

NT Animal Welfare Act Review

(see
http://www.nt.gov.au/d/Primary_Industry/animalwelfare/animalact/index.cfm?pg=permits)

Introduction

The *Animal Welfare Act* came into operation in March 2000.

This discussion paper has been developed to generate debate and feedback about the *Animal Welfare Act* and *Animal Welfare Regulations*, and how they work. The issues and questions identified in this discussion paper are provided as a guide only. You are invited to address these issues and questions, as well as any other matter related to animal welfare in the Northern Territory.

You can provide a submission online or via a short letter or email outlining your views on a particular topic, or it could be a more substantial document covering a range of matters. [Click here](#) to find out more about making a submission.

The Animal Welfare Act and Regulations are available from the Northern Territory Government Legislation Database:

- [Animal Welfare Act](#)
- [Animal Welfare Regulations](#)

The Australian code of practice for the care and use of animals for scientific purposes is available at:

http://www.nhmrc.gov.au/_files_nhmrc/publications/attachments/ea16.pdf

Call for submissions

The Department is interested in your views on the questions outlined in this paper, and any related matters.

Matters for discussion

Current legislation and its objectives

The principal legislation providing for the welfare of animals in the Northern Territory is the [Animal Welfare Act](#) (the Act) and [Animal Welfare Regulations](#) (the Regulations). The objectives of the Act are stated to be to:

- ensure animals are treated humanely;
- prevent cruelty to animals; and
- promote community awareness regarding the welfare of animals.

The Act establishes:

- the Animal Welfare Authority and sets out its roles, functions and powers;
- the Animal Welfare Advisory Committee;
- a minimum level of care that must be provided for an animal;
- the licensing regime for premises used for teaching or research.

The Act also creates offences in relation to the treatment of animals.

The Regulations cover a number of administrative matters including:

- the constitution, maintenance, powers and functions of the Animal Welfare Advisory Committee ;
- the content of annual reports that are to be provided by a licensee of premises used for teaching or research under the Act;
- provisions for infringement notices and the penalty unit amounts that attach to infringement notices for a number of offences;
- prescription of electrical devices that can be sold, possessed or used without breaching the Act.

Question Guide:

Question 1: Do we need a new Animal Welfare Act? If so, why?

Question 2: What should the principle objectives of the Act be?

[\(Link to Animal Welfare Act\)](#)

Question 1

Yes, a new Act is required. The current legislation does not sufficiently encompass the definition of 'animal', provide sufficient resources for its enforcement, or meet the animal welfare standards set by other states and territories.

Question 2

Keep as is, and include "To improve the level of community awareness about the humane treatment of animals and their responsibilities with regard to their companion animals."

Definition of Animal

Animal Welfare AuthorityAnimal Welfare inspectors and officersAppointmentsAnimal Welfare Advisory CommitteeIndemnityDuty of care and Offences of cruelty and aggravated crueltyOther offencesExceptions and defencesCodes of PracticeUsing animals for scientific purposes

In general, animal welfare legislation seeks to regulate two distinct uses of animals; use of animals for common purposes (such as pets, assistance and food production) and use of animals for scientific purposes.

The definition of "animal" in the Act provides a different definition from other states and the current *Australian code of practice for the care and use of animals for scientific purposes* (the Code).

Definitions of "animal" used in legislation in States, Territories and in the Code:

Australian Capital Territory (ACT)	Animal means: <ul style="list-style-type: none"> a) a live member of a vertebrate species, including <ul style="list-style-type: none"> i. amphibian; and ii. a bird; and iii. a fish; and iv. a mammal (other than a human being); and v. a reptile; or b) a live cephalopod; or c) live crustacean intended for human consumption. 	
Queensland(QLD)	1) An animal is any of the following <ul style="list-style-type: none"> a) a live member of a vertebrate animal taxon b) a live pre-natal or pre-hatched creature as follows if it is in the last half of gestation or development - <ul style="list-style-type: none"> i) a mammalian or reptilian foetus; ii) an avian, mammalian or reptilian pre-hatched young; c) a live marsupial young; d) a live invertebrate creature of a species, or a stage of the life cycle of a species, from the class Cephalopoda or Malacostraca prescribed under a regulation for this paragraph. 2) However, a human being or human foetus is not an animal.	

	<p>To remove any doubt, it is 3) declared that the following are not animals -</p> <p>a) the eggs, spat or spawn of a fish;</p> <p>b) a pre-natal, larval or pre-hatched creature, other than a creature mentioned in subsection (1)(b) or (c);</p> <p>c) another immature form of a creature, other than a creature mentioned in subsection (1)(a) to(c).</p>	
New South Wales (NSW)	Means a vertebrate animal, and includes a mammal, bird, reptile, amphibian and fish, but does not include a human being.	
Victoria (VIC)	<p>a) a live members of a vertebrate species including any -</p> <p>i) fish or amphibian; or</p> <p>ii) reptile, bird or mammal, other than any human being or any reptile, bird or other mammal that is below the normal mid-point of gestation or incubation for the particular class of reptile, bird or mammal; or</p> <p>b) a live adult decapod crustacea, that is -</p> <p>i) a lobster; or</p> <p>ii) a crab; or</p> <p>iii) a crayfish; or</p> <p>c) a live adult cephalopod including -</p> <p>i) an octopus; or</p> <p>ii) a squid; or</p> <p>iii) a cuttlefish; or</p> <p>iv) a nautilus.</p>	
South Australia (SA)	Animal means a member of any species of the sub-phylum vertebrata except -	

