definition of animal welfare is required. While ACA supports ‘sentience’ being a part of the definition, there is much disagreement on the precise meaning of the term due to the influence of organisations based on a philosophy of animal rights. Consideration could be given to specifically excluding animal rights-based matters from the definition. We look forward to working with department staff to develop a definition.
2. The purpose of the Animal Welfare Act 1985 is for **‘the promotion of animal welfare’**. There should be no additional wording. This is sufficient for the objects of the Act. Positive Animal Welfare outcomes should be its sole purpose.
3. ACA recommends the Object of the Act should be:
 - a. Raising animal welfare outcomes through education, encouragement, improvement and compliance
4. We note the term “the Society” is afforded to the RSPCA (South Australia) Inc. within Section 3 of the Act. ACA suggests such a distinction between different animal welfare organisations is no longer appropriate or required.
5. Section 6 (2) specifies the membership of the Animal Welfare Advisory Committee (AWAC). ACA recommends the membership and structure of the AWAC be reassessed as part of this review. Some

of the organisations with nominated members have changed focus or are no longer representative as they once were. The addition of a specialist companion animal or pet-based advisor such as ACA would enhance the expertise of the AWAC. ACA looks forward to the opportunity of being invited to join AWAC.

6. Currently the Act includes, essentially two offences, Section 13(1) - the aggravated offence and Section 13(2) the lesser ill treatment offence. A further range of "ill-treats" offences are prescribed in the Regs. Consideration could be given to specifying all the specific "ill-treats" offences in the Regs.
7. The definition of 'harm' is sufficient for describing the animals' experience, however the intentions of the person committing an offence must also be recognised and scaled in a similar way. Deliberate harm is very different to harm caused by someone lacking knowledge, financial or mental health resources.
8. Owners Care requirements are NOT set out clearly within the Act. They are absorbed within the 'ill-treats' explanation. ACA recommends a minimum baseline - Minimum Standards of Care - for prosecutable offences - should be clearly defined. Codes of practice (developed in conjunction with or adopted from) organisations and Animal Keeping Associations could be recognised within the Act/Regs to ensure best practice standards are referenced.
9. ACA supports the current list of prohibited activities listed in the Act.
10. ACA has concerns that the prohibited activities (Section 14) and items (Section 14a) listed in the Act adequately protect animals, that may be subjected to these activities, from harm, as the Act currently lacks accountability and oversight for inspectors. History of events within South Australia has shown The Inspectorate have proven their inability to understand individual species, animal behaviour and basic animal care requirements HAS placed animals under their supervision 'in harm'. Those enforcing the Act must also be subject to the same conditions of the Act.
11. Section 14 of the Act details prohibited activities. This section has significant penalties for persons present whilst a prohibited activity occurs including within the preceding 2 hours (s.14(3)). ACA questions the "preceding 2 hours" as it looks to presume intent to be a participant in the prohibited activity without evidence. The person so charged must then defend (under s.14(4)) the charge by proving their innocence. A reverse onus of proof is always of legal concern.
12. ACA questions s.14(8)(b) which includes prohibiting simulated animals such as the mechanical hare used by greyhound tracks. Furthermore, the term carcass appears intended to mean a complete or discernible carcass but is poorly defined. Currently it may also refer to a range of meat cuts routinely offered to dogs.
13. Section 15 regulates the use of electrical devices to confine or control animals. The details are prescribed in Regs 7 and 8. There are a range of issues with the current wording of these Regs that restrict the use of some devices unreasonably. ACA has been involved in discussion with government in other jurisdictions around the use of such electrical devices, in particular collars. We look forward to further consultation to refine this section of the Act and the associated Regs.
14. In Part 4 the requirements for licenses and ethics committee approval for schools are all encompassing. For schools who wish to house animals for non-intrusive purposes the current requirements appear overly restrictive. As a consequence schools may decide not to keep animals due to the administrative burden. ACA supports animals in schools to familiarise students with their husbandry and welfare needs. Education is vital in ensuring ongoing animal welfare.
15. Section 25(3)(a) the use of the animal must be essential for the particular purpose. When the reason is non-intrusive then this requirement is no longer necessary. ACA would prefer schools to be encouraged to keep a range of different animals to familiarise students with their husbandry and welfare needs.

