

Updating South Australia's Animal Welfare Act

Explanatory guide to the draft Animal Welfare Bill 2024



Government
of South Australia

Department for
Environment and Water



Acknowledgement of Country

The Department for Environment and Water acknowledges Aboriginal people as the First Peoples and Nations of the land and waters we live and work upon and we pay our respects to their Elders past and present. We acknowledge and respect the deep spiritual connection and the relationship that Aboriginal and Torres Strait Islander people have to Country.



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Introduction

The South Australian Government is updating the *Animal Welfare Act 1985* to ensure the laws governing animal welfare reflect contemporary practices and meet community expectations.

Seven key areas for reform have been identified:

- Reform 1** Update the purpose and include objects in the Act – *to better explain why the law exists and help the reader interpret its intent.*
- Reform 2** Better recognise animal sentience – *to acknowledge that animals experience feelings, both positive, such as pleasure, or negative, such as pain and fear.*
- Reform 3** Broaden the definition of an animal – *to allow the law to cover more types of animals by removing the exclusion of fish, and including cephalopods (squid, octopus, cuttlefish) for scientific purposes.*
- Reform 4** Introduce a ‘duty of care’ provision – *to create a positive requirement to provide a minimum level of care.*
- Reform 5** Improve regulation, oversight and transparency of the research and teaching sector – *to enable greater transparency, accountability and address community concerns.*
- Reform 6** Increase the ability to administer and enforce the Act – *to provide appropriate powers and ability to hold to account people that do not meet animal welfare requirements, preventing cruelty and promoting welfare.*
- Reform 7** Contemporise the governance and administrative provisions for the Animal Welfare Advisory Committee – *to ensure that animal welfare advice comes from a transparent and diverse group.*



What are we asking?

The Department for Environment and Water is seeking feedback on the Animal Welfare Bill 2024 (the Bill), which has been developed to replace the current *Animal Welfare Act 1985*.

How will I know what the Bill says?

This guide explains the intent and rationale for key provisions. The guide also makes reference to parts of the current Animal Welfare Act to assist in interpreting the Bill. It is important to read this guide in conjunction with the Bill.



How will I know what reform area is in what part of the Bill?

This explanatory guide links each section of the Bill to the corresponding reform area(s). A reform area may be delivered through one or multiple sections of the Bill.

How can I give my feedback?

Feedback is being accepted via a survey on the government's [YourSAy platform](#). The survey asks about the sections in the Bill and the questions are included in this explanatory guide for reference.

What will be done with the feedback?

The responses will be analysed and summarised into a consultation report. Depending on the responses provided, there may be changes identified and the Bill may be modified.

What are the next steps?

Once the Bill is finalised, the government will provide approval to table the Bill in Parliament.

The Bill will then be debated in Parliament. If it is passed by both houses, it will be assented to by the Governor, and it will become an Act (law).

What else do I need to know?

A commitment to introduce a licensing system for animal shelters will be progressed separately but the building blocks have been included in this Bill.

The government is also working through amendments to the *Dog and Cat Management Act 1995*, which will also support better animal welfare outcomes in South Australia, including the prevention of puppy farming. The consultation for that set of changes can also be found on YourSAy.



The Bill

Structure of the Bill

The structure of the Bill is updated to be more logical and provide additional flexibility for the future. It includes high-level abilities to create committees, licences, permits and to register activities or entities.

The structure of the Bill is:

Part 1 – Preliminary

Part 2 – Animal welfare offences

Part 3 – Advisory committees etc

Part 4 – Licences, permits and registered activities

Division 1 – Licences for prescribed activities

Division 2 – Permits

Division 3 – Registered activities

Part 5 – Enforcement

Division 1 – Authorised Officers

Division 2 – Enforceable Undertakings

Division 3 – Special powers relating to animals

Division 4 – Court Orders

Division 5 – Miscellaneous

Part 6 – Reviews

Part 7 – Animal Welfare Fund

Part 8 – Miscellaneous

Schedules

Long title of the Bill Reform 1

The ‘long title’ of an Act describes its purpose. This has been updated to better reflect the Bill’s focus on the prevention of harm and proactive protection of animals and their welfare.

Most Acts include a provision ‘for other purposes’. This is a general phrase intended to mean ‘issues related to the main subject of the Act’.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
An Act for the promotion of animal welfare and for other purposes.	An Act to provide for the protection of animal welfare and the prevention of harm to animals, to make amendments to the <i>Criminal Law Consolidation Act 1935</i> , the <i>Dog and Cat Management Act 1995</i> and the <i>Sentencing Act 2017</i> , to repeal the <i>Animal Welfare Act 1985</i> and for other purposes.



Part 1 – Preliminary

Part 1 contains principles and objects that articulate the Bill’s intent. Part 1 also includes definitions used to interpret the legislation. It is always worth reading the interpretation section, as many words that are used in day-to-day life can have a specific meaning in legislation. Where a word is not specifically defined, the ordinary meaning of the word/term is generally used.

Interpretation

Definitions

Reform 3

Reform 5

The definition of animal has been updated to include fish, and additionally to include cephalopods when used, supplied or kept for scientific purposes. The updated definition allows these species to be protected.

The current Act refers to 'teaching and research involving animals'. This has been updated to the 'use of animals for scientific purposes' in line with the *Australian Code for the Care and Use of Animals for Scientific Purposes*.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s3 ‘Animal’ means a member of any species of the sub-phylum <i>vertebrata</i> except – (a) a human being; or (b) a fish, and includes any prescribed animal;	s3 ‘Animal’ means – (a) a member of any species of the subphylum <i>vertebrata</i> other than a human being; or (b) a member of the class <i>Cephalopoda</i> if it is being supplied, kept or used for scientific purposes; or (c) a prescribed animal or a prescribed animal kept or used in prescribed circumstances.
s16(1) (...) a person must not use an animal for the purposes of – (a) teaching any science; or (b) research or experimentation.	s3 scientific purposes, in relation to an animal – (a) means all activities conducted with the aim of acquiring, developing or demonstrating knowledge or techniques in all areas of science, including teaching, field trials, environmental studies, research (including the creation and breeding of a new animal line where the impact on animal wellbeing is unknown or uncertain), diagnosis, product testing and the production of biological products;

Principles

Reform 1

Reform 2

Reform 4

The Bill includes an overarching acknowledgement of an animal’s ability to feel, perceive and have experiences. It also introduces a person’s ‘duty of care’ to an animal. These principles are stated at the beginning of the Bill and are fundamental for understanding it.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
The current Act does not include principles.	s4(1) animals are recognised as living beings that can feel, perceive, and experience positive and negative states. s4(2) the owners of animals have a duty of care in respect of those animals.

Objects

Reform 1

Including objects in the Bill provides clear intents and objectives of the legislation. The long title is taken from the current Act and expanded to create the objects.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
The current Act does not include objects.	s4(3) The objects of the Act are – (a) to protect the welfare of animals; and (b) to take a proactive approach in preventing harm to, and ill treatment of, animals; and (c) to improve the level of community awareness about the responsibilities of animal ownership; and (d) to ensure the Minister receives appropriate advice in relation to animal welfare matters.

Survey questions:

Do you think the definition of 'animal' is appropriate?

Do you think the wording of 'scientific purposes' is appropriate?

Do you think the principles and objects are appropriate?



Part 2 – Animal welfare offences

Part 2 of the Bill is about what you can and cannot do when interacting with animals to ensure that their welfare is protected. It includes the ‘duty of care’, as well as the offences of ill treatment. Prohibited items and activities can be found in this part of the Bill.

Penalties associated with offences have been significantly increased in the Bill and several expiations have also been added. The ability to issue an expiation provides additional tools to facilitate compliance with the legislation and improve an animal’s situation without needing to go through the court system. Penalties are listed separately in [Appendix 1](#).

Duty of care

Reform 4

The Bill introduces a proactive ‘duty of care’ provision. The current Act has an implicit requirement, but the Bill makes it clear that if you are responsible for the care of the animal, then you must make sure it has appropriate and sufficient water, food and living conditions.

