



New South Wales

Prevention of Cruelty to Animals Amendment Bill 2005

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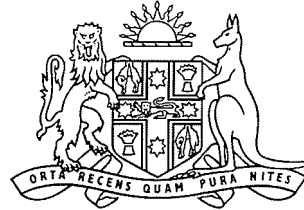
Prevention of Cruelty to Animals Amendment Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Prevention of Cruelty to Animals Amendment Bill 2005

Act No , 2005

An Act to amend the *Prevention of Cruelty to Animals Act 1979* to make further provision with respect to the treatment of animals and the powers of officers under that Act; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Prevention of Cruelty to Animals Amendment Act 2005*.

2 Commencement

- (1) Except as provided by subsections (2)–(4), this Act commences on the date of assent.
- (2) Schedules 1 [7], [14]–[17], [20], [22] and [23], 2.1 and 2.2 commence on a day or days to be appointed by proclamation.
- (3) Schedule 2.3 [1] commences on:
 - (a) the day on which Schedule 1 [14] commences, or
 - (b) the day on which section 9 (1) of the *Veterinary Practice Act 2003* commences,whichever is the later.
- (4) Schedule 2.3 [2] commences:
 - (a) on the day on which Schedule 1 [14] commences, or
 - (b) immediately after the commencement of Schedule 3.20 [5] to the *Veterinary Practice Act 2003*,whichever is the later.

3 Amendment of Prevention of Cruelty to Animals Act 1979 No 200

The *Prevention of Cruelty to Animals Act 1979* is amended as set out in Schedule 1.

4 Amendment of Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Prevention of Cruelty to Animals Act 1979

(Section 3)

[1] Section 4 Definitions

Insert “, or by an officer of the Department of Primary Industries authorised by the Minister,” after “Minister” in paragraph (c) of the definition of *officer* in section 4 (1).

[2] Section 4 (1), definition of “stock animal”

Insert “deer,” after “goats,”.

[3] Section 4 (1), definition of “stock animal”

Omit “swine”. Insert instead “pigs”.

[4] Section 4 (1), definition of “veterinary treatment”

Insert at the end of paragraph (b):

, or

- (c) a veterinary diagnostic procedure carried out on the animal by a veterinary surgeon, or
- (d) a veterinary consultation undertaken in respect of the animal by a veterinary surgeon.

[5] Section 10 Tethering of animals

Omit “rope, chain or cord” from section 10 (1). Insert instead “tether”.

[6] Section 10 (3) and (4)

Insert after section 10 (2):

- (3) A person must not confine a bird by means of a tether.
Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.
- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant satisfies the court before which the proceedings are being taken that the bird to which the offence relates was a raptor and that the tether involved was a jess that was used solely to tether the bird to its handler.

[7] Section 12A Registers relating to certain procedures

Omit “section 25” from section 12A (4). Insert instead “section 24G”.

[8] Section 21 Coursing and other similar activities prohibited

Omit “used” from section 21 (1) (a).

Insert instead “released from confinement”.

[9] Section 21 (3) and (4)

Omit section 21 (3). Insert instead:

- (3) It is a defence to any proceedings for an offence against subsection (1) if the defendant shows that the act constituting the alleged offence was done by the defendant in the course of, and for the purpose of:
 - (a) mustering stock, the working of stock in yards or any other animal husbandry activity, or
 - (b) sheep dog trials.
- (4) For the removal of doubt, section 24 (1) (b) (i), in its application to this section, includes hunting, shooting, snaring, trapping, catching or capturing an animal by using a dog, but only in a manner that inflicted no unnecessary pain on the animal.

[10] Section 21D Confining of bird by ring and chain prohibited

Omit the section.

[11] Section 24 Certain defences

Omit section 24 (1) (d).

[12] Section 24 (1) (f)

Insert at the end of section 24 (1) (e):

- , or
- (f) for the purpose of feeding a predatory animal lawfully kept by the person if:
 - (i) the act concerned was the release of live prey for the predatory animal, and
 - (ii) the diet of the predatory animal included animals of the kind released, and
 - (iii) the person believed on reasonable grounds that the feeding of live prey to the predatory animal was necessary for the predatory animal’s survival because the predatory animal would not eat a dead animal or meat from a dead animal.

[13] Section 24 (3)

Omit the subsection.

[14] Part 2A

Insert after Part 2:

Part 2A Powers of officers

Division 1 Powers of officers generally

24A Officers may demand name and address

- (1) An officer who finds a person:
 - (a) who is committing an offence against this Act or the regulations, or
 - (b) whom the officer suspects, on reasonable grounds, of having committed or attempted to commit such an offence, or
 - (c) who is in charge of a vehicle or vessel that the officer suspects, on reasonable grounds, to have been instrumental in the commission of an offence against this Act or the regulations,

may require that person to inform the officer immediately of that person's full name and home address.

- (2) A person must not fail to comply with a requirement made by an officer under subsection (1).

Maximum penalty: 25 penalty units.

- (3) A person is not guilty of an offence under this section unless the officer:
 - (a) warned the person that failure to comply with the requirement is an offence, and
 - (b) identified himself or herself to the person as an officer.

24B Officer may require responsible person for vehicle to disclose identity of driver who commits offence

- (1) If the driver of a motor vehicle is alleged to have committed an offence against this Act or the regulations in the course of driving the vehicle:
 - (a) the responsible person for the vehicle, or the person having the custody of the vehicle, must, when required to do so by an officer, immediately give information (which must, if

so required, be given in the form of a written statement signed by that person) as to the name and home address of the driver, and

- (b) any other person must, if required to do so by an officer, give any information that it is in the person's power to give and that may lead to the identification of the driver.

Maximum penalty: 20 penalty units.

- (2) It is a defence to a prosecution for an offence under subsection (1) (a) if the defendant proves to the satisfaction of the court that he or she did not know and could not with reasonable diligence have ascertained the driver's name and home address.
- (3) A written statement:
 - (a) purporting to be given under subsection (1) (a) and to contain particulars of the name and home address of the driver of a motor vehicle at the time of commission of an alleged offence against this Act or the regulations, and
 