

Community Consultation Paper

2023 Review of the *Animal Welfare Act 1985*



Government
of South Australia

Department for
Environment and Water

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Thank you for taking the time to provide feedback on the *Animal Welfare Act 1985*. Your feedback will help us better understand community expectations about animal welfare and identify opportunities for change that may improve the Act.

The care and welfare of animals has links to many aspects of our private and professional lives and has many social, environmental and economic implications. We recognise community members' diverse views and the different values, beliefs and experiences that will be brought to this consultation.

Background

The *Animal Welfare Act 1985* aims to promote the welfare of animals in South Australia. The Act was last updated in 2008. The South Australian Government is reviewing the Animal Welfare Act to ensure the laws governing animal treatment stay up-to-date with community expectations.

About this consultation

This first step in the review aims to help us understand expectations about animal welfare and identify opportunities for change that may improve the Act.

The next steps will depend on the outcomes of this initial consultation, resources and timeframes necessary to implement proposed reforms.

This consultation paper provides a brief overview of the Act, its purpose and the ways it promotes animal welfare. The paper then provides information providing context for each questions in the online survey.

This stage of consultation is open until 26 March 2023.

You can get involved by:

- reading further information available on the [YourSAy](#) website
- completing the online survey on the [YourSAy](#) website to provide feedback
- [subscribing](#) to receive updates on the Animal Welfare Act review.



An opportunity for change

The Act first came into effect in 1985. It was then known as the *Prevention of Cruelty to Animals Act*. Since then, there have been several revisions to the Act, with the most recent significant changes in 2008 including:

- repositioning the Act's purpose from preventing animal cruelty to promoting animal welfare
- strengthening the existing legislation
- providing tougher penalties
- improving ways of detecting people who harm animals.

This consultation will help the department to understand current community expectations about the welfare of animals and opportunities for change to reflect contemporary practices and community expectations.

Updating legislation can be complex and take time. This is because governments need to consider all the potential impacts on members of the community, directly impacted stakeholders and in the case of animal welfare, on the animals themselves.

A national shift in animal welfare legislation

South Australia's review of the Act coincides with recent or current reviews to animal welfare legislation in:

- [New South Wales](#)
- [Victoria](#)
- [Queensland](#)
- [Western Australia](#).

Some of the main themes across these reviews are changes to:

- the objects, purpose or principles underpinning the legislation
- how animals are used for scientific purposes
- controlled or restricted procedures, e.g. tail docking and disclosure upon sale or supply of animals
- penalties and offences
- compliance activities, e.g. increased powers of inspectors and notices.

How we think about animal welfare

Our approach to treating, using, caring for and interacting with animals is shaped by our understanding of what

animal welfare is. In the recent past, there have been different approaches to defining animal welfare but the two most common models currently are:

- Five Freedoms of Animal Welfare, focussing on preventing cruelty
- Five Domains of Animal Welfare, focussing on promoting welfare.

Five Freedoms of Animal Welfare

The Five Freedoms of Animal Welfare were developed by Britain's Farm Animal Welfare Council in 1965.

They are:

1. freedom from hunger and thirst
2. freedom from discomfort
3. freedom from pain, injury or disease
4. freedom to express normal behaviour
5. freedom from fear and distress.

Five Domains of Animal Welfare

The other approach was developed in 1994 by Professor David Mellor and Dr Cam Reid. Building on the Five Freedoms approach, the Five Domains of Animal Welfare model recognises that the first four functional domains contribute to the fifth domain of 'mental state'. The Five Domains are:

1. nutrition
2. environment
3. health and fitness
4. behaviour / behavioural interactions
5. mental state.

Animal sentience

The definition of sentience is 'the quality of being able to experience feelings'. Those feelings can be positive, such as happiness or pleasure, or negative, such as pain and fear. There is ongoing debate and increasing knowledge about which animal species are understood to be sentient. The 2008 Animal Welfare Act update introduced a definition of harm that recognised pain, suffering or distress.

The Five Freedoms and Five Domains of Animal Welfare and our understanding of animals' ability to experience feelings are useful in framing expectations around the welfare of animals. It is also useful in understanding the role legislation can play in promoting the welfare of animals.