The language used to describe ‘duty of care’ is quite broad as it is intended to apply in every situation for all species. Species-specific requirements can be defined through regulation. The ‘duty of care’ complements the ill treatment offences and provides a greater range of opportunities to act where ‘duty of care’ is not being met.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
No specific duty of care is included in the current Act.	s5 (1) The owner of an animal must provide the animal with appropriate and adequate food, water, living conditions (whether temporary or permanent) and care, and must take all reasonable and practicable measures to prevent or minimise harm to the animal

III treatment of animals

Reform 6

Ill treatment offences have not been altered, other than in relation to ‘duty of care’. The interaction between ‘duty of care’ and ill treatment offences is shown below.

Penalties have increased significantly.

A definition of ‘abandon’ has been added, as this had been a cause of confusion. Abandoning an animal has been an ill treatment offence for many years. A definition clearly explains how this offence would be defined to have occurred.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
Ill treatment offences include (s13(3)): Being the owner of the animal – (i) Failing to provide animal with appropriate and adequate food, water, living conditions or exercise.	s6(3)(b) Being the owner of the animal — (iii) causes the animal harm by neglecting the animal (including, for example, by failing to provide the animal with appropriate, and adequate food, water, living conditions (whether temporary or permanent) or exercise).
Maximum penalty - Aggravated offence: \$50,000 or imprisonment for 4 years - Lesser offence: \$20,000 or imprisonment for 2 years	Maximum penalty - Aggravated offence: \$1,000,000 for a corporation or \$250,000 for an individual, or imprisonment for 10 years - Lesser offence: Maximum penalty of \$500,000 for a corporation or \$100,000 for an individual, or imprisonment for 5 years
A definition of ‘abandon’ is not included in the current Act.	s6(6) For the purposes of this section, a person abandons an animal if the person relinquishes care or charge of the animal without ensuring that another person has, or will immediately take care or charge of the animal, including by – (a) deliberately abandoning the animal at a place; or (b) intentionally allowing the animal to escape; or (c) inappropriately releasing the animal into the wild.

Prohibited activities and items

Reform 6

Several activities and items are prohibited. These are outlined in sections 7 to 10 of the Bill. No changes to the activities or items that are prohibited have been made from the current Act. A new provision is included that would enable additional activities or items to be prohibited through regulation. The penalties have also been significantly raised.

It is an offence to participate in a prohibited activity or to be present at a place where a prohibited activity is occurring.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s14-15 Prohibited activities and items are listed.	Maintains current prohibited activities and items, and adds: s7(5) (f) any other act or activity of a kind prescribed by regulations to be a prohibited activity. s8(2) (e) any other implement, article or thing prescribed by regulations to be a prohibited item.
Maximum penalty • Taking part: \$50,000 or imprisonment for 4 years • Being present: \$20,000 or imprisonment for 2 years	Maximum penalty Taking part or possession: • In the case of a body corporate – \$1,000,000 • In the case of an individual – \$250,000 or imprisonment for 10 years Being present: • In the case of a body corporate – \$500,000 • In the case of an individual – \$100,000 or imprisonment for 5 years

Special requirements for greyhound racing entities

In 2023, the South Australian Government conducted an *Independent Inquiry into the governance of the greyhound racing industry*. Several recommendations were made to improve the welfare and governance of the industry – the government endorsed all recommendations. One recommendation related to mandatory reporting of suspected breaches of the animal welfare legislation (recommendation 33). The Bill creates a requirement for employees in the greyhound racing industry to report suspected breaches to the Minister.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
No provision in the current Act.	s11(1) a person must, if – (a) the person suspects on reasonable grounds that an offence against this part is being committed; and (b) that suspicion is formed in the course of the person’s employment with a prescribed greyhound racing entity, report that suspicion to the Minister in a manner prescribed by regulations.
No provision in the current Act.	Maximum penalty: • in the case of a body corporate—\$250,000 • in the case of an individual—\$50,000 Expiation fee: \$1,500

Exemption for fishing activities

Reform 3

Removing the exclusion of fish from the definition of 'animal' means the legislation will apply to a much wider array of people and industries while providing protections against ill treatment for fish, and cephalopods in relation to science. Aquaculture and fishing activities undertaken in accordance with the *Aquaculture Act 2001* and *Fisheries Management Act 2007* are exempt. In real terms, this means that fishing and aquaculture activities (including recreational, traditional or commercial) undertaken in accordance with the requirements of the Acts listed will not constitute an offence. However, the Bill does provide a mechanism to prescribe certain activities where they are not consistent with those Acts.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
Fish are not included in the current definition of 'animal'.	s12 (1) Aquaculture and fishing activities (whether recreational, traditional or commercial) will not constitute an offence against this Part provided that such activities are done in compliance with the relevant legislation and do not involve any acts that are prescribed as ill treatment of an animal for the purposes of section 6(3)(h). (2) In this section – Relevant legislation means – (a) in relation to aquaculture – the <i>Aquaculture Act 2001</i>; and (b) in relation to fishing – the <i>Fisheries Management Act 2007</i>.

Survey questions:

Do you think the duty of care provision is appropriate?

Do you think the penalties for ill treatment offences are appropriate?

Do you think the ability to prohibit items or activities in the future is appropriate?

Do you agree with the inclusion of mandatory reporting for the greyhound industry?

Do you think that the exemptions for fishing activities will enable normal practices to continue?



Part 3 – Advisory committees

Part 3 of the Bill allows the Minister to establish committees. More than one type of committee can be formed.

Establishment of a committee

The current Act establishes the Animal Welfare Advisory Committee (AWAC). Section 13(1)(b) allows for committees other than AWAC, to be formed where needed. These other committees are not included in the current Act. The committees are subject to the requirements for appointment, membership and governance outlined in sections 13 and 14.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
AWAC is the only committee set out in the current Act	Section 13(1)(b) states that the Minister may establish an Animal Welfare Advisory Committee and other committees they think fit.

Establishment of an Animal Welfare Advisory Committee

Reform 7

The provision to establish AWAC is maintained in the Bill. The Bill updates the membership requirements to include appropriate skills, qualifications and experiences. This shift enables the committee to be more broadly representative and may open the opportunity for individuals to apply to be on the committee.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s6(2) The Committee consists of 8 members appointed by the Minister, of whom – (a) 1 is to be nominated by the Minister responsible for the administration of the <i>Livestock Act 1997</i>; (b) 2 will be nominated by Primary Producers SA Incorporated; (c) 1 will be nominated by the Society; (d) 2 will be persons who, in the opinion of the Minister, are suitable to represent the interests of animal welfare organisations; (e) 1 will be nominated by the Australian Veterinary Association; (f) 1 will be engaged in research activities involving animals nominated by the Minister responsible for the administration of the <i>Health Care Act 2008</i>.	s13(3) The Animal Welfare Advisory Committee established by the Minister under this Part must consist of members appointed by the Minister with experience, skills or qualifications in any of the following areas: (a) animal welfare; (b) enforcement of any relevant legislation; (c) livestock production and management; (d) fishing or aquaculture; (e) wildlife management; (f) veterinary science; (g) scientific use of animals; (h) government administration; (i) other experience, skills or qualifications as determined suitable by the Minister. and at least 1 member must be a person from the Royal Society for the Prevention of Cruelty to Animals (South Australia).

Functions of committees

Reform 7

Reform 6

The Bill defines the range of functions that committees may undertake, including providing advice, reviewing specific matters, or carrying out an assessment. These functions are more general than in the current Act and provide for committees to be established on a temporary or ongoing basis.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s12 The functions of the committee are – (a) to advise the Minister on any matter relating to the administration of enforcement of this Act; and (b) to consider, and report to the Minister on, legislative proposals affecting animal welfare; and (c) to examine proposed codes of practice relating to animals and to report to the Minister on their likely effect upon animal welfare; and (ca) to develop, or assist in developing, codes of practice for animal welfare and to make recommendations to the Minister as to their adoption under the regulations; and (d) To investigate and report to the Minister on any matters referred by the Minister to the Committee for advice.	s13(9) The Minister may confer on a committee 1 or more of the following functions; (a) to provide advice to the minister in relation to any matters referred to the committee by the Minister; (b) to review any matters referred to the committee by the Minister; (c) to arbitrate or otherwise deal with complaints referred to the committee by the Minister; (d) to carry out assessments, in particular where systemic animal welfare issues are suspected, and provide advice on enforcement and compliance actions; (e) to perform such other functions as may be prescribed by the regulations.

Survey questions:

Do you think the skills based composition of AWAC is appropriate?