	<ul style="list-style-type: none"> a) a human being; or a fish, b) and includes any prescribed animal. 	
Western Australia (WA)	<p>Animal means -</p> <ul style="list-style-type: none"> a) a live vertebrate; or b) live invertebrate of a prescribed kind, other than a human or a fish (as defined in the <i>Fish Resources Management Act 1994</i>). 	
Tasmania (TAS)	<p>Animal means -</p> <ul style="list-style-type: none"> a) any live vertebrate animal other than a human being; or b) any other creature prescribed for the purposes of any or all of the provisions of this Act. 	
The Code	<p>Animal:</p> <p>any live non-human vertebrate, that is, fish, amphibians, reptiles, birds and</p> <p>mammals, encompassing domestic animals, purpose-bred animals, livestock, wildlife, and also cephalopods such as octopus and squid.</p>	
Northern Territory (NT)	<p>Animal means:</p> <ul style="list-style-type: none"> a) a live member of a vertebrate species including an amphibian, bird, mammal (other than a human being) and reptile; b) a live fish in captivity or dependent on a person for food; or c) a live crustacean if it is in or on premises where food is prepared for retail sale, or offered by retail sale, or offered by retail sale, for human consumption. 	

An example of where the definition in the Act and the Code differ is fish. The Act definition does not include "wild" fish that are in NT waters. Apart from the NT, the states which exclude fish from the definition are SA and WA.

Some states provide exemptions or defences such as those which specifically allow hunting and fishing. It would be possible to include fish in the definition and then make an exception for fishing and other things as necessary. QLD does this by providing that a person who lawfully does something under the *Fisheries Act 1994* (which allows for fishing) does not commit an offence. Exceptions and defences are discussed later in this paper [[go to](#)].

The QLD definition addresses the issue of prenatal foetuses and pre-hatched creatures, defining when they are considered to be an animal.

If the general definition of animal in the Act is wider or narrower than the definition in the Code, consideration needs to be given to whether, for the purposes of the Code, the NT definition should prevail.

Question Guide:

Question 3: What definition of "animal" should be use in the Act?

Question 3

- a) A live member of a vertebrate species including any -
 - i) fish or amphibian; or
reptile, bird or mammal, other than any human being or any reptile, bird or other mammal that is
 - ii) below the normal mid-point of gestation or incubation for the particular class of reptile, bird or mammal; or
- b) A live adult decapod crustacea, that is -
 - i) a lobster; or
 - ii) a crab; or
 - iii) a crayfish; or
- c) A live adult cephalopod including -
 - i) an octopus; or
 - ii) a squid; or
 - iii) a cuttlefish; or
 - iv) a nautilus.

There should be no exceptions to this definition, including where animals are used for hinting, fishing, research, teaching, and food production.

Animal Welfare Authority

Currently, the Act establishes the Animal Welfare Authority to administer the Act, ensure compliance with the Act and prosecute offences.

NSW, QLD, SA, TAS, VIC and WA do not have an Animal Welfare Authority. Instead, the administrative power rests with the Department head, who is responsible for administering the relevant Act on behalf of the relevant Minister. Only the ACT has an Animal Welfare Authority similar to the NT.

Having a public servant appointed to be the Animal Welfare Authority can confuse the usual chain of bureaucratic responsibility. A public servant is answerable to, and must take direction from, the Department Chief Executive.

Unless the Animal Welfare Authority was a Statutory Body appointed independently of the public service and therefore not answerable to the Chief Executive, the reality is that it is not an independent body. There is no clear reason why the executive responsibility for animal welfare should be independent, as animal welfare is a responsibility of States or Territories and accountability should be clear.

For these reasons, it is suggested that there is no need for an Animal Welfare Authority as such. Instead, the NT Government via its relevant Minister and Department Chief Executive could be administratively responsible for the Act (similar to the arrangements in all of the States).

Question Guide:

Question 4: Would it be better to abolish the Animal Welfare Authority so that it is clear and transparent that the Chief Executive is responsible to the Minister for the operation of the Act?

Question 4

We would argue for a **replacement** of the Animal Welfare Authority by a Statutory Body, which must be independent of the public service, and not answerable to the Department Chief Executive. Placing this position within the Department risks significant conflict of interest. Responsibilities toward the promotion of animal industries inherently interfere with the responsibilities for ensuring compliance of handling and husbandry practices that are in the best interests of the animals. Historically, this conflict of interest also leads to lengthy investigations resulting in either Departmental failure to duly prosecute offences, or the application of tokenistic penalties. It also raises biases during legislation and regulation development, where industry needs are prioritized above the best interests of animals.

Animal Welfare inspectors and officers

The Act provides for the appointment of animal welfare inspectors and animal welfare officers and provides for their functions and powers. Only persons who are veterinarians may be appointed as animal welfare officers. Currently, it is Departmental policy that the minimum qualification for animal welfare inspectors is Certificate IV in Government (Investigation).

Of note, each member of the Police Force also has the powers and functions of an animal welfare inspector under the Act.

Both animal welfare inspectors and animal welfare officers are "authorised persons". Functions of authorised persons include:

- assessing whether or not the provisions of the Act are being complied with;
- seeking evidence of a suspected offence against the Act; and
- assisting the Animal Welfare Authority in the performance of its function.

Authorised persons have a duty to report suspected offences against the Act to the Animal Welfare Authority. The powers of authorised persons include:

- power to require the name and address of any person;
- power to apply for a search warrant;
- power of inspection, such as examining an animal or documents;
- power to alleviate suffering of an animal; and
- power to enter premises including entry into Aboriginal land. (For animal welfare inspectors entry is to premises that are not licensed premises or a vehicle that is not connected with licensed premises, while for animal welfare officers, entry is to premises that are licensed premises or a vehicle that is connected with licensed premises). This refers to premises used for scientific research.