The Animal Welfare Act

About the Act

The *Animal Welfare Act 1985* is the primary piece of legislation concerned with animal welfare in South Australia. It promotes the welfare of animals through:

- prohibiting ill treatment or harm of animals
- prohibiting a number of activities and items that may harm animals
- requiring standards of care that should stop an animal experiencing harm or ill treatment
- restricting the use of animals for research and teaching overseen by Animal Ethics Committees
- the Animal Welfare Advisory Committee providing independent advice to the Minister on the Act and its operation
- compliance powers to enforce the Act
- penalties for contraventions of the Act.

The Minister for Climate, Environment and Water is the Minister responsible for the Act. The Act is administered by the Department for Environment and Water.

It is enforced through investigation and compliance activities undertaken by individuals authorised by the Minister from:

- Department for Environment and Water
- The Royal Society for the Prevention of Cruelty to Animals (RSPCA)
- Primary Industries and Regions South Australia (PIRSA)
- South Australian Police (SAPOL)
- local government.



Regulations, codes of practice and other legislation

The Act is only one piece of legislation used to promote animal welfare in South Australia. There are other documents that are used to support the Act's operation and are also used by government to carry out its responsibilities (Figure 1).

The *Animal Welfare Regulations 2012* support the Act by setting out specific requirements for:

- animal transport
- housing
- husbandry
- use of devices
- restricted activities
- licensing.

The regulations may also mandate compliance with animal management and care requirements set out in *Codes of Practice* and standards.

Australian state and territory governments are working together to create nationally consistent standards and guidelines for the welfare of livestock. This means revising and updating expectations outlined in the *Model Codes of Practice for the Welfare of Animals*.

- Standards set out things that **must be done** to ensure the welfare of animals across Australia. Each state or territory may incorporate these legal requirements into relevant state legislation and regulations.
- Guidelines are recommended practices to achieve desirable animal welfare outcomes and set out things that **should be done**.

Other South Australian legislation relating to the welfare or management (or both) of animals:

- *Dog and Cat Management Act 1995*
- *Landscape South Australia Act 2019*
- *Livestock Act 1997*
- *Veterinary Practice Act 2003*
- *Local Government Act 1999*
- *Planning, Development and Infrastructure Act 2016*.

Commonwealth legislation relating to the conservation or management (or both) of animals:

- *Environment Protection and Biodiversity Conservation Act 1999*
- *Customs Act 1901*
- *Biosecurity Act 2015*.

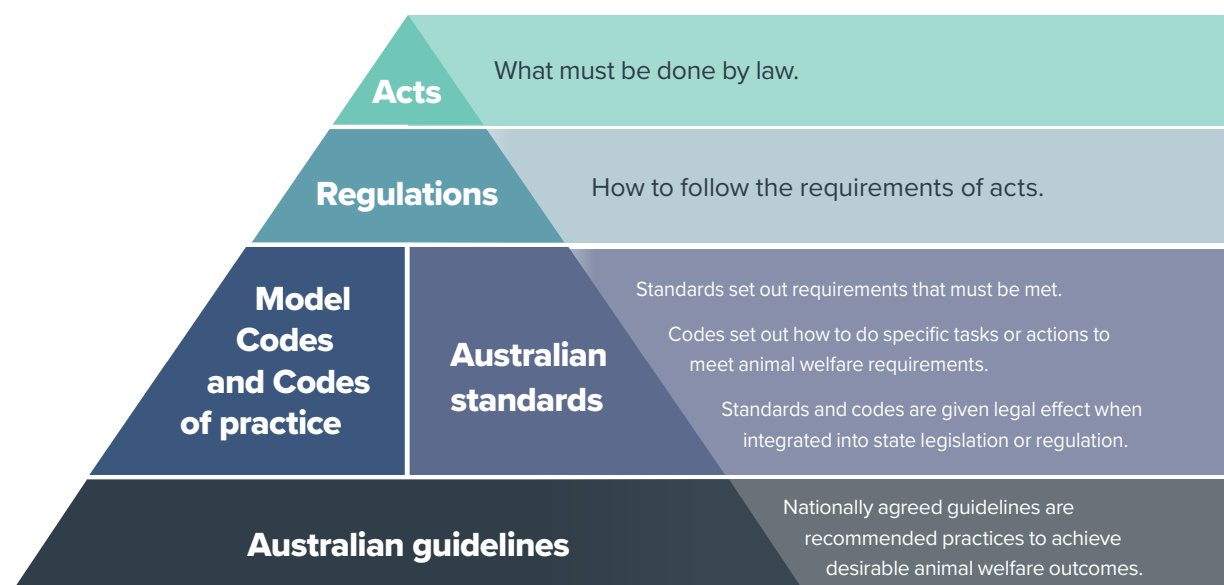


Figure 1: Instruments used by government to carry out responsibilities.