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Part 4 – Licences, permits and registered activities

Reform 5

Reform 6

This part of the Bill provides the Minister with a ‘head power’ to create licences, permits or registers for certain activities. The current Act has one type of licence and one type of permit. Allowing multiple types will enable the government to oversee or regulate a wider range of activities to protect animal welfare.

As with other parts of the Bill, penalties are proposed to increase substantially, and some expiations have also been introduced for non-compliance with licence, permit or registration conditions.

Requirement to hold a licence

The Bill includes a requirement to hold a licence when a person breeds and supplies an animal for scientific purposes, keeps or uses an animal for scientific purposes, or undertakes another activity prescribed in legislation.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s16(1) (...) a person must not use an animal for the purposes of – (a) teaching any science; or (b) research or experimentation.	s15 (1) Subject to subsection (2), a person must not undertake a prescribed activity unless the person holds a licence under this Division authorising the activity. (3) In this section – Prescribed activity means any of the following: (a) breeding and supplying an animal for scientific purposes; (b) keeping or using an animal for scientific purposes; (c) an activity of a kind prescribed by the regulations.
Maximum penalty \$50,000 for a corporation \$10,000 for an individual	Maximum penalty - In the case of a body corporate – \$250,000 - In the case of an individual – \$50,000 - Expiation fee – \$1,500

Classes of licence

The Bill creates 2 new classes of licence associated with the scientific use of animals, covering breeding and use of animals. This aligns with the *Australian Code for the Care and Use of Animals for Scientific Purposes*. A provision has also been included to enable licences for other purposes.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s16(1) (...) a person must not use an animal for the purposes of - (a) teaching any science; or (b) research or experimentation.	s16(1) For the purposes of this Act (but subject to subsection(2)), licences are divided into the following classes: (a) Animal supplier’s licence – a licence authorising the breeding and supplying of animals for scientific purposes; (b) Animal use licence – a licence authorising the keeping and use of animals for scientific purposes. (2) The regulations may – (a) Prescribe additional classes of licence; and (b) Divide a class of licence into subclasses; and (c) Prescribe the persons or organisations, or classes or groups of persons or organisations, to which licences, or any classes or subclasses of licences, may be granted.

Administration of licences

Each licence will need to have a nominated person who takes responsibility for compliance with its conditions. The Bill introduces licence conditions that may be ‘designated’ or ‘non-designated’. This allows appropriate penalties to be applied depending on the seriousness of the issue.

The duration of licences is updated. Licences would be granted for an initial 12 months, with renewals available for a period up to 5 years. The Bill also includes requirements for reports and other documents to be submitted where applicable.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s17—Application for a licence (1) A person may apply to the Minister for a licence under this Part. (2) An application for a licence must— (a) be made in the prescribed manner in a form approved by the Minister; and (b) contain the prescribed information; and (c) be accompanied by the prescribed application fee. s18—Grant of licences (1) Where application is made under this Part for a licence, the Minister must determine whether a licence should be granted having regard to— (a) the suitability of the applicant to be granted the licence; and (b) the adequacy of the applicant's premises and facilities for the care and handling of animals; and (c) the adequacy of arrangements made by the applicant for the provision of veterinary attention to animals; and (d) such other matters as may be prescribed. (2) On granting a licence, the Minister must forward to the applicant a licence in the form approved by the Minister.	s17—Application for and grant of licence (1) The Minister may, on an application under this section and by written notice, taking into account any criteria prescribed by the regulations, grant or refuse to grant a licence under this Division. (2) An application for a licence must— (a) be made in a manner and form determined by the Minister; and (b) identify the activity for which the licence is being sought in a manner determined by the Minister; and (c) be accompanied by such information or documents as may be required by the Minister; and (d) be accompanied by the prescribed fee or fees.
Not in the current Act.	s18—Nomination of responsible person for compliance (1) If an application for a licence is made by an applicant who is not an individual, the application must nominate to the Minister an individual (the responsible person) who will be responsible for complying with all conditions of, and any obligations under, the licence. (2) If the licensee or any other person commits an offence against this Act in relation to the licence or the prescribed activity under the licence, the responsible person is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the responsible person proves that they could not, by the exercise of reasonable diligence, have prevented the commission of that offence.

Animal Welfare Act 1985

s19—Conditions of licence

(1) A licence under this Part is subject to such conditions as the Minister may specify by notice in writing given to the holder of the licence.

(2) Without limiting the matters with respect to which conditions may be imposed, the Minister may impose conditions—

- (a) requiring the holder of the licence to establish an animal ethics committee in accordance with section 23; and
- (b) requiring the holder of the licence to consult with animal ethics committee in relation to specified matters; and
- (c) requiring the holder of the licence to seek the approval of an animal ethics committee before—
 - (i) acquiring animals for the purposes of teaching, research or experimentation; or
 - (ii) using animals for the purposes of teaching, research or experimentation; and
- (d) requiring the holder of the licence to provide an animal ethics committee with such information in relation to teaching, research or experimentation involving animals as the animal ethics committee may request; and
- (e) requiring the holder of the licence to answer such questions in relation to teaching, research or experimentation involving animals as may be put by an animal ethics committee; and
- (f) requiring the holder of the licence to comply with such provisions of the Code as may be specified in the conditions.

(3) The Minister may, by notice in writing given to the holder of a licence, vary or revoke a condition of the licence or impose a further condition.

(4) A person who contravenes or fails to comply with a condition of a licence is guilty of an offence.

Draft Animal Welfare Bill 2024

s19—Conditions of licence

(1) A licence under this Division is subject to such conditions as the Minister thinks fit and specifies in the licence.

(2) Without limiting the matters with respect to which conditions may be imposed, the Minister may impose conditions requiring the licensee—

- (a) to establish an animal ethics committee, or undertake another registered activity, in accordance with Division 3; and
- (b) to consult with an animal ethics committee in relation to specified matters; and
- (c) to obtain the approval of an animal ethics committee before—
 - (i) acquiring animals for scientific purposes; or
 - (ii) using animals for scientific purposes; and
- (d) to provide an animal ethics committee with such information in relation to scientific purposes involving animals as the animal ethics committee may request; and
- (e) to answer such questions in relation to scientific purposes involving animals as may be put by an animal ethics committee; and
- (f) to comply with such provisions of the Code as may be specified in the conditions; and
- (g) to submit annual reports containing specified details within specified timeframes; and
- (h) to provide information required by the Minister.

(3) The Minister may, on the Minister's own initiative or on the application of a licensee and payment of the prescribed fee, by written notice to the licensee, amend or revoke a condition of a licence or impose a further condition.

(4) A person who contravenes a designated condition of a licence is guilty of an offence.

(5) A person who contravenes a condition of a licence, other than a designated condition, is guilty of an offence.

(6) In this section—

designated condition—a condition of a licence is a designated condition for the purposes of this section if—

- (a) the condition is of a kind prescribed by the regulations as designated conditions; or
- (b) the licence specifies that the condition is a designated condition for the purposes of this section.

Animal Welfare Act 1985

s20—Renewal of licences

- (1) Subject to this Part, a licence remains in force for a period of 2 years from the day on which it is granted and may be renewed for successive periods of 2 years.
- (2) An application for renewal—
- (a) must be made in a manner and form determined by the Minister; and
 - (b) must be delivered to the Minister not less than 1 month before the licence is due to expire; and
 - (c) must be accompanied by the prescribed fee.
- (3) The Minister has a discretion to determine an application for renewal despite the fact that it is delivered out of time.
- (4) Where an application for renewal is made in accordance with this Act, the Minister must renew the licence of the applicant.

Draft Animal Welfare Bill 2024

s20—Term and renewal of licence

- (1) Subject to this Act, a licence remains in force—
- (a) in the case of a licence granted other than by way of renewal of a licence—for a period of 12 months commencing on the day on which the licence is granted; or
 - (b) in the case of a licence granted by way of renewal of a licence—for such period (not exceeding 5 years) as is stated in the licence commencing on the day on which the previous licence is due to expire.
- (2) The Minister may, on an application under this section and by written notice, taking into account any criteria prescribed by the regulations, renew or refuse to renew a licence.
- (3) An application for the renewal of a licence must—
- (a) be made in a manner and form determined by the Minister; and
 - (b) be delivered to the Minister not less than 1 month before the licence is due to expire; and
 - (c) be accompanied by such information or documents as may be required by the Minister and
 - (d) be accompanied by the prescribed application fee.
- (4) The Minister may, if the Minister thinks fit and on payment of the prescribed late application fee, renew a licence despite the fact that the application for renewal was delivered out of time.
- (5) If an application for the renewal of a licence is not decided before the day on which the licence is due to expire, the licence continues in operation until the application is decided and, if the licence is renewed, the renewal is taken to have commenced on the 10 day on which the licence would, but for this subsection, have expired.