Excluding police officers, there are currently 28 authorised persons in the NT. There are 25 animal welfare inspectors and 3 animal welfare officers.

Rather than having separate categories of authorised persons (inspectors and officers) it may be preferable to have one category of authorised officers, who would have the power to investigate and monitor compliance with the Act, including in relation to scientific research. As now, the police could be authorised officers. When an authorised officer is appointed, their powers could be limited depending on the type of work and power intended.

Powers could include some or all of the following:

- entry to premises and vehicles
- power to require reasonable help

- power to require person in control of vehicle to take action
- power to give animal welfare direction
- power to destroy animals
- power to require name and address
- power to require information
- power to require production of documents
- monitoring programs relating to scientific teaching and research of animals
- general power of investigation.

Question Guide

Question 5: Should there be just one category of authorised officer with powers appropriately specified upon appointment?

Question 6: Are the powers mentioned above sufficient?

Question 5

Yes, provided these persons receive sufficient training and ongoing support for the role. Police officers should receive additional training in animal handling and animal welfare responses. Parties should have access to an on-call veterinarian in order to discuss difficult scenarios.

Question 6

Include: “Power to seize animals.” Police should also have additional powers to seize any person found committing offences against animals that result in immediate suffering, such as aggravated cruelty.

Appointments

Currently, authorised persons in the NT are appointed by the Animal Welfare Authority. The Table below indicates the appointing authority of authorised persons in other jurisdictions.

	Appointing Authority	Authorised persons
New South Wales	Director General	<ul style="list-style-type: none"> • Inspectors (vets)
Victoria	Minister <i>However, occupiers of certain positions automatically become inspectors</i>	<ul style="list-style-type: none"> • Generalist Inspectors • Specialist inspectors
Queensland	Chief Executive	<ul style="list-style-type: none"> • Authorised officers (compliance monitoring scientific research) • Inspectors

		(investigation and enforcement)
Western Australia	Chief Executive Officer	<ul style="list-style-type: none"> • General inspectors • Scientific inspectors
South Australia	Minister	<ul style="list-style-type: none"> • ♦♦ Inspectors
Tasmania	Minister	<ul style="list-style-type: none"> • Officers (animal welfare) • Inspectors (animal research)
Australian Capital Territory	Director General	<ul style="list-style-type: none"> • Inspectors (police are automatically inspectors) • Officers (vets)

It would be administratively efficient if the Department Chief Executive had the power to make the appointments as they are responsible for the employment of staff in the Department. If the Chief Executive, or delegate, made the appointments the Chief Executive, or delegate, could also limit powers upon appointment.

Question Guide

Question 7: Who should appoint authorised officers?

Currently, authorised persons can be appointed from Departments other than the Department of Primary Industry and Fisheries, with agreement with the respective Chief Executive Officer. It is proposed that this arrangement be continued.

Question 7

Authorised persons should be appointed by the independent, statutory Animal Welfare body.

Animal Welfare Advisory Committee

The Act requires the Minister to establish the Animal Welfare Advisory Committee. The functions of the Committee include:

- advising the Minister about animal welfare legislation and other matters relevant to animal welfare;
- investigating and reporting on matters relevant to animal welfare referred to it by the Minister;
- participating in the development of codes of practice and the review of adopted codes of practice; and

- providing advice to bodies, organisations or the general community on programs for the improvement of community awareness about animal welfare.

The Committee is to be constituted of at least 8 members representing one of the following bodies:

- RSPCA Darwin Regional Branch
- Australian Veterinary Association Limited (AVA)
- Local Government Association of the Northern Territory (LGANT)
- Department of Local Government
- Department of Primary Industry and Fisheries
- Northern Territory Cattlemen's Association (NTCA)
- Charles Darwin University (CDU)
- Parks and Wildlife Commission of the Northern Territory

The Regulations also provide for appointment of members to represent any other body the Minister considers should be represented on the Committee. Currently, there are members who represent:

- Ark Animal Hospital
- Pet Industry Association of Australia (PIAA)
- Animal Management in Rural and Remote Indigenous Communities (AMRRIC)

In NSW, VIC and WA, their respective Animal Welfare Advisory Committees are non-statutory bodies. This means that they are not specifically mentioned in the legislation although they still have an important role. Terms of reference approved by the Minister set out the functions of the Committee in these jurisdictions. The terms mainly include providing advice to the Minister on matters related to animal welfare and endorsing codes related to the welfare of various animals. In other jurisdictions, the Animal Welfare Advisory Committees are established by the respective animal welfare legislation.

Animal welfare is a specialised field that is dynamic. As such, the regulation of this sector requires significant input from industry for the regulation to be efficient and relevant. Please see page 17 for further discussion of the role of the Animal Welfare Advisory Committee in relation to Codes of Practice.

Question Guide:

Question 8: Should the Committee be a non-statutory body similar to NSW, VIC and WA?

Question 8

No, it is important to protect the status of this committee under legislation. Furthermore, there should be an equal proportion of representatives from both industry, and animal welfare organisations. Currently, only one animal welfare organisation (RSPCA) is included. As the AVA is not an animal welfare organization, due to its role in representing the interests of veterinarians employed by industry, it should not be considered as such. The Committee should have greater representation by animal protection groups and independent scientists and furthermore, should include a layperson member of the community

Indemnity

The Act currently provides that personal liability does not attach for an action done in good faith in pursuance of, and for the purposes of, the Act by the Animal Welfare Authority, authorised officers or veterinarians.