The pyramid shows formal instruments at the top and less formal documents at the bottom.

What we're asking and how it relates to parts of the Act

The Animal Welfare Act includes five Parts. During this stage of consultation, we want to get an understanding of your perceptions of animal welfare in relation to each Part of the Act. This paper gives a summary of each Part to provide context and clarity to the survey questions.

All of the survey questions are included in grey text boxes throughout this paper.

Some questions in the survey will ask you if you agree or disagree with questions relating to Parts of the Act. There will be other 'yes or no' questions. You can provide comments or explanations for any questions you have answered.

You do not have to answer all the questions and can skip questions you don't have an opinion on or don't feel you can answer using the information provided.

About you

The survey asks for some background information before moving into specific questions about the Act and whether it reflects your expectations of animal welfare.

The survey will ask about your:

- location
- age group
- interest in animals
- professional involvement with animals (if any)
- current level of understanding of animal welfare legislation in South Australia.

These background questions will help us to determine trends across regions, across interests and within different industries. All personal data will be kept confidential in line with the South Australian Government's [*Information Privacy Principles*](#).

The Act and animal welfare

Long title

Long titles are used to describe the scope or purpose of the Act. For Acts that don't include 'objects' (see below), the long title of the Act may be used to help courts interpret provisions of an Act. The long title of the Act is:

Animal Welfare Act 1985: An Act for the promotion of animal welfare; and for other purposes

The Act is more commonly referred to by its short title, which is the *Animal Welfare Act 1985*.

Part 1 – Preliminary

This Part includes the short title of the Act and also outlines the definitions used throughout the Act.

This Part also states that 'the Act binds the Crown', requiring the Crown to comply with the Act and regulations. The Crown can mean any office that provides public service on behalf of the Crown or that is controlled, appointed or remunerated by the Crown.

Purpose and objects of the Act

More recent legislation sometimes includes 'objects' that may either:

- give a general understanding of the legislation's purpose
- set out general aims or principles that help the reader to interpret the detailed provisions of the legislation.¹

When the Act was written and later revised in 2008, objects were often not included in legislation. Instead the Act includes a 'purpose', which is taken from the Act's 'long title'. The purpose the *Animal Welfare Act 1985* is for 'the promotion of animal welfare; and for other purposes'.

- Do you agree that the current purpose of the Act provides a good understanding of the general aims and principles of the legislation?
- Should the Act include specific objects? If so, what might they be or what themes should the objects reflect?

¹ Office of Parliamentary Counsel, Working with the Office of Parliamentary Counsel: A Guide for Clients (3rd ed, 2008)

Definitions and interpretation

Part 1 of the Act includes definitions used to interpret the legislation. If a particular word is not defined in the 'interpretation' of a piece of legislation, then the ordinary meaning of the word/term is generally used. Some words may seem unusual to define, but in the context of the legislation it may be necessary to provide a specific meaning.

Part 1 of the *Animal Welfare Act 1985* includes a range of definitions including 'animal', 'owner', 'harm' and 'inspector'. These definitions are used throughout the Act.

Definition of animal

In considering whether the Act's purpose to promote animal welfare is appropriately captured, we need to start with the definition of animal. The Act currently defines 'animal' as:

*a member of any species of the sub-phylum
vertebrata except*

(a) a human being; or

(b) a fish, and includes any prescribed animal.

The 'sub-phylum vertebrata' (vertebrate animals) is interpreted in the Act to include animals with a spinal cord and backbone, whether made from bone or cartilage. This includes amphibians, reptiles, birds and mammals. Humans and fish are specifically excluded and not considered to be animals under the Act (Figure 2). Note, fish may still be included in the definition of 'animal' in other legislation.

A 'prescribed' animal means a type of animal that is listed in the legislation itself for a particular section or reason.