Permits

The current Act has a provision for rodeo permits (s34). The Bill includes a broader power to create and issue permits. No activities are currently listed as requiring permits, but the Bill provides flexibility to require them if needed.

Registered activities

The Bill introduces a power to create registers and require an activity or entity to be registered. The Minister may impose terms and conditions on registered activities/entities, with penalties for non-compliance. One of the key entities that will be registered is animal ethics committees (AECs). Other activities could be registered in future.

By registering AECs, attaching conditions to that registration, and providing additional powers to disclose information, the government will have greater oversight of the sector. The functions and structure of AECs has been aligned to the *Australian code for the care and use of animals for scientific purposes* to ensure consistency across the country.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
Not included in the current Act.	s25—Activities that must be registered (1) A person must not conduct an activity to which this Division applies unless registered in accordance with this Division. (2) This Division applies to the following activities: (a) the establishment and operation of an animal ethics committee for the purposes of approving any activities of a licensee; (b) an activity of a kind prescribed by regulation.
Not included in the current Act.	s26—Minister may maintain registers (1) The Minister may maintain 1 or more registers for the purposes of this Division. (2) A register— (a) may be maintained in a manner determined by the Minister; and (b) may be made wholly or partly available for public inspection on a website determined by the Minister.
Not included in the current Act.	s27—Registration (1) A person (the applicant) may apply to the Minister for registration in accordance with this section. (2) An application for registration must— (a) be made in a manner and form determined by the Minister; and (b) identify the activity for which registration is being sought in a manner determined by the Minister; and (c) be accompanied by such information or documents as may be required by the Minister; and (d) be accompanied by the prescribed application fee.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
Not included in the current Act.	s28—Nomination of responsible person for compliance (1) If the applicant is not an individual, the application must nominate to the Minister an individual (the responsible person) who will be responsible for complying with all conditions of the registration and any legal requirements applicable to the registered activity. (2) If the applicant or any other person commits an offence against this Act in relation to the registration or the registered activity, the responsible person is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the responsible person proves that they could not, by the exercise of reasonable diligence, have prevented the commission of that offence.
Not included in the current Act.	s29—Conditions of registration (1) The Minister may register an activity subject to such conditions as the Minister thinks fit and specifies in the register maintained under section 26. (2) Without limiting the matters with respect to which conditions may be imposed, the Minister may impose conditions requiring the applicant — (a) to conduct an independent external review within a specified timeframe; and (b) to submit annual reports containing specified details within specified timeframes; and (c) to provide information required by the Minister. (3) The Minister may, on the Minister's own initiative or on the application of a person and payment of the prescribed fee, by written notice to the applicant, amend or revoke a condition of a registration or impose a further condition. (4) It is taken to be a condition of registration of the establishment of an animal ethics committee that the applicant must notify the Minister— (a) within 14 days of a change in the presiding member of the committee; and (b) within 30 days of any other change in the membership of the committee. (5) An applicant who contravenes a condition of a registration is guilty of an offence.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
Not included in the current Act.	s30—Term and renewal of registration (1) Registration of an activity remains in force for a period determined by the Minister (but not exceeding of 5 years) and may be renewed in accordance with this section. (2) The Minister may, on an application under this section and by written notice, taking into account any criteria prescribed by the regulations, renew or refuse to renew the registration of an activity. (3) An application for the renewal of registration must— (a) be made in a manner and form determined by the Minister; and (b) be delivered to the Minister not less than 1 month before the registration is due to expire; and (c) be accompanied by such information or documents as may be required by the Minister; and (d) be accompanied by the prescribed application fee. (4) The Minister may, if the Minister thinks fit and on payment of the prescribed late application fee, renew a registration despite the fact that the application for renewal was delivered out of time. (5) If an application for renewal of registration is not decided before the day on which the renewal is due to expire, the applicant may continue the registered activity until the application is decided and, if the registration is renewed, the renewal is taken to have commenced on the day on which the registration would, but for this subsection, have expired.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
s23—Establishment of animal ethics committees by licensee (2) Where a licensee is required, as a condition of the licence, to establish an animal ethics committee, the licensee must establish an animal ethics committee in accordance with this section. (3) An animal ethics committee will consist of at least 5 members appointed by the licensee, of whom— (a) at least 1 will be a veterinary surgeon; and (b) at least 1 will be a person who is engaged in teaching or research activities involving animals; and (c) at least 1 will be a person who is responsible for the daily care of animals kept for use in teaching or research activities; and (d) at least 1 will be a person with an established commitment to the welfare of animals; and (e) at least 1 will be a person who is independent of the licensee and has never been involved in teaching or research activities involving animals. (4) In selecting persons for appointment to an animal ethics committee the licensee should act with a view to ensuring that the membership of the committee is, as nearly as possible, equally representative of each of the classes of person referred to in subsection (3). (5) The licensee will appoint a member of an animal ethics committee to be the presiding member of the committee. (6) A member of an animal ethics committee is appointed on such terms and conditions as may be determined by the licensee.	s31—Animal ethics committees (1) An animal ethics committee will consist of at least 4 members appointed in compliance with the Code. (2) The applicant who applied for registration in relation to the animal ethics committee must— (a) ensure that the Minister is advised of the name of and contact details for the presiding member of the animal ethics committee; and (b) if there is a change in the presiding member of the animal ethics committee—ensure that the Minister is advised of the name of and contact details for the new presiding member within 14 days of that change. (3) Subject to this section, the functions of an animal ethics committee are— (a) to ensure that animals used for scientific purposes are treated humanely, and that the regulations relating to such purposes are complied with; and (b) to furnish annual reports in accordance with the regulations; and (c) such other functions as are prescribed by the Code or the regulations. (4) An animal ethics committee must perform its functions, and conduct its business, in compliance with the Code. (5) An animal ethics committee may not approve the use of an animal for scientific purposes, or the acquisition of an animal for such purposes, unless it is satisfied that— (a) the use of the animal is essential for the particular purpose; and (b) the person who proposes to use the animal has appropriate experience and qualifications. (6) If an animal ethics committee contravenes a requirement applying under subsection (4) or (5), the presiding member of the committee is guilty of an offence. (7) It is a defence to a charge of an offence against subsection (6) if the presiding member proves that they could not, by the exercise of reasonable diligence, have prevented the commission of that offence.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
s23A—Approval of animal ethics committee by Minister (1) The Minister may approve a body as an animal ethics committee for the purposes of this Act. (2) The Minister may only approve a body under subsection (1) if satisfied that— (a) the body is constituted in accordance with the membership requirements for an animal ethics committee (within the meaning of the Code) as laid down in the Code; and (b) the body has appropriate procedures and standards in place to enable the body to comply with the Code in performing functions for the purposes of this Act; and (c) the body is otherwise suitable to act as an animal ethics committee for the purposes of this Act. (3) An approval under subsection (1) may be conditional or unconditional. (4) The Minister may vary or revoke an approval under subsection (1). s24—Procedure (...) (1a) The quorum for a body approved as an animal ethics committee under section 23A is to be determined in accordance with the Code unless the Minister specifies otherwise. (2) A decision carried by a majority of the votes cast by the members present at a meeting of an animal ethics committee is a decision of the committee. (3) Each member present at a meeting of an animal ethics committee is entitled to 1 vote on a question arising for decision at that meeting and, in the event of an equality of votes, the person presiding is entitled to a second, or casting, vote. (4) Subject to this Act, the business of an animal ethics committee may be conducted in accordance with the Code but otherwise in such manner as the committee determines.	s31—Animal ethics committees <i>Continued</i>