In addition, section 23A of the Act provides that a person who enters premises to alleviate an animal's suffering incurs no liability if the person believes on reasonable grounds that the animal has been confined for more than 24 hours without appropriate and sufficient food or water.

These indemnities give a level of comfort to the Authority, authorised officers, veterinarians and members of the public generally, to take actions that ensure the welfare of animals. However, for the indemnity to apply, the action in question must be done in good faith and be in accordance with the provisions of the Act.

Duty of care and Offences of cruelty and aggravated cruelty

The Act imposes a duty of care on the owner or a person in charge of an animal to look after it, feed it, and provide appropriate care and shelter. The minimum level of care required for an animal is that the animal:

- has appropriate and sufficient food and water;
- has appropriate accommodation and living conditions;
- is appropriately treated for disease, injury or suffering;
- is allowed appropriate exercise;
- is handled only in ways that are appropriate;
- is confined or restrained only in ways that are appropriate;
- is worked, ridden or otherwise used only in ways that are appropriate;
- is not abandoned; and
- is not used in an organised animal fight.

This duty of care requirement is similar to provisions in QLD and Tasmanian animal welfare legislation.

The Act also prohibits acts of cruelty directed towards animals. 'Cruelty' to an animal is now defined as an intentional causing of harm to an animal by failing to ensure that minimal care. It also includes the situation where any person causes

an animal unnecessary suffering. This offence is similar to that in other jurisdictions.

'Aggravated cruelty' is created by the Act as a third level of offence after breach of the duty of care and cruelty. A person commits the offence of aggravated cruelty if they are intentionally cruel to an animal and the cruelty causes the death of, or serious harm to, the animal. Aggravated cruelty is also an offence in the animal welfare legislation of the ACT, NSW, TAS and VIC.

Thus, under the Act, there are three levels of offences relating to the welfare of animals namely breach of duty of care, cruelty and aggravated cruelty. The Act allows the Court to convict in the alternative for these offences. Where the Court is not satisfied that a person is guilty of the offence of aggravated cruelty, the Court can find the person guilty of the alternative charge of cruelty or breach of the duty of care. Similarly, the Court may find a person charged with cruelty to be guilty of the alternative offence of breach of the duty of care.

Other offences

The Act creates a number of offences. The offences relate to the handling or using of animals, selling or possessing certain equipment, promoting or attending certain events involving animals, obligations for persons licensed to use premises for teaching and research, obligations for permit holders to conduct a teaching and research program and failure to comply with directions given under the Act. Appendix 1 summarises the offences under the Act.

The first six offences in the Appendix, as they relate to animals, would be examples of cruelty or aggravated cruelty against animals. The Act could also specify other conduct or activity that would constitute "cruelty" or "aggravated cruelty" against animals such as cropping animals' ears, docking animals' tails, debarking dogs and removing cats' claws.

Question Guide:

Question 9: Should the actions that amount to cruelty or aggravated cruelty be expanded in more detail? If so, what should be included?

Question 9

Change *Section 7 Meaning of minimum level of care*, to include

2) For this section, **appropriate**, for an animal, means appropriate to ensure the welfare, health and safety of the animal [include: "and observing the animal's best interests as a priority"].

(3) Further, something is not appropriate for an animal if:

(a) it causes, or is likely to cause, the animal unnecessary [delete unnecessary] suffering;

Change *Section 18 Traps*

- (3) This section does not apply in relation to:
- (a) A bow trap or soft-jawed trap [Remove. AI; bow and soft-jawed traps should be banned]; o

Change *Section 21 Competitions, hunting and baiting etc*, to include

- (1) A person must not advertise, promote, take part in or be present at a match, competition or other activity in which an animal is to be released from confinement for the purpose of being:
- (a) hunted, caught, confined, killed or caused suffering by another animal; or
- (b) used to train or exercise another animal
- (c) [Include: used to chase, catch, or otherwise aid in the hunting of other animals, including those living in the wild]

It has been suggested that additional general offences could be included in the Act such as:

- supplying animals that have undergone particular surgical procedures which are unlawful under the Act
- supplying a debarked dog
- setting baits or harmful substances
- impersonation of an authorised officer
- attempts to commit offences
- supplying or using glue traps

Question Guide:

Question 10: Should any offences be added to those that exist in the Act?

Question 10

- supplying animals that have undergone particular surgical procedures which are unlawful under the Act
- supplying cattle that have been speyed using the 'dropped ovary technique'
- speying cattle using the 'dropped ovary technique'
- supplying a debarked dog
- supplying a declawed cat
- supplying a tail-docked animal
- setting baits or harmful substances
- impersonation of an authorised officer
- attempts to commit offences
- supplying or using glue traps
- supplying or using soft-jawed traps
- supplying or using electronic prodders on animals
- supplying or using electronic shock collars on animals
- catching animals using any form of spear
- the use of wild animals in circuses

- using animals in rodeo events
- gambling events with involve animals, including greyhound racing

Exceptions and defences

Although in QLD the definition of animal includes fish (as mentioned at page 3), the legislation provides that a person who lawfully does something under the *Fisheries Act 1994* (which allows for fishing) does not commit an offence. In this way an exception for fishing is created. It would be possible to add other exceptions where other legislation covers the use or treatment of particular animals.

It would also be possible to provide exemptions for particular activities or in certain circumstances.

Question Guide:

Question 11: Should there be exceptions or exemptions in relation to the application of the Act and if so, what for?