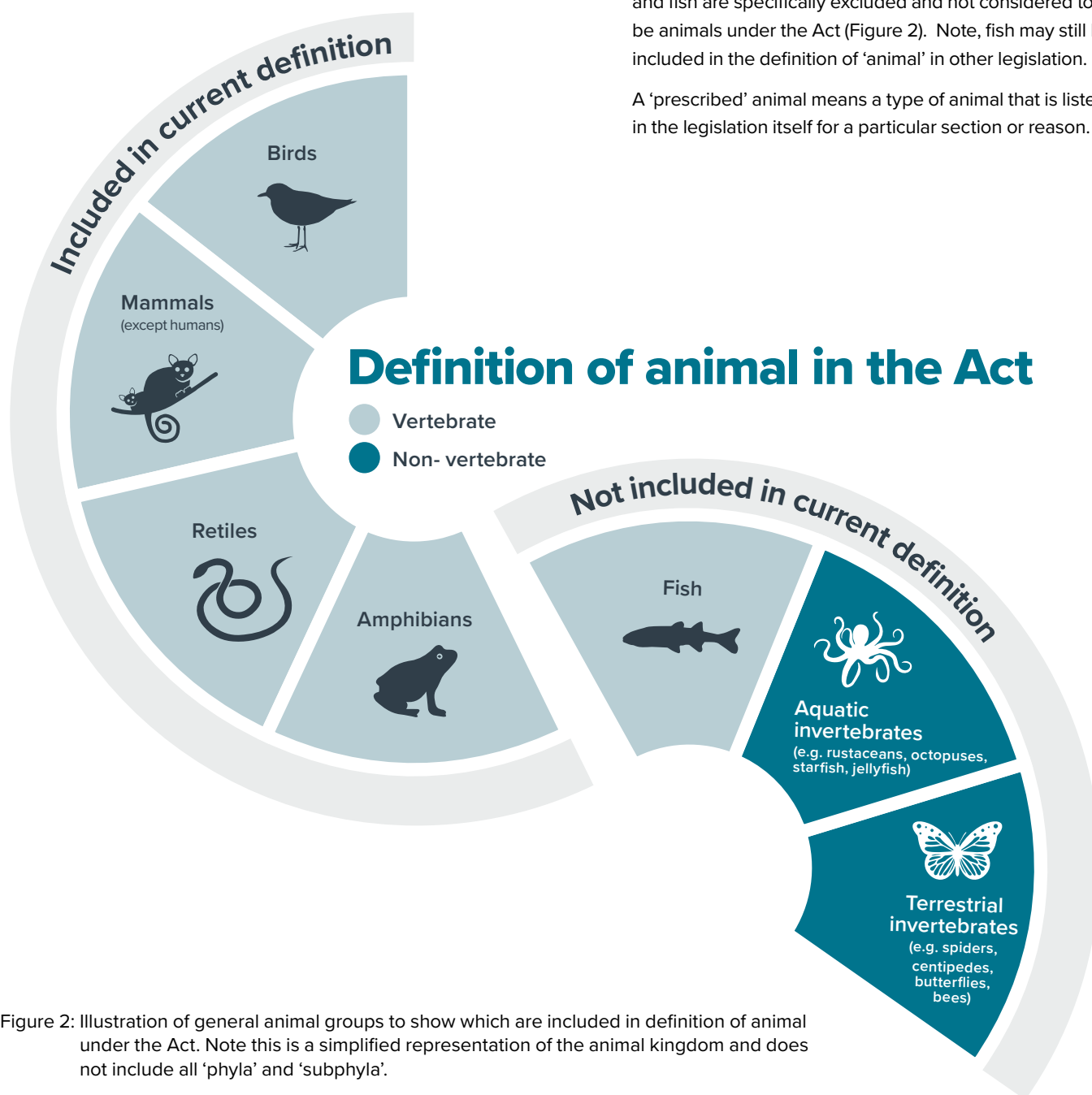


Figure 2: Illustration of general animal groups to show which are included in definition of animal under the Act. Note this is a simplified representation of the animal kingdom and does not include all 'phyla' and 'subphyla'.

Definition of harm or serious harm

Under Section 13 of the Act, it is an offence to ill-treat an animal, including causing intentional or reckless harm or harm through neglect or mistreatment.

‘Harm’ is defined in the Act as meaning ‘any form of damage, pain, suffering or distress (including unconsciousness), whether arising from injury, disease or any other condition’.

The reference to suffering and distress to an animal implies that animals have the capacity to experience feelings and sensations. This is sometimes referred to as animal sentience, described earlier in this paper.