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
s25 — Functions of animal ethics committees (1) Subject to this section, the functions of an animal ethics committee are— (a) to determine matters required under this Act to be referred to an animal ethics committee by the holder of a licence; and (b) to approve the use of animals for the purposes of teaching, research or experimentation proposed to be undertaken by the holder of a licence; and (c) to approve the acquisition, by the holder of a licence, of animals for the purposes of teaching, research or experimentation; and (d) to ensure that animals involved in teaching, research or experimentation are treated humanely, and that the regulations relating to such activities are complied with; and (e) to furnish annual reports in accordance with the regulations; and (f) such other functions as are prescribed by the Code or the regulations. (1a) In performing its functions, an animal ethics committee must comply with the Code. (2) An animal ethics committee may, subject to and in accordance with the Code, approve the use of an animal for the purposes of teaching, research or experimentation, or the acquisition of animals for such purposes, unconditionally, or subject to such conditions as the committee thinks fit. (3) An animal ethics committee may not approve the use of an animal for the purposes of research or experimentation, or the acquisition of an animal for such purposes, unless it is satisfied that— (a) the use of the animal is essential for the particular purpose; and (b) the person who proposes to use the animal has appropriate experience and qualifications (4) A person who contravenes or fails to comply with a condition of an approval under this section is guilty of an offence.	s31—Animal ethics committees <i>Continued</i>

Survey questions:

- Do you think the separation of licences is appropriate?*
- Do you think it is appropriate to have a nominated person for a licence?*
- Do you think the ability to create permits is appropriate?*
- Do you think it is appropriate to have registered activities/entities?*
- Do you agree that animal ethics committees should be registered and require a nominated person?*



Part 5 – Enforcement Reform 6

Part 5 of the Bill relates to enforcement of the legislation. It includes the ability to appoint and restrict authorised officers, identification requirements for authorised officers and powers (including general powers and special powers). The provisions relate to inspections, animal welfare notices, notices to comply and offences in relation to hindering an authorised officer and enforceable undertakings.

Appointment and identification of authorised officers

The Bill updates the terminology for officers who enforce the Animal Welfare Act. These officers are now known as 'authorised officers'. This is consistent with multiple pieces of legislation that refer to these compliance staff. Whilst most of the general powers have remained the same as in the current Act, 2 new powers have been added to support investigations and enforcement. The changes relate to obtaining information about the owner of a vehicle (s34) and the ability to require someone to attend an interview.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s28—Appointment of inspectors (1) The Minister may, by instrument in writing, appoint a qualified person to be an inspector for the purposes of this Act. (2) An appointment may be made subject to conditions specified in the instrument of appointment. (3) Without limiting the conditions that may be imposed under subsection (2), the conditions may include the following: (a) a condition restricting the powers of the inspector; (b) a condition requiring the inspector to undertake suitable training; (c) a condition requiring compliance with prescribed protocols and operational procedures; (d) any other condition that the Minister thinks fit. (4) The Minister may, at any time, revoke an appointment or vary, revoke or add a condition of an appointment. (5) In this section— qualified person means a person who has successfully completed training as prescribed by the regulations.	s32—Appointment of authorised officers Maintains provisions included in the current Act and updates references of 'inspector' to 'authorised officer'.



Animal Welfare Act 1985

s29—Identification of inspectors

(1) An inspector appointed under this Part must be issued with an identity card—

- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an inspector for the purposes of this Act.

(2) If the powers of an inspector have been limited by conditions, the identity card issued to the inspector must contain a statement of the conditions imposed on the inspector's powers.

(3) An inspector appointed under this Part must, at the request of a person in relation to whom the inspector intends to exercise powers under this or any other Act, produce for the inspection of the person his or her identity card.

(4) If an inspector who is a police officer is not in uniform, the officer must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for the inspection of the person his or her warrant card.

(5) If a person in possession of an identity card issued to the person under this section ceases to be an inspector, the person must immediately return the identity card to the Minister.

Draft Animal Welfare Bill 2024

Maintains provisions in s29 of the current Act, replacing references to 'inspector' with 'authorised officer'. Other updates and changes have been made to:

- s33(5) If a person in possession of an identity card issued to the person under this section ceases to be an authorised officer, the person must return the identity card to the Minister within 14 days.
- s33(6) If a person who was appointed as an authorised officer in their capacity as an officer or employee of a particular entity, ceases to be an employee or officer of that entity, the entity must—
 - (a) inform the Minister, as soon as reasonably practicable, that the person has ceased to be an officer or employee; and
 - (b) ensure that the person complies with subsection (5).

Animal Welfare Act 1985

s30—General powers

(1) An inspector may—

- (a) enter and search and, if necessary, use reasonable force to break into or open—
 - (i) premises or a vehicle to which this section applies; or
 - (ii) part of, or anything in or on, premises or a vehicle to which this section applies; and
- (b) give directions with respect to the stopping or movement of a vehicle to which this section applies; and
- (c) require a person to produce a document, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; and
- (d) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information; and
- (e) take photographs, films or audio, video or other recordings; and
- (f) seize and retain any animal or other thing that the inspector reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; and
- (g) identify, by marking, tagging or otherwise, an animal or other property in respect of which powers have been exercised under this Act; and
- (h) require a person who the inspector reasonably suspects has committed, is committing, or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
- (i) require a person who the inspector reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act to answer questions in relation to those matters; and
- (j) require a person holding or required to hold a licence, permit or approval under this Act to produce it for inspection; and
- (k) give a direction required in connection with the exercise of a power conferred by this Act or otherwise in connection with the administration or enforcement of this Act.

Draft Animal Welfare Bill 2024

s34 – General powers

As per s30 of the current Act, with the addition of:

(1)(i) if the authorised requires the information of any vehicle for purposes related to the administration or enforcement of this Act –

- (i) request the provision of such information from the Registrar of Motor Vehicles (who is, by force of this section, authorised to provide such information); or
- (ii) require a person who the authorised officer reasonably suspects has knowledge of those matters to answer questions in relation to those matters; and

(j) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act –

- (i) to answer questions in relation to those matters; or
- (ii) to attend at a specified place at a specified time and answer questions in relation to those matters; (...)

Animal Welfare Act 1985

s30—General powers

continued

(2) An inspector—

- (a) may only exercise the powers conferred by subsection (1) as reasonably required for the administration and enforcement of this Act; and
- (b) may only exercise the power to use force under subsection (1)(a) on the authority of a warrant issued by a magistrate or in circumstances in which the inspector reasonably believes that urgent action is required in order to prevent or mitigate serious harm occurring to an animal.

(3) An inspector may be assisted in the exercise of powers under this Act by such persons as the inspector considers necessary in the circumstances.

(4) An inspector may require an occupier of premises or a person apparently in charge of a vehicle, animal or other thing to give to the inspector or a person assisting the inspector such assistance as is reasonably required by the inspector for the effective exercise of powers under this Act.

(5) This section applies to the following premises and vehicles:

- (a) premises or a vehicle in or on which an inspector reasonably suspects that an offence against this Act has been, is being or is about to be, committed;
- (b) premises or a vehicle in or on which an inspector reasonably suspects there is an animal that is being, or has been, harmed unnecessarily or that will, if urgent action is not taken, be harmed unnecessarily;
- (c) premises or a vehicle subject to, or being used for the purposes of an activity that is the subject of, a licence, permit or approval under this Act;
- (d) premises or a vehicle in or on which an inspector reasonably suspects there is an animal in respect of which an animal welfare notice or animal welfare order is in force;
- (e) premises or a vehicle that an inspector reasonably suspects is being used for or in connection with a business, or organised event or activity, involving animals;
- (f) premises or a vehicle in which an inspector reasonably suspects there may be records relating to a business or organised event or activity involving animals or an animal or other thing that has been used in, or may constitute evidence of, a contravention of this Act.

Draft Animal Welfare Bill 2024

s34 – General powers

continued

Routine inspections

Routine inspection provisions (s36) have not been altered from the current legislation, though ‘reasonable notice’ has been updated to require at least 24 hours’ notice.

Offence to hinder

The ‘offence to hinder’ is included in section 39 of the Bill. The key difference from the current Act is the separation of offences. Section 39(1) creates an offence to hinder/obstruct or to falsely represent oneself as an authorised officer, while section 39(2) creates an offence to fail to answer when required. Significant increases in penalties are also included in section 39.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
s31E—Offence to hinder etc inspectors A person who— (a) hinders or obstructs an inspector, or a person assisting an inspector, in the exercise of powers under this Act; or (b) refuses or fails to comply with a requirement or direction of an inspector under this Act; or (c) when required by an inspector under this Act to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or (d) falsely represents, by words or conduct, that he or she is an inspector, is guilty of an offence.	s39 – Offence to hinder etc authorised officers (1) A person who – (a) Hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act; or (b) Falsely represents, by words or conduct, that they are an authorised officer, is guilty of an offence (2) A person who – (a) Refuses or fails to comply with a requirement or direction of an authorised officer under this Act; or (b) When required by an authorised officer under this Act to answer a question, refuses or fails to answer the question to the best of the person’s knowledge, information and belief, Is guilty of an offence.