Question 11

No. There is no scientifically or ethically valid reason for doing so. There is strong evidence for animal sentience, which includes fish species. Exemptions for particular activities or circumstances would require strong arguments for reasons why those activities are so essential that they are allowed to take place despite causing suffering to animals. Animal pain and suffering must always take priority over non-essential elements of human lifestyles.

The Act provides that it is a defence to a prosecution if the defendant establishes that the act or omission constituting the offence was in accordance with an adopted code of practice or for the purpose of alleviating the suffering of an animal and was reasonable in the circumstances. An adopted code of practice is one that has been Gazetted by the Minister. It can be difficult for people to know what codes have been adopted and therefore what codes should be followed or can be used as a defence. Please see further discussion of codes and questions under the heading "Codes of Practice" in the following section.

The Act provides that it is not a defence to a prosecution for an offence under the Act if the act or omission constituting the offence was in accordance with cultural, religious or traditional practices. It is proposed that while this provision be retained, it should be clarified so that it is not a defence to the extent that cultural, religious or traditional practices are permitted by any other law.

The Act provides the Minister responsible for administering the Act (currently the Minister for Primary Industry and Fisheries) with the power to exempt a person or class of persons from complying with the any provision of, or the whole Act, as

well as regulations made under the Act. The Minister also has the power to provide that any provision of, or the whole Act, as well as regulations made under the Act, do not apply to or in relation to an animal or a class of animals.

Question Guide:

Question 12: Should the power of the Minister to exempt people, or a class of persons, from complying with the Act be retained?

Question 13: Should the power of the Minister to prevent the Act applying to an animal, or class of animals, be retained?

Question 12

No, the Minister should not retain the power to exempt people, or a class of persons, from complying with the Act. This would effectively nullify the provision in the Act that it is not a defence to a prosecution for an offence that was in accordance with cultural, religious or traditional practices.

Furthermore, we believe the Act should not allow that it is a defence to a prosecution if the defendant establishes that the act or omission constituting the offence was in accordance with an adopted code of practice. This is because codes of practice are not enforceable, take a long time to be updated and are inconsistently adhered to. Since they cannot be relied upon to ensure minimum standards of animal welfare, it would be a travesty of justice for such standards to be used as a defence for acts or omissions constituting offences under the Act.

Question 13

No, the power of the Minister to prevent the Act applying to an animal, or class of animals, should not be retained.

Codes of practice

The Act provides that the Minister may, on the recommendation of the Animal Welfare Advisory Committee, by notice in the Gazette, adopt, vary or revoke a code of practice relating to animal welfare. Codes of practice are usually approved at the national level following consultation between Commonwealth, State and Territory governments. While the Department endeavours to make all adopted codes available on its website, Gazette notices are not easily accessible to members of the public if the date or reference to a particular notice is not known.

In the NT, codes of practice do not strictly form part of the law relating to animal welfare. Instead, they can be relied on as a defence to a prosecution for an offence against the Act.

Other jurisdictions allow for the adoption, variation or revocation of codes of practice but have a slightly different procedure. In the ACT, NSW, QLD, VIC and WA, the Governor or Minister may approve or make regulations adopting a code of practice relating to animal welfare. In NSW, the Animal Welfare Advisory Council must be given an opportunity to review or comment on the provision of such a regulation. In SA, the Animal Welfare Advisory Committee may examine and report on proposed codes of practice as well as make recommendations on their code of practice. In TAS, the only codes of practice that the Animal Welfare Advisory Committee can make recommendations on are those that relate to carrying out of animal research and the functions and procedures of Animal Ethics Committees.

If codes of practice were to be adopted, varied or revoked by regulations, it would ensure that information regarding them is clear and easily accessible. In addition, rather than requiring that the Animal Welfare Advisory Committee to make recommendations on codes of practice, the Act could provide that the Animal Welfare Advisory Committee may volunteer advice to the Minister regarding codes of practice.

In NSW, QLD and SA, compliance or failure to comply with codes of practice is admissible as evidence in proceedings under the relevant animal welfare legislation. This in effect means that a breach of a code can be used to support proceedings for an offence against the legislation. Breach of a code does not, however create an offence. In WA, a code of practice can be used as a defence against proceedings under animal welfare legislation but a breach of the code, in itself, is not sufficient to prove cruelty. In the ACT, SA, TAS and VIC, certain provisions of the respective legislation relating to offences do not apply to conduct on animals carried out in accordance with a code of practice.

Question Guide:

Question 14: Should codes be adopted by including reference to them in the Animal Welfare Regulations rather than by Gazette notice?

Question 15: Should codes that have been adopted have to be clearly identified and available on the Department website?

Question 16: Should non-compliance with an adopted code be an offence?

Question 14

Yes. Codes of Practice should be legally enforceable.

Questions 15

Yes, and any amendments should be advertised and disseminated to relevant industry, animal welfare, and community groups.

Question 16

Yes.

Using animals for scientific purposes

The Act sets up a licensing regime relating to teaching and research including teaching or research involving the use or breeding of animals. Under the Act, a person may use premises for teaching or research only if the person holds a licence. In other words, the licence attaches to premises rather than a person or institution. The Act defines premises to include:

- land (including water on land);
- a permanent or temporary structure on land; and
- a vehicle.

The Act provides for considerations to be taken into account before a licence is issued and for conditions, duration, renewal, refusal, variation, cancellation and suspension of licences. Licensees also have reporting requirements.