The Act defines ‘serious harm’ as:

- (a) *harm that endangers an animal’s life; or*
- (b) *harm that results in an animal being so severely injured, so diseased or in such physical condition that it would be cruel not to destroy the animal; or*
- (c) *harm that consists of, or results in, serious and protracted impairment of a physical or mental function.*

- Do you agree that the definition of ‘animal’ included in the Act is appropriate? If not, what should it be?
- Do you agree that the definition of ‘harm’ in the Act provides adequate protections for the welfare of animals when used in the context of ill treatment?
- Do you agree that the definition of ‘serious harm’ in the Act provides adequate protections for the welfare of animals when used in the context of ill treatment?
- Are there any other terms that should be included or amended in the ‘interpretation’ section of the Act to provide greater clarity in understanding or applying the Act? If so, what are they and how should they be defined?



Part 2 – The Animal Welfare Advisory Committee

Part 2 of the Act is about the Animal Welfare Advisory Committee. It sets out the requirements for its membership, administration and functions. The committee provides independent advice to the Minister relating to the Act and its operation.

The committee is appointed by the Minister for Climate, Environment and Water. Its functions are to:

- advise the Minister on the administration and enforcement of the Act
- consider and report on legislative proposals affecting animal welfare
- develop, assist in developing and/or reporting on codes of practice relating to animal welfare
- investigate and report on other matters requested by the Minister.

Committee members are nominated by organisations specified in the Act or the relevant Minister, and appointed by the Minister for Climate, Environment and Water to provide a wide range of viewpoints from production, research, veterinary and welfare areas. They provide an annual report to parliament each year.

- **Do you agree that the administrative arrangements and functions of the Animal Welfare Advisory Committee, established by the Act, support the promotion of animal welfare?**



Part 3 – Animal welfare offences

Part 3 outlines offences relating to ill treatment of animals caused by prohibited activities or possessing certain items.

Ill treatment of animals

The Act sets out actions that would be considered ill treatment. These include:

- causing serious harm or the death of an animal by their ill-treatment
- being inhumane when killing an animal and allowing them to suffer unnecessarily
- carrying out a medical or surgical procedure where not allowed in the regulations
- causing the death of one animal by another e.g. releasing a dog to kill a rabbit or other animal
- failing to take steps to avoid harm coming to an animal.

For animal owners, ill-treatment also includes not providing adequate care, not avoiding or reducing the possibility of harm coming to the animal or abandoning the animal or causing neglect.

- Do you agree that the Act adequately prohibits the ill treatment of animals through the activities described in Section 13?

Responsibilities of owners and minimum standards of care

Animal owners have responsibilities under the Act to provide adequate food, water, living conditions and exercise. Failing to do so may cause harm.

The Act and regulations do not specify the frequency of feeding and watering, what constitutes appropriate living conditions and the frequency of exercise. This means for an alleged offence, the courts would need to determine 'adequate' food, water, living conditions and exercise for the animal in question for compliance and enforcement purposes.

Other states have investigated 'minimum standards of care' as part of their review processes. New South Wales has proposed minimum standards that align to the Five Domains of Animal Welfare e.g. ability to display normal behaviours and requirements to treat injured or sick animals with appropriate veterinary care. Victoria is also proposing to include enforceable minimum standards of care that reflect the Five Domains of Animal Welfare model. Victoria will include species-specific standards in its regulations that set out mandatory care requirements.

Some jurisdictions have included exemptions for minimum standards of care in exceptional circumstances, such as natural disasters like bushfires or floods.

- Do you agree that the Act sets out appropriate requirements for owners' care of their animals?

Prohibited activities and items

The Act prohibits some activities and items intended to cause the death of an animal by another animal as a result of human action. Some activities prohibited under Section 14 of the Act include:

- organised animal fights
- live baiting
- keeping, preparing, selling, supplying or releasing an animal from captivity for the purpose of it then being hunted or killed by a person or animal.

There are also some items relating to prohibited activities that cannot be owned without applying for specific approvals under Section 14a. Prohibited items include equipment used in live baiting or animal fighting, such as cock-fighting spurs, lures or baits and other items used in these activities.

- Do you agree 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?

Part 4 – Teaching and research involving animals

Part 4 sets out requirements relating to using animals in teaching and research, including the requirement to be licensed to undertake any research involving animals. It provides guidance as to how licences may be issued and the conditions that may be applied to teaching and research licences.