Notices etc.

The Bill introduces 2 new tools to support compliance and enforcement. These are a ‘notice to comply’ and an ‘enforceable undertaking’.

The ‘notice to comply’ is separate from an animal welfare notice. It applies when an authorised officer believes that a breach of the Act is occurring. It requires a person to take action or stop certain actions. Compliance is mandatory and significant penalties apply for non-compliance.

‘Enforceable undertakings’ are a contract between a person/party and the government, which outline an agreement negotiated between the parties. The agreement is legally binding and penalties are associated with failing to comply.

Animals or items may be seized or forfeited if there is non-compliance with either a ‘notice to comply’ or ‘enforceable undertaking’.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
Not in the current Act	s38 – Notice to comply (1) if an authorised officer believes on reasonable grounds that a person is contravening a requirement of this Act, the authorised officer may issue the person with a notice (a notice to comply) directing the person to take, or cease, specified action within a specified period. (2) A person to whom a notice to comply has been given must not refuse or fail to comply with the direction set out in the notice.
Not in the current Act	s40 – Enforceable undertakings (1) If the Minister is satisfied that a person is contravening a requirement of this Act, the Minister may ask the person to consent to an enforceable undertaking setting out actions the person agrees to take, or to cease, within a specified time, any costs or expenses the person agrees to pay in respect of action taken or to be taken by an authorised officer or the Minister and any other matters that may be agreed between the Minister and the person. (2) A person who consents to an enforceable undertaking must not refuse or fail to comply with the terms of the undertaking.
Not in the current Act	s43 – Seizure and forfeiture following non-compliance with notice or undertaking.

Seizing animals and objects

The Bill defines when animals or items can be seized, and separates items from animals in terms of how they are managed after seizure. An object can be held indefinitely, whereas the care and welfare of an animal must be the central consideration to determine what happens after it has been seized.

Where an animal(s) is seized by an authorised officer, the Bill establishes a default position that the animal is forfeited to the Minister after 30 days. If the owner wants their animal to be held until the end of a court proceeding, they must apply to the Minister. This animal-centric approach will result in improved animal welfare outcomes as court proceeding may take several years to finalise. The seizure provisions explain when animals can be sold, rehomed or euthanised after they have been seized.

Reviews of decisions by authorised officers and the review of any Ministerial decisions is discussed further in Part 6 – Reviews, below.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
s31C – Dealing with seized animals and objects (1) The Minister may sell, destroy or otherwise dispose of an animal or object that has been seized under this Act but is no longer required to be retained if— (a) the whereabouts of the owner of the animal or object cannot, after reasonable inquiries, be ascertained; or (b) the whereabouts of the owner are known but the owner has failed, within 3 clear <i>working days</i> of being given written notice that the animal or object may be collected from a specified place, to collect the animal or object. (2) If, on application by an inspector, a magistrate is satisfied that— (a) an animal has been seized and retained under this Act; and (b) legal proceedings under this Act relating to the animal are pending; and (c) in the circumstances, it is impractical or unreasonable for the animal to continue to be retained until the proceedings have been concluded or otherwise terminated, the magistrate may make an order authorising that the animal be sold, destroyed or otherwise disposed of as the Minister thinks fit. (3) If an animal is disposed of by sale under subsection (2), the proceeds of the sale are to be held by the Minister until the conclusion or termination of the proceedings when they are to be disbursed in accordance with a further order of the court.	s35 - Provisions relating to seizure of things other than animals (2) If a thing has been seized under section 34(1)(f),...: (a) the thing must be held pending a decision on whether to institute proceedings for an offence related to the thing seized, unless the Minister, on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including as to the giving of security for satisfaction of an order under paragraph (b)(ii)); (b) if proceedings for an offence relating to the thing are instituted within the prescribed period after its seizure and the defendant is convicted or found guilty of an offence, the court may— (i) order that it be forfeited to the Crown; or (ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Crown or that the person to whom it was released or the defendant pay to the Crown an amount equal to its market value at the time of its seizure, as the court thinks fit; (c) if— (i) proceedings are not instituted for an offence relating to the thing within the prescribed period after its seizure; or (ii) proceedings have been so instituted and— (a) the defendant is found not guilty of the offence; or (b) the defendant is convicted or found guilty of an offence but no order for forfeiture is made under paragraph (b), then the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Crown (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure, unless possession of the thing is (or would be) contrary to another provision of this or any other Act;

s31C – Dealing with seized animals and objects

Continued

- (c) if—
 - (i) possession of the thing by the person from whom the thing was seized is (or would be) contrary to another provision of this Act; or
 - (ii) a thing is not liable for forfeiture under a preceding paragraph and the Minister has, after taking reasonable steps in the circumstances, been unable to return the thing to the person from whom it was seized, the Minister may deal with, destroy or dispose of the thing in such manner as the Minister thinks fit.

(3) In subsection (2)— prescribed period means 12 months or such longer period as may be prescribed by the regulations.

s44—Dealing with seized animals

(1) This section applies to an animal seized under any provision of this Act.

(2) The Minister may—

- (a) sell an animal seized under this Act; or
- (b) give an animal seized under this Act to an animal welfare entity for selling or rehoming; or
- (c) if satisfied that no action can reasonably be taken under paragraph (a) or (b) or that it is otherwise in the best interests of the seized animal—destroy (or arrange for the destruction of) the animal.

(3) Before selling, rehoming or destroying a seized animal, the Minister must—

- (a) if the identity of the owner of the animal is not known—make reasonable enquiries to find out who the owner is; or
- (b) if the identity of the owner of the animal is known—give the person written notice of the Minister’s intention to sell, rehome or destroy (or arrange for the destruction of) the animal.

Animal Welfare Act 1985

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s31C – Dealing with seized animals and objects

Continued

- (4) The Minister may only sell, rehome or destroy (or arrange for the destruction of) a seized animal if the Minister—
- (a) is satisfied on reasonable grounds it is in the best interests of the seized animal; and
 - (b) has complied with subsection (3); and
 - (c) where the identity of the owner of the animal is known, if—
 - (i) the Minister has given notice to the owner under subsection (3)(b); and
 - (ii) the person—
 - (A) has not, within 14 days after the day the notice is given (the application period), applied to SACAT under section 50 for review of the decision; or
 - (B) has applied to SACAT under section 50 for review of the decision within the application period and the Minister's decision has been confirmed.
- (5) If an animal that has been seized is disposed of by sale under this section—
- (a) if the animal was seized as evidence of an offence—the proceeds of the sale must be held by the Minister until the conclusion or termination of the proceedings for the offence when they must be disbursed in accordance with a further order of the court; or
 - (b) in any other case—the costs incurred by the Minister in relation to the seizure and sale of the animal must be deducted from the proceeds of sale and the remainder (if any)—
 - (i) if the identity of the owner of the animal is not known—must be paid into the Animal Welfare Fund maintained under Part 7; or
 - (ii) if the identity of the owner of the animal is known—must be paid to the owner of the animal.
- (6) For the avoidance of doubt, nothing in this section affects the ability of an authorised officer to exercise powers under section 42.
- (7) In this section— animal welfare entity means an entity that, in the opinion of the Minister, carries out appropriate functions relating to animal welfare.

Interim orders

The Bill introduces interim court orders that can require a person to care for an animal owned by them in a particular way, including any supervision needed. An interim order may require a person to surrender an animal to an authorised officer, forbid a person from acquiring or having any other animal for a specified time, or direct a person to surrender an object to the Crown. Interim orders are legally binding and impose significant penalties for non-compliance.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
Interim orders are not included in the current Act.	S46—Interim orders (1) A court may, in proceedings for an offence against this Act, make such interim orders as the court considers appropriate. (2) Without limiting the generality of subsection (1), a court may make 1 or more of the following orders: (a) an order requiring a specified person to care for any animal owned by the person (whether or not the subject of the alleged offence) in accordance with the conditions of the order (which may include a condition that the care of any such animal be supervised or monitored by an authorised officer); (b) an order directing a specified person to surrender a specified animal that is owned by the person (whether or not the subject of the alleged offence) to an authorised officer; (c) an order forbidding the person to acquire, or have custody of, any other animal or any other animal of a specified class, either until further order, or for the period specified in the order (d) an order directing a specified person to surrender to the Crown an object that is the property of the person and is the subject of the alleged offence or was allegedly used by the person in the commission of the alleged offence. (3) A person in relation to whom an interim order under this section is in force must comply with the order.
Not in the current Act.	Maximum penalty • in the case of a body corporate – \$100,000 • in the case of an individual – \$20,000

Court orders on finding of guilt

When a case has been through the courts, a magistrate can make certain orders once a person is found guilty. The Bill provides that these orders can apply even if a person has committed offences but cannot be held fully liable for their actions due to psychological impairment or the influence of substances (per Part 8A of the *Criminal Law Consolidation Act 1935*).