The fact that the licence attaches to premises sometimes creates difficulties as, theoretically at least, the whole land mass of the NT could possibly be premises. The provisions appear to have been drafted with the idea of laboratories in mind, but much scientific work is done in the field, observing or catching wildlife. A scientist might be observing birds right across the Territory for example. In such cases licensing "premises" where research can be conducted does not make much sense.

The licensing regimes in other jurisdictions are varied. Similar to the NT, VIC and WA licence premises or establishments where teaching or research of animals occur. NSW has an accreditation system for research establishments. The ACT, SA and TAS grant licences to a person or institution to carry out teaching or research involving animals, although the ACT licence is for stated premises. QLD has a registration system for people wishing to use animals for an activity performed to acquire, demonstrate or develop knowledge or a technique in a scientific discipline including:

- diagnosis;
- environmental studies;
- field trials;
- producing biological products;
- product testing;
- research; or
- teaching.

In QLD, a person wishing to use animals for these purposes applies for registration to the Chief Executive Officer of the agency responsible for administering the animal welfare legislation. "Person wishing to use animals"

includes corporations or public authorities (such as research institutions, theme parks, zoos and pharmaceutical companies), learning institutions (such as schools, colleges and universities) and individuals.

The QLD legislation sets out the criteria for making a decision to register a person including whether the person has been convicted of an animal welfare offence. It also provides for the conditions, duration, renewal, refusal, variation, cancellation and suspension of registration. There are reporting obligations for registrants including reports on the animals used for scientific purposes and any complaints, enquiries or grievances received about the use of animals for scientific purposes. The registrant is responsible for any of the activities conducted by employees or associates pursuant to the registration.

It has been suggested that the NT could adopt a registration system similar to the QLD system for people wishing to use animals for a scientific or teaching purpose. This would achieve more transparency, especially in regard to who has the authority to conduct teaching or research programs. People or organisations would be registered, rather than premises being licensed. There would be provisions relating to the application process and criteria to be taken into account before registration, renewal, refusal, suspension and cancellation and of registration. There would be provision for conditions to be imposed and the duration of registration would be limited. Reporting requirements would also attach to the registration.

The administrative functions incurred by a licensing or registration system incur a cost to government resources. It is arguable that this cost should be borne at least to some extent by the licensees or registrants.

Question Guide:

Question 17: Would it be a good idea to have a registration system like QLD has?

Question 18: Should there be fees for licensing/registration?

Question 17

Yes. The QLD system is preferable to the current requirement to licence premises.

Question 18

Yes, applicants should incur fees. Fees for teaching and research performed for conservation purposes should be subsidised by the state and/or federal governments.

Permits to conduct teaching or research program

Animal Ethics Committees Other Northern Territory Legislation

A person employed or engaged by a licensee to use premises to conduct a teaching or research program may do so only if the person holds a permit. Permit application are made to the licensee's Animal Ethics Committee.

Should the registration system for people wishing to use animals for a scientific purpose be adopted, then people engaged or employed by the registrant would automatically be permitted to conduct a teaching or research program. The registrant would be under an obligation to ensure that his/her employees, or persons he/she engages, comply with the animal welfare and animal ethics obligations. This is the current arrangement in QLD. The registrant must take full responsibility to ensure all projects and persons engaged are compliant with the Code of Practice for the care and use of animals for scientific purposes and any direction by the Animal Ethics Committee.

Animal Ethics Committees

The Act provides that a licensee of premises for teaching or research must have an animal ethics committee. The animal ethics committee may be established, constituted and maintained by the licensee or another person or body and must be in accordance with the Code. The committee has the powers and function specified in the Code.

Animal Ethics Committees must have terms of reference that are publicly available and include provisions to:

- i. approve guidelines for the care of animals that are bred, held and used for scientific purposes on behalf of the institution;
- ii. monitor the acquisition, transportation, production, housing, care, use and fate of animals;
- iii. recommend to the institution any measures needed to ensure that the standards of the Code are maintained;
- iv. describe how members are appointed, re-appointed, or retired, according to procedures developed by the institution in consultation with the AEC;
- v. require that all members declare any conflict of interest;
- vi. deal with situations in which a conflict of interest arises;
- vii. examine and approve, approve subject to modification, or reject written proposals relevant to the use of animals for scientific purposes;
- viii. approve only those studies for which animals are essential and justified and which conform to the requirements of the Code. This should take into consideration factors including ethics, the impact on the animal or animals and the anticipated scientific or educational value;
- ix. withdraw approval for any project;
- x. authorise the emergency treatment or euthanasia of any animal;
- xi. examine and comment on all institutional plans and policies that may affect the welfare of animals used for scientific purposes;

- xii. maintain a record of proposals and projects;
- xiii. comply with the reporting requirements of the institution and the Code; and
- xiv. perform all other duties required by the Code.

Animal Ethics Committees provide a service to researchers and teachers by providing guidance and permission for activities. The administration of ethics committees has a resource cost and many members of ethics committees are unpaid for their time. Under the current Act, the Animal Welfare Authority approves fees payable under the Act, including the fee for permit requests to the Animal Ethics Committee. The Animal Ethics Committee, rather than the Department, administers permit applications. No fees for these permits have been approved to date.

Question Guide:

Question 19: Should Animal Ethics Committees be able to set their own fees to defray some of the administrative and attendance costs?

Question 19

Yes.