Part 4 also establishes the governance arrangements for Animal Ethics Committees. This includes their role in assessment, approval and administration of applications to use animals in teaching and research. The role of Animal Ethics Committees is to ensure animals are used for teaching and research by licenced organisations with qualified staff, in accordance with the *Australian Code for the Care and Use of Animals for Scientific Purposes (8th Edition)*. The Code's purpose is to 'promote the ethical, humane and responsible care and use of animals for scientific purposes'.

- Do you agree that the provisions of Part 4 relating to the use of animals for teaching and research enable the ethical, humane and responsible use of animals for teaching and research?

Animal Ethics Committees

Animal Ethics Committees may be established under the Act by an organisation licensed for teaching and research involving animals. The Minister is responsible for approving the formation of a committee where it meets the requirements of the Act. Animal Ethics Committees carry out several functions, including approving the acquisition and use of animals for research and teaching.

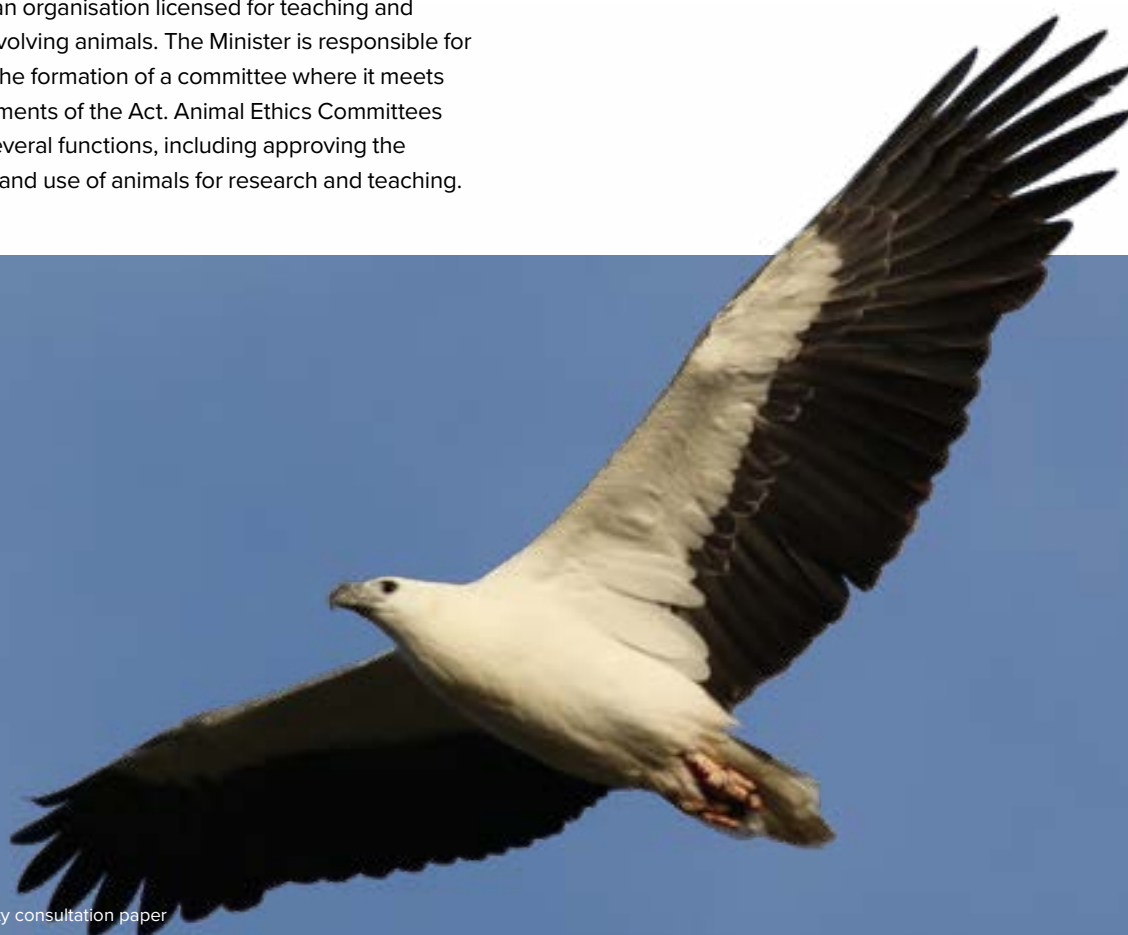
Animal Ethics Committee membership is intended to provide independent oversight of animal use in research and teaching, and includes people with expertise in animal welfare and care as well as members of the general public.