The Bill introduces a new order relating to costs incurred in taking action under the Act (section 47(1)(g)). The court can order a party to pay the costs associated with enforcing the Act against that party. The range of costs can include care of an animal, veterinary or administrative costs associated with responding to an animal welfare offence.

All other court orders remain the same as they are in the current Act.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
s32A (2) A person in relation to whom an order under subsection (1) is in force must comply with the order.	s47 (1) A court may, on finding a person guilty of an offence against this Act or on declaring a person charged with an offence against this Act liable to supervision under part 8A of the <i>Criminal Law Consolidation Act 1935</i> , make 1 or more of the following orders: (...) (g) An order requiring the person to pay the Minister the amount of any costs incurred in taking action under this Act. (2) A person in relation to whom an order under subsection (1) is in force must comply with the order.
Maximum penalty: \$5,000	Maximum penalty • In the case of a body corporate – \$100,000 • In the case of an individual – \$20,000

Section 48 of the Bill explains the procedures that must be followed to obtain a warrant to take action under the Act. These provisions are updated to allow the Magistrates Court to issue warrants. This provides the court with more flexibility in dealing with applications.

Survey questions:

Do you think that the updated powers for authorised officers are appropriate?

Do you think separating the provisions for animals and items is appropriate?

Do you think the definition of reasonable notice for routine inspections is appropriate?

Do you think the ability to issue notices (animal welfare notice and notice to comply) is appropriate?

Do you think the inclusion of enforceable undertakings is appropriate?

Do you think the powers relating to non-compliance with a notice or undertaking are appropriate?

Do you think the ability to deal with seized animals is appropriate?

Do you think the ability to seek an interim order is appropriate?

Do you think the ability to issue an order relating to costs is appropriate?



Part 6 – Reviews

Reform 6

Part 6 of the Bill includes mechanisms for reviews by 2 bodies: the Minister and the South Australian Civil and Administrative Tribunal (SACAT). A range of decisions can be reviewed.

Review by the Minister is a new section. It relates to the Minister being able to review decisions made by an authorised officer in relation to enforcement of the Act. Section 49(2) explains a person can apply for an appeal and what happens once an appeal is made.

SACAT reviews remain the same as in the current Act, with one exception. If a person seeks SACAT review of a decision to seize an animal, the application to review that decision must be made within 14 days. Applications to review other decisions must be made within one month. The shorter timeframe for reviews against seizure applies so that an animal’s welfare is the priority for decision makers.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
s26—Reviews of decisions of animal ethics committees (1) A right of review lies from a decision of an animal ethics committee under this Part to the Tribunal under section 34 of the <i>South Australian Civil and Administrative Tribunal Act 2013</i>. (2) An application for review may be made to the Tribunal within 1 month after the making of the relevant decision (or such longer period as the Tribunal may allow). (3) Before the Tribunal makes a decision on the review, the Committee must investigate the decision under review and furnish the Tribunal with a report on its investigations for consideration by the Tribunal.	s51—Reviews of decisions of animal ethics committees (1) Subject to this section, SACAT is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of a decision of an animal ethics committee under Part 4. (2) An application for review may be made to SACAT within 1 month after the making of the relevant decision (or such longer period as SACAT may allow). (3) Before SACAT makes a decision on the review, a prescribed committee (if any) must investigate the decision under review and furnish SACAT with a report on its investigations for consideration by SACAT.
s27—Reviews of decisions of Minister (1) A right of review lies from a decision of the Minister under this Part to the Tribunal under section 34 of the <i>South Australian Civil and Administrative Tribunal Act 2013</i>. (2) Subject to subsection (5), an application for review may be made to the Tribunal within 1 month after the making of the relevant decision (or such longer period as the Tribunal may allow). (4) The Minister must, if so required by any person affected by a decision, state in writing the reasons for that decision. (5) If the reasons of the Minister were not given in writing at the time of making a decision or order and the applicant for review then requests the Minister to state the reasons in writing, the time for making the application for review to the Tribunal runs from the time when the applicant receives the written statement of those reasons.	s50—Reviews by SACAT (1) Subject to subsection (5), SACAT is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of a decision of the Minister under this Act. (2) Subject to subsection (4) and to sections 43(4) and 44(4)(c), an application for review may be made to SACAT within 1 month after the making of the relevant decision (or such longer period as SACAT may allow). (3) The Minister must, if so required by any person affected by a decision, state in writing the reasons for that decision. (4) If the reasons of the Minister were not given in writing at the time of making a decision or order and the applicant for review then requests the Minister to state the reasons in writing, the time for making the application for review to SACAT runs from the time when the applicant receives the written statement of those reasons. (5) The regulations may prescribe classes of decisions that this section does not apply to.



<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
Not included in the current Act.	s49—Reviews by Minister (1) Subject to regulations under subsection (5), a person who is aggrieved by a decision of an authorised officer under Part 5 is entitled to apply to the Minister for a review of the decision. (2) An application for review of a decision— (a) must be in writing and made in the manner specified by the Minister on a website determined by the Minister; and (b) must specify an email address or other address in Australia to which notices under this Act should be sent; and (c) must be made within 30 days after the day on which notice of the decision was given to the applicant or within such further time as the Minister may allow. (3) On an application for review under this section, the Minister may confirm, vary or reverse the decision under review. (4) The making of an application for review of a decision under this section does not affect the operation of the decision or prevent the taking of action to implement the decision. (5) The regulations may prescribe classes of decisions that this section does not apply to.

Survey questions:

Do you think the system of reviews of decisions is appropriate?



Part 7 – Animal Welfare Fund

The Bill establishes a new Animal Welfare Fund. The fund will collect any fees paid for licences, permits and registrations or any financial penalties. Money from the fund can be spent on activities or purposes that are consistent with the principles and objects of the Act.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
Not included in the current Act.	s52 (4) The Minister may apply any portion of the Fund towards- (a) paying any costs or expenses incurred in the administration or enforcement of the Act; and (b) the promotion of research into the welfare of animals (including wildlife); and (c) funding education programs relating to the protection of animal welfare and the prevention of harm to animals; and (d) funding other programs, or achieving other outcomes, prescribed by the regulations; and (e) providing for any matter that, in the opinion of the Minister, advances the objects of this Act.

Survey questions:

Do you agree with the introduction of an animal welfare fund?

Part 8 – Miscellaneous

The Bill also covers a range of miscellaneous requirements. Registration of interstate orders, waiving, reducing and refunding fees, and Ministerial exemption are new provisions. Service of notices has been updated and the time allowed to expiate or take someone to court has been explicitly included. The other provisions stay the same as in the current Act.

Registration of interstate orders

Reform 6

Prohibition orders that have been made in other states and territories will be recognised and registered in South Australia. A corresponding notice to comply will be used to enable enforcement and penalties within our state.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
Not included in the current Act.	s53 (1) The Minister may register an interstate order. (2) On registering an interstate order under this section, the Minister must ensure that any details specified in the regulations relating to the registration of interstate orders under this section are recorded on the copy or extract of the order and in the register (as the case requires). (3) As soon as possible after registering an interstate order, the Minister must ensure that a notice is served on the person who is the subject of the order. (4) The notice must inform the person— (a) that the relevant interstate order has been registered under this section; and (b) that the registration of the order does not take effect until 14 days after the notice is served on the person; and (c) that from the time the registration takes effect, a contravention of the order in South Australia is an offence. (5) The registration of an interstate order registered under this section takes effect 14 days after notice is served in accordance with subsection (4) on the person who is the subject of the order. (6) A person who is the subject of an interstate order, that is registered under this section, must comply with the order. (7) Subsection (6) applies even if the order is varied after it is registered. (8) However, if an interstate order is varied after it is registered to create a new obligation on the person to whom the order relates, proceedings against the person in respect of a contravention of that obligation must not be started unless the person had notice of the obligation before the contravention occurred. (9) In proceedings for an alleged offence against subsection (6)— (a) production of a certificate apparently signed by the Minister stating that an interstate order was registered on a specified date is proof in the absence of proof to the contrary of the registration under this section of the order; and (b) production of a certificate apparently signed by the interstate minister setting out the terms of the interstate order at a particular date is proof in the absence of proof to the contrary of the terms of the order on that date.