An Animal Ethics Committee must have a membership that will allow it to fulfil its terms of reference. It must comprise at least four persons, including a separate person appointed to each of the following categories:

Category A	a person with qualifications in veterinary science and with experience relevant to the activities of the institution;
Category B	a suitably qualified person with substantial recent experience in the use of animals in scientific or teaching activities;
Category C	a person with demonstrable commitment to, and established experience in, furthering the welfare of animals, who is not employed by or otherwise associated with the institution, and who is not involved in the care and use of animals for scientific purposes; and
Category D	a person who is both independent of the institution and who has never been involved in the use of animals in scientific or teaching activities, either in their employment or beyond their under-graduate education

In addition to the prescribed membership Categories A to D, the institution should appoint to the AEC a person responsible for the routine care of animals from within the institution. This membership is not mandatory.

Question Guide:

Question 20: Should the NT require any other types of people on an AEC? For example, should there be a person with legal knowledge to help interpret the law?

Question 20

No? Or make category E mandatory? I agree, make category E mandatory as these people have firsthand experience of the care and use of animals at the institution, so their input is invaluable in terms of the day to day impact of scientific or teaching activities on those animals.

The NT is the only State or Territory which allows a public servant (the Animal Welfare Authority) to overturn a decision of an ethics committee. As the ethics committees are experts and specifically allocated decision making responsibility, it is suggested that this provision should be abolished.

Additional

This is appropriate, although the Authority should retain power to resolve disputes.

Other Northern Territory Legislation

Aboriginal Land Rights (Northern Territory) Act 1976

The Act applies to the whole of the NT. This includes Aboriginal land as designated under the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976* (the ALRA). Where the provisions of the *Animal Welfare Act* are inconsistent with those of the ALRA, the ALRA provisions would prevail.

Section 65 of the *Animal Welfare Act* allows for the entry of authorised officers onto Aboriginal land, where it is necessary or convenient for them to do so for the purpose of exercising a power under the Act. In addition, section 79(2) of the Act provides that it is not a defence to a prosecution for an offence under the Act that the act or omission constituting the offence, or an element of the offence, was in accordance with cultural, religious or traditional practices.

Livestock Act

The *Livestock Act* seeks to promote the livestock and associated industries through various means including establishing methods of identifying and tracing livestock, supporting market access to, and product integrity of, livestock and livestock products, regulating the movement of livestock and animal products, protecting the health and welfare of livestock by establishing standards and procedures for managing livestock, controlling diseases and implementing the

national biosecurity strategy and providing compensation for losses caused by certain livestock diseases.

The Agency with responsibility for the *Livestock Act* is the Department of Primary Industry and Fisheries. Welfare matters relating to livestock are dealt with by the animal welfare officers (veterinarians) in that Department and animal welfare inspectors from the Animal Welfare Branch of the Department of Local Government. Currently the memorandum of understanding between the Departments of Local Government and Primary Industry and Fisheries setting out how the Departments work together is being updated. [\[view Act\]](#)

Fisheries Act

The *Fisheries Act* provides for the regulation, conservation and management of fisheries and fishery resources so as to maintain their sustainable utilisation and regulates the sale and processing of fish and aquatic life. All fishing in the Territory is regulated under this Act. The Agency with administrative responsibility is the Department of Primary Industry and Fisheries. [\[view Act\]](#)

Racing and Betting Act

The *Racing and Betting Act* controls racing and betting including for horseracing, trotting, greyhound racing and unlawful racing. The Act and its subordinate legislation regulate the treatment of horses and greyhounds used for racing. The Agency with administrative responsibility is the Department of Sport and Recreation. [\[view Act\]](#)

Biological Control Act

The *Biological Control Act* establishes the Northern Territory Biological Control Authority and the control of target organisms by biological means via agent organisms. The Agency with administrative responsibility is the Department of Primary Industry and Fisheries. [\[view Act\]](#)

Parks and Wildlife Commission Act

The objective of the *Parks and Wildlife Commission Act* is to establish a Commission to establish and manage, or assist in the management of, parks, reserves, sanctuaries and other land, to encourage the protection, conservation and sustainable use of wildlife and to establish a land-holding corporation in connection with those purposes. The Parks and Wildlife Commission of the Northern Territory administers this Act. [\[view Act\]](#)

Territory Parks and Wildlife Conservation Act

The Parks and Wildlife Commission of the Northern Territory administers this Act. It makes provision for the establishment of Territory Parks and other Parks and Reserves and for the study, protection, conservation and sustainable utilisation of wildlife. The Act provides for animal sanctuaries, classification of wildlife, protected wildlife, feral animals and feral animal control areas and prohibited entrants (non-indigenous, non-vertebrate animals). [\[view Act\]](#)

Police Administration Act

Killing or injuring police dogs or horses is an offence under this Act. [\[view Act\]](#)

Pounds Act

The *Pounds Act* comes under the administrative responsibility of the Department of Local Government. It provides for local government councils and the Minister for Local Government to establish pounds for cattle found trespassing or found wandering, straying or lying upon any public road. The Minister can only establish a pound in an area that is not under the responsibility of a local government council. The *Pounds Act* also provides for the appointment of poundkeepers and inspectors and their duties and responsibilities, the conditions of the pounds, how cattle are to be treated while in the pound, impounding fees, payment of fees and sale of impounded cattle.

Preliminary investigation by Departmental officers suggests that the *Pounds Act* is not used. The Department does not currently have or operate a pound for cattle. Councils do not operate pounds under the *Pounds Act*. A Council could establish a pound under bylaws if it wanted to control cattle. The Animal Welfare Branch does not use pounds for carrying out its functions. Instead, the Animal Welfare Branch uses stock export yards, the paddocks on Department of Primary Industry and Fisheries Research Stations or enters into agistment arrangements, where a landholder receives payment in return for grazing the cattle, as well as assuming responsibility for the maintenance and welfare of the cattle. [\[view Act\]](#)

Question Guide:

Question 21: Is there any reason to keep the Pounds Act?

Question 21

No.

Additional

All other legislation should be subordinate to anti-cruelty legislation.

Criminal Code Act

The *Criminal Code Act* provides for certain offences in relation to animals such as stealing animals, bestiality and using registered brands with criminal intention. The definition of damage includes harming or killing an animal so it follows that offences such as damage to property could be used in relation to injuring an animal. The Department of the Attorney-General and Justice administers this Act. [\[view Act\]](#)

Council By-laws

The following By-laws include animals:

- Alice Springs (Animal Management) By-Laws (administered by Alice Springs Town Council)
- Borroloola Community Government Council (Control Of Dogs) By-Laws (administered by Roper Gulf Shire Council)
- Borroloola Community Government Council (Garbage And Removal And Destruction Of Animals) By-Laws (administered by Roper Gulf Shire Council)
- Coomalie (Dog Management) By-Laws (administered by Coomalie Community Government Council)
- Darwin City Council By-Laws (administered by City of Darwin)
- Jabiru Town Development (Control Of Animals) By-Laws (administered by West Arnhem Shire Council)
- Jabiru Town Development (Control Of Dogs) By-Laws (administered by West Arnhem Shire Council)
- Katherine Town Council By-Laws (administered by Katherine Town Council)
- Litchfield Council Rural Dog Management By-Laws (administered by Litchfield Council)
- Mataranka Community Government Council (Control Of Dogs) By-Laws (administered by Roper Gulf Shire Council)
- Nhulunbuy (Animal Control) By-Laws (administered by Nhulunbuy Corporation Limited)
- Palmerston (Animal Management) By-Laws (administered by City of Palmerston)
- Pine Creek (Control Of Dogs) By-Laws (administered by Victoria Daly Shire Council)
- Tennant Creek (Control Of Dogs) By-Laws (administered by Barkly Shire Council)
- Timber Creek Community Government Council By-Laws (administered by Victoria Daly Shire Council)

Regulations

(see
<http://notes.nt.gov.au/dcm/legislat/legislat.nsf/linkreference/ANIMAL%20WELFARE%20REGULATIONS>)

Change *Part 3 Teaching or research involving animals, 4A Content of annual report*, to include:

(3) For section 34A(2)(c) of the Act, the annual report must contain the following information about each permit holder employed or engaged by the licensee:

(iv) a brief description of the teaching or research conducted during the project, [include: “including the types of procedure/s performed, and reasoning behind the use of, or exclusion of, analgesia”];

(v) the number of animals used in the project [include: “including the numbers of animals bred to obtain final research cohort”];

Change *Schedule 1*, to:

- Electric stock prods should never be used.
- Electric stunning device: include Column 4, Condition, that “People using equipment must be appropriately trained”
- Electric training collar, should never be used, including a collar operated by a remote control device
- Electro-ejaculator should never be used on conscious animals
- Electro-immobiliser should never be used
- Fence known as an ‘invisible fence’, should never be used

Additional Comments

Under Section 4, Definitions:

Change definition of animal to from “(b) a live fish in captivity or dependent on a person for food (c) a live crustacean if it is in or on premises where food is prepared for retail sale, or offered by retail sale, for human consumption, to:

- a) a live members of a vertebrate species including any -
- i) fish or amphibian; or
reptile, bird or mammal, other than any human
 - ii) being or any reptile, bird or other mammal that is
below the normal mid-point of gestation or

incubation for the particular class of reptile, bird or mammal; or

- b) a live adult decapod crustacea, that is -
 - i) a lobster; or
 - ii) a crab; or
 - iii) a crayfish; or
- c) a live adult cephalopod including -
 - i) an octopus; or
 - ii) a squid; or
 - iii) a cuttlefish; or
 - iv) a nautilus.

This is in keeping with scientific consensus about the cognitive capacities of these species, and is cohesive with other states' regulations.

Change *Section 7 Meaning of minimum level of care*, to include

2) For this section, **appropriate**, for an animal, means appropriate to ensure the welfare, health and safety of the animal [include: "and observing the animal's best interests as a priority"].

(3) Further, something is not appropriate for an animal if:

(a) it causes, or is likely to cause, the animal unnecessary [delete unnecessary] suffering

Change *Section 18 Traps*

(3) This section does not apply in relation to:

(a) A bow trap or soft-jawed trap [Remove. A; bow and soft-jawed traps should be banned]; o

Change *Section 21 Competitions, hunting and baiting etc*, to include

(1) A person must not advertise, promote, take part in or be present at a match, competition or other activity in which an animal is to be released from confinement for the purpose of being:

(a) hunted, caught, confined, killed or caused suffering by another animal; or

(b) used to train or exercise another animal

(c) [Include: used to chase, catch, or otherwise aid in the hunting of other animals, including those living in the wild]

Part 5 Teaching or research involving animals

Change *Section 31 Consideration of application*

(1) In determining whether or not to grant a licence, the Authority must consider:

(b) whether the applicant is a fit and proper person to hold a licence, including whether the applicant has been found guilty of an offence under animal welfare legislation in Australia [include: “and/or internationally, or whether they are representing a legal person or institution found guilty of an offence under animal welfare legislation in Australia and/or internationally”];

(c) the experience and competency of the applicant in the care and handling of animals, [include: “and procedural tasks required in the course of breeding and/or research”];

(d) the adequacy of the premises, equipment and other facilities to be used in connection with the breeding, care, use, and of animals [include: and research procedures performed];