16. Section 28 specifies the appointment of officers. This section requires full and open consultation to ensure accountability and a line of command from all inspectors throughout the department and up to the Minister is implemented. Accountability of inspectors is a major oversight and concern within the current Act. and must be addressed during the review.
17. There are many regulations with the Regs that may be better placed as separate Code of practice documents. For example Part 4 Rodeos, Part 5 Domestic Fowls, Part 6 Pigs, Part 7 Transport of livestock, Part 8 Cattle, and Part 9 Sheep. This would enable more efficient editing as standards of care evolve. We recommend a panel of expert stakeholders is created to maintain each code of practice over time. This has been implemented in other states.
18. The details of the qualifications required of inspectors is unclear – s.28(5) refers to the Regs but no Reg references s.28 – perhaps Schedule 2 of the Regs includes some detail. There are a large range of species and hence no inspector can be expected to be an expert on all. Specific species expertise should be a requirement before compliance operation related to those species can be performed by an inspector.
19. Section 30 includes details of right of entry to premises for inspectors. There appears to be a number of concerns currently. In summary, no entry should be permitted to any premises (including land) used for residential purposes without the authority of a warrant from a magistrate as detailed in s.31D. The only exception is when the occupant has given express consent after being advised they do not have to give consent and that their consent may be withdrawn at any time, after which the inspector must immediately exit the premises. ACA has worked through this issue in a number of jurisdictions and has provided evidence at parliamentary inquiries – we offer our experience for further discussion.
20. ACA is concerned about current Section 31. We would prefer routine inspections to be performed by different personnel to those involved in enforcement. Such officers should be plain clothed, their aim is to educate not regulate.
21. Section 31(3) is surprising to ACA. If an inspector is not complying with their duties under the Act then they should be disciplined and doubt cast on the validity of their exercise of powers under the Act. **ACA insists s.31(3) is reconsidered as part of this review.**
22. Section 31A(1) requires editing to require the inspector to instruct the owner to do 1 or more of the following, prior to the inspector initiating the action. The inspector can only initiate the listed actions if the owner cannot be located or refuses to comply.
23. ACA recommends all decisions to destroy an animal (refer s.31A(4)) must require more than one decision maker. It is preferable for one of these people to be a veterinarian.
24. There is currently no readily accessible right of appeal against animal welfare notices specified in Section 31B. A system of departmental appeal should be implemented to ensure accountability, avoid trivial court cases and maintain public support for the system.
25. ACA recommends seized animal time limits are reviewed. Times specified in s.31C(1) such as “after reasonable inquiries” and “within 3 clear days” are insufficient and imprecise.
26. The ability of a magistrate (on application from an inspector) to destroy or sell an animal that is the subject of proceedings without any consultation with the owner is strikingly unethical. Section 31C(2) requires review and change.
27. The power to provide food and water under Section 35 is supported, however care is needed to ensure this power is not misused as an excuse to enter premises without permission or a warrant as

has occurred in other jurisdictions. ACA recommends an amendment that specifies that when entering for the purpose of urgent food and water no other compliance or evidence collection can take place. Inspectors would need to leave, and obtain a warrant before returning.

28. The offences (s.38) by members of body corporates are tarring all members with the same brush with limited recourse. ACA recommends amending s.38(1) to read “each member of the body corporate may be guilty of an offence” rather than is guilty.
29. In Section 39 the wording requires tightening to ensure additional penalties can only be applied after the offence was first detected, and of course, only levied once found guilty. We suspect there will be cases where a person is of the view they are not guilty of an offence and continue the action or omission. The court then finds them guilty and hence they are then subjected to further penalties under this section. The wording requires reworking to take account ethically of such matters or permit the courts to do so.
30. ACA has concerns with regard to Section 42(2)(b) which requires a person to prove they do NOT own an animal. The onus of proof must be on the prosecution to prove the person is the owner of the animal. This reverse onus of proof is unreasonable.
31. ACA recommends amendments to Sections 42A and 43 are made to enable compliance with prescribed codes of practice to be used as a defence to charges. This is the case in other jurisdictions and should be considered for South Australia.
32. Section 43B deals with allegations of victimisation by persons. Unusually the Act limits the recourse for victims and goes even further by cutting off appeal processes before the case commences. The review of the Act must reconsider this section as it currently looks to, in particular circumstances, advantage the perpetrator (who may be an inspector) over the victim. The ability of people to complain about government appointed officials for a range of reasons including victimisation is an important accountability measure.
33. Section 44(5) is rather too open ended. The Minister must also be accountable for decisions and the power provided by this section is all encompassing – both on general and specific matters. ACA prefers the courts to rule on specific matters and general matters should be dealt with by legislation.

Finally, taking all the above into account ACA cannot agree that penalties and expiations for contraventions are appropriate to discourage offending under the Act, given that most people are unaware that the Act exists, let alone that particular penalties exist. Further still fewer would have the forethought to consider the penalties when making the decision to commit an offence.

On the other side of this, are people who know they should be doing better, or want to do better, but cannot due to their personal circumstances. They would not consider themselves offenders, and need assistance from the community, not prosecution.

Education over regulation over prosecution – a philosophy currently absent from the ethos of the RSPCA.

To be clear ACA DOES NOT support the RSPCA as an enforcement organisation. Enforcement should be the responsibility of the government alone and not out-sourced to charitable organisations. Enforcement Officers should be employed by, and answerable to the government directly via a Chief Animal Welfare Officer.

ACA trusts you will find our feedback informative, and we look forward to meeting with you, and department representatives in further consultation.

Please do not hesitate to make contact in order to advise us of an appropriate time to discuss this further.

Kind regards,



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References:

The South Australia Animal Welfare Act 1985 (Act) is here -
https://www.legislation.sa.gov.au/_legislation/lz/c/a/animal%20welfare%20act%201985/current/1985.106.auth.pdf

The South Australia Animal Welfare Regulations 2012 (Regs) are here -
https://www.legislation.sa.gov.au/_legislation/lz/c/r/animal%20welfare%20regulations%202012/current/2012.187.auth.pdf

Animal Care Australia (ACA) is a national incorporated association established to consult with government in advocating for real animal welfare by those who keep, breed and care for animals. Our goal is to promote and encourage high standards in all interactions with the animals in our care.