Ministerial exemption

The Minister will have an exemption power. Exemptions could be granted (where appropriate) via application, or on the Minister’s own initiative and a permit could be used to provide specific conditions and timeframes. A new power for the Minister to waive, reduce or refund fees is included.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
Not included in the current Act.	s55 (1) the Minister may, by instrument in writing, grant or declare that a person or class of persons is exempt from this Act, or specified provisions of this Act, or in specified circumstances. (2) An exemption may be granted or declared on application to the Minister (in a manner and form determined by the Minister) or on the Minister’s own initiative. s56 – The Minister may waive, reduce or refund a fee (or part of a fee) prescribed for the purposes of this Act if satisfied that it is appropriate to do so in a particular case.

Service of notices

The Bill updates the ways notices can be served aligning with modern day practices.

<i>Animal Welfare Act 1985</i>	<i>Draft Animal Welfare Bill 2024</i>
s37—Service of notices A notice or document required or authorised to be given or served under this Act may be given or served personally or by post.	s60 (1) A notice or document required or authorised to be given to, or served on, a person under this Act may be given or served— (a) personally; or (b) by leaving it at, or posting it to— (i) the physical address designated by the person for the service of notices or documents of that kind; or (ii) if such an address is not so designated, the last known place of residence or a place of business of the person; or (c) by sending the notice or document to an email address known to be used by the person (in which case the notice or document will be taken to have been given or served at the time of transmission); or (d) if the whereabouts of the person to whom the notice is to be given or served are unknown— (i) by affixing the notice or document in a prominent position on premises to which it relates; or (ii) by publishing the notice or document in a newspaper circulating generally throughout the State; or (e) in such other manner as may be prescribed by the regulations. (2) The provisions of this section are in addition to, and do not limit or exclude, the provision of any other law with respect to the service of notices or documents

Proceedings

Reform 6

Offences must be expiated within 2 years and charges must be laid within 5 years.

Animal Welfare Act 1985	Draft Animal Welfare Bill 2024
Not included in the current Act.	s61 Proceedings for an offence against this Act must be commenced – (a) In the case of an expiable offence – within 2 years after the day on which the offence is alleged to have been committed; or (b) In any other case – within 5 years of the day on which the offence is alleged to have been committed.



Schedule 1

Reform 6

Other pieces of legislation will need to be amended in relation to changes made to the Animal Welfare Act.

Many of these amendments are straightforward, such as the reference to the Act and terminology of authorised officers.

The most significant amendment would be to the *Sentencing Act 2017*. Under this provision, a court can make an order using the Animal Welfare Act when a person is sentenced or found guilty of any offence under any Act that involves animals. This allows a court to use a broader range of powers, potentially including seizure and forfeit of an animal.

Survey questions:

Do you think it is appropriate to register interstate orders and enforce them in SA?

Do you think it is appropriate for the Minister to be able to grant exemptions?

Do you think it is appropriate to amend the Sentencing Act 2017 so that the Animal Welfare Act orders could be available for offences involving animals?

Provisions removed

Some provisions in the current Act have not been replicated in the Bill. Section 15A has been removed due to impracticality. Section 34 requires a permit to hold a rodeo, which is replaced by the broader provisions in the Bill for permitting prescribed activities.



Appendix 1 – Penalties

A key theme of community and stakeholder feedback was that penalties in the current Act are too low to be appropriate or effective. A core component to strengthening the animal welfare legislation is in raising the level of penalties for offences. This will hold the guilty to account and act as a deterrent to others. The proposed changes to penalties would see South Australia equal with the strongest in the nation.

The Bill also proposes more offences that are expiable, meaning a fine can be issued, rather than going to court. More offences can also be applied to corporate organisations. The new proposed penalties are based on a 5-tiered system which group types of offences and severity of offending together.

Clause	Clause subject	Tier	Penalty
s 5(1)	General duty of care	Tier 3 <i>(without expiation)</i>	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000
s 6(1)	Ill treatment of animals (aggravated offence)	Tier 1	Maximum penalty individual: \$250,000 Maximum penalty body corporate: \$1,000,000 Imprisonment: 10 years
s 6(2)	Ill treatment of animals (lesser offence)	Tier 2	Maximum penalty individual: \$100,000 Maximum penalty body corporate: \$500,000 Imprisonment: 5 years
s 7(1)	Prohibited activities (taking part)	Tier 1	Maximum penalty individual: \$250,000 Maximum penalty body corporate: \$1,000,000 Imprisonment: 10 years
s 7(2)	Prohibited activities (being present)	Tier 2	Maximum penalty individual: \$100,000 Maximum penalty body corporate: \$500,000 Imprisonment: 5 years
s 8(1)	Possession of certain items prohibited	Tier 1	Maximum penalty individual: \$250,000 Maximum penalty body corporate: \$1,000,000 Imprisonment: 10 years

Clause	Clause subject	Tier	Penalty
s 9(1)	Electrical devices not to be used in contravention of regulations	Tier 4	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000 Expiation fee: \$1,000
s 10(1)	Jumps racing prohibited	Tier 2	Maximum penalty individual: \$100,000 Maximum penalty body corporate: \$500,000 Imprisonment: 5 years
s 11(1)	Special requirements for greyhound racing entities	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500
s 15(1)	Requirement to hold licence	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500
s 19(4)	Conditions of licence (designated)	Tier 5	Maximum penalty individual: \$10,000 Maximum penalty body corporate: \$50,000 Expiation fee: \$500
s 19(5)	Conditions of licence (non-designated)	Tier 4	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000 Expiation fee: \$1,000
s 21(1)	Notification of change in circumstances (licensee name/ address)	Tier 5	Maximum penalty individual: \$10,000 Maximum penalty body corporate: \$50,000 Expiation fee: \$500
s 21(2)	Notification of change in circumstances (responsible person name/address)	Tier 4	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000 Expiation fee: \$1,000
s 23(1)	Permits for prescribed activities and items (not organise, conduct, promote activity without permit) –	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500

Clause	Clause subject	Tier	Penalty
s 23(2)	Permits for prescribed activities and items (not have in possession or control item without permit)	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500
s 23(7)	Permits for prescribed activities and items (contravenes a condition of permit)	Tier 4	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000 Expiation fee: \$1,000
s 25(1)	Activity that must be registered	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500
S 29(5)	Conditions of registration (contravenes a condition of registration)	Tier 4	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000 Expiation fee: \$1,000
s 31 (2)	Animal ethics committees (applicant does not inform of details of presiding member)	Tier 4	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000 Expiation fee: \$1,000
s 31(6)	Animal ethics committees (presiding member is guilty if AEC contravenes)	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500
s 33(6)	Identification of Authorised Officers (returning ID card)	Tier 4	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000 Expiation fee: \$1,000
s 37(2)	Animal welfare notices (not comply with)	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500
s 38(2)	Notice to comply (not comply with)	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500
s 39	Offence to hinder etc authorised officers	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500

Clause	Clause subject	Tier	Penalty
s 40(2)	Enforceable undertakings (not comply with)	Tier 3	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000 Expiation fee: \$1,500
s 46(3)	Interim orders (not complying with orders)	Tier 4 (<i>without expiation</i>)	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000
s 47(2)	Court orders on finding of guilt etc (not complying with orders)	Tier 4 (<i>without expiation</i>)	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000
s 53(6)	Registration of interstate orders (not complying with orders)	Tier 4 (<i>without expiation</i>)	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000
s 55	Ministerial exemption (contravening an exemption)	Tier 4	Maximum penalty individual: \$20,000 Maximum penalty body corporate: \$100,000 Expiation fee: \$1,000
s 57	False or misleading statements	Tier 3 (<i>without expiation</i>)	Maximum penalty individual: \$50,000 Maximum penalty body corporate: \$250,000





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