Each research or teaching project involving animals is reviewed against the Code requirements by an Animal Ethics Committee before approval. The committee determines whether animal impacts are warranted or justified so that approved projects align with the general public's expectations and perspectives, and are informed by the advice of experts in animal care.

Animal Ethics Committees must provide annual reports to the Chief Executive of the Department for Environment and Water and the licensed organisation that include:

- minutes and attendance of committee meetings
- an overview of activities assessed and approved by the committee
- details of adverse incidences and responses
- the education and training of staff involved in the care or use of animals and of committee members.

- Do you agree that the structures and functions of Animal Ethics Committees provide appropriate arrangements and oversight for the use of animals for teaching and research?



Part 5 – Enforcement

Part 5 sets out how the Act can be enforced. This includes:

- establishing who can be authorised to enforce the Act
- how animal welfare inspectors must be able to demonstrate their authority through an identification card
- what authorised personnel can do to inspect an alleged offence, such as entering property, taking photographs and collecting evidence
- how inspectors may carry out routine inspections where an offence isn't suspected
- what can be done as part of an inspection in relation to handling or seizing animals
- the ability to issue directions or notices under the Act.

- Do you agree that the compliance powers set out in Part 5 of the Act are appropriate for the administration and enforcement of the Act, regulations and codes of practice?

Penalties and expiations

Penalties or expiations (fines) may be assigned to an offence under the Act. Penalties are for more serious offences that require prosecution in court.

The amount or duration listed is the maximum penalty that can be issued by the court. The penalty applied is determined based on the seriousness of the offence, previous decisions relating to similar offences and other sentencing principles.

Offence	Maximum penalty	Expiation fee
Ill-treating an animal that causes serious harm or death intentionally or recklessly	\$50,000 or 4 years imprisonment	Not set
Ill-treating an animal	\$20,000 or 2 years imprisonment	Not set
Taking part in a prohibited activity	\$50,000 or 4 years imprisonment	Not set
Possessing a prohibited item	\$20,000 or 2 years imprisonment	Not set
Using an electrical device in contravention of the regulations	\$10,000 or 1 year imprisonment	Not set
A vehicle owner involved in an accident involving animals not notifying the owner or an inspector when the owner is not able to be contacted	\$5,000	\$315
Using animals for teaching or research purposes without a licence or failing to comply with the conditions of a licence	\$50,000 for a body corporate \$10,000 for a natural person	Not set
Failing to comply with a direction or requirement set out in an animal welfare notice	\$2,500	\$210
Hindering an inspector or someone assisting an inspectors	\$5,000	Not set
Failure to comply with a court order	\$5,000	Not set
Conducting a rodeo without a permit or not complying with the condition of a rodeo permit.	\$5,000	Not set
Making a misleading statement in an application under this Act	\$10,000 intentionally \$5,000 in any other case	Not set

Table 1: Examples of maximum penalties for offences and expiations in the *Animal Welfare Act 1985*.

An expiation (fine) is usually issued by an authority such as an animal welfare inspector or police officer for more minor offences.

Some examples of **maximum** penalties for offences and expiations are listed in Table 1.

- Do you agree that the penalties and expiations for contraventions are appropriate to discourage offending under the Act?

Shared enforcement or co-regulation

The Minister for Climate, Environment and Water can appoint qualified animal welfare inspectors under the Act to investigate incidents, issue expiations (fines) and assist prosecution for alleged offences against the Act.

The Act does not specifically require animal welfare inspectors to be government employees. This means multiple organisations may employ staff who are responsible for enforcing the Act, in partnership with the Department for Environment and Water. These currently include the RSPCA, PIRSA, and local government agencies.

- Do you agree that the provisions of the Act that enable this model of shared enforcement are appropriate?

Other feedback you can provide

The final question provides an opportunity for you to give any other information, commentary, or suggestions for how the Act or related legislation could better promote animal welfare and meet community's expectations.

This question invites you to add anything that may not have been relevant to previous questions or a specific Part of the Act. It also provides an opportunity for you to provide commentary on related legislation, which includes the regulations and Animal Welfare codes of practice.

- Are there any other areas of the Act or regulations that could be improved to:
 - promote animal welfare in South Australia
 - better meet community expectations of animal welfare in South Australia?



Thank you

Thank you for participating in this consultation on the Animal Welfare Act. [Subscribe](#) to keep up-to-date on the Animal Welfare Act review.

Contact us at: animalwelfareactreview@sa.gov.au



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