

# Updating the *Animal Welfare Act 1985*

Overview of reform areas (phase 1)



Government  
of South Australia

Department for  
Environment and Water

# Introduction

## Background

The South Australian Government is reviewing the *Animal Welfare Act 1985* (the Act). The review represents an opportunity to modernise the laws, supported by science and consistent with contemporary practices and community expectations. The Act is the primary piece of legislation concerned with animal welfare in South Australia and aims to prevent harm and ill treatment of animals and protect their welfare.

In early 2023, consultation was undertaken to gauge community views on the current Act and identify opportunities for improvements. More than 1,000 people contributed to this consultation.

Seven reform areas were identified through a thorough assessment of comparable legislation and feedback received. They focus on improving the Act and moving towards alignment with comparable jurisdictions.

**1. Update the purpose and include objects in the Act** – *to better explain why the law exists and help the reader interpret its intent.*

**2. Recognise animal sentience** – *to acknowledge that animals experience feelings, both positive, such as pleasure, or negative, such as pain and fear.*

**3. Broaden the definition of animal** – *to allow the law to cover more types of animals by removing the exclusion of fish, and including cephalopods (such as squid, octopus, cuttlefish) for scientific purposes.*

**4. Introduce a ‘duty of care’ provision** – *to create a positive requirement to provide a minimum level of care.*

**5. Improve regulation, oversight and transparency of the research and teaching sector** – *to enable greater accountability and address community concerns.*

**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.*

**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.*

The 7 reform areas form the basis of the first phase of amendments, with further information on each reform summarised in this document.

Another key state government commitment was to work respectfully with shelters to create a licensing system with appropriate conditions, so everyone who takes an animal to a shelter for rehoming and care can be confident that they will be treated well. This commitment will be managed in a second stage of reform and proposed to be completed in mid-2025.

## Opportunities

Whether you have pets at home, work in the agriculture sector or simply appreciate our unique and vibrant native species – animal welfare is an important subject to many of us.

Our understanding of, and expectations for, animal welfare have evolved significantly since the Act was proclaimed in 1985. As the key piece of legislation in our state that dictates how we treat animals, we have an opportunity to modernise the Act to meet community expectations. The updates will raise South Australia’s animal protection profile to be consistent with other states and territories and reflect a contemporary understanding of animal welfare.

The Act currently sets an expectation and fundamental baseline that a person must not fall below in their care of animals. Whilst we are intending to raise the profile of animal welfare and provide appropriate avenues for action, the vast majority of animals are well cared for by those responsible.

The majority of South Australians already surpass the baseline care expected under any revisions to the Act. Consultation feedback showed strong support for strengthening protections for animals against activities and practices that are considered unacceptable, cause harm, or are no longer accepted within today's society. Strengthening protections assists to build South Australia's reputation in protecting animal welfare and preventing the harm of animals.

The Department for Environment and Water is considering how interstate mechanisms could be applied within South Australia's legislation to ensure communities and industries are not unduly impacted by the proposed amendments.

## Next steps

### Key stakeholder conversations

DEC 2023 - APR 2024

Conversations with key stakeholders will occur on the areas of reform most relevant to them. The feedback from those conversations will inform the drafting and refinement of the legislation.

For each reform area, a brief paper has been prepared outlining the proposed directions. This will be used as a basis for this consultation.

### YourSAy consultation

ANTICIPATED APR - MAY 2024

After Cabinet's consideration of the draft Bill, public consultation will take place. Information will be developed to assist those contributing to this phase.



# Summary of the 7 areas of reform (phase 1)

## 1. Update the 'purpose' and include 'objects' in the Act

Modern legislation often includes 'objects' that identify general aims or principles that help the reader to interpret its intent. This can be particularly helpful for a magistrate in making decisions during court proceedings. Since 1985, society's understanding of animals and their welfare has changed and it is proposed that 'objects' be included in the Act to reflect this.

Most Acts have a 'purpose' that states what it is principally about. The Act's current purpose is 'an Act for the promotion of animal welfare and for other purposes'. Other proposed changes to the Act will ensure it is both about the protection of animal welfare and the prevention of harm.

## 2. Recognise animal sentience

Animal sentience refers to an animal's ability to perceive, feel and have both physical and psychological experiences. Those experiences can be positive, such as pleasure, or negative, such as pain and fear.

The Act defines 'harm' to mean 'any form of damage, pain, suffering or distress', and defines 'serious harm' to mean 'harm that consists of, or results in, serious and protracted impairment of a physical or mental function'. The concept of sentience is already implied in the Act but there is an opportunity in the reform process to ensure it is recognised more clearly, which was a key theme of the feedback received during the initial community consultation process.

## 3. Broaden the definition of animal

The Act currently defines 'animal' as a vertebrate (animals with a spinal cord and backbone) other than a human or a fish.

Most other Australian states and territories already include fish in their legislation, or they are in the process of doing so. Some jurisdictions also include some invertebrates, such as cephalopods. All jurisdictions that have adopted this definition continue to enjoy healthy and well supported commercial and recreational fishing sectors.

Expanding the definition in the SA's Act would bring it into line with other states and territories and support a contemporary understanding of animal welfare. South Australia will look to broaden the definition of animal by removing the exclusion of fish and including cephalopods (such as squid, octopus and cuttlefish) for scientific purposes.

The intention is that commercial and recreational fishing and aquaculture industries in South Australia will not be unreasonably impacted by this change. The review will consider how interstate mechanisms could be applied within South Australia's legislation to ensure aquatic-based industries activities are not unduly affected.

## 4. Introduce a duty of care provision

South Australia is one of the only states and territories that does not currently have proactive care requirements for animal care, rather action can only be taken once 'ill treatment' has occurred. This provides limited opportunities to address neglect prior to an animal being harmed.

A 'duty of care' provision in the Act would obligate an owner to provide them with base care requirements, such as appropriate and adequate food, water and living conditions.

## **5. Improve regulation, oversight and transparency of the research and teaching sector**

The use of animals for teaching assists to develop the skills and techniques of the next generation. The use of animals in scientific activities is still a fundamental part of the development of therapies, medications and understanding of our environment.

Reforming the licensing and administration for the use of animals in this sector will increase the accountability of those who use animals for scientific purposes, those who are directly and indirectly responsible for animals, as well as those who supply animals for scientific purposes.

## **6. Increase the ability to administer and enforce the Act**

We will review and contemporise penalties for breaches of the Act. New offences and penalties will be defined through the legislative reform, providing greater ability to act against those who harm animals.

The powers of inspectors will be updated and administrative provisions expanded to enable enforcement and provide a full suite of appropriate actions and tools to deter offending generally.

Together these changes will improve the ability to enforce and administer the Act and provide greater opportunity for interventions or punitive actions commensurate with the severity of the offence, ultimately better protecting the welfare of animals.

## **7. Contemporise the governance and administrative provisions for the Animal Welfare Advisory Committee**

The Animal Welfare Advisory Committee (AWAC) carries out an important function by providing independent advice to the Minister across a range of matters relating to the welfare of animals.

Updating the Act presents the opportunity to review the composition of the committee, as well as processes such as recruitment. Membership of the committee will be reviewed to ensure it has an appropriately diverse range skills and individuals.





With the exception of the Piping Shrike emblem, other material or devices protected by Aboriginal rights or a trademark, and subject to review by the Government of South Australia at all times, the content of this document is licensed under the Creative Commons Attribution 4.0 Licence. All other rights are reserved.

© Crown in right of the State of South Australia | FIS 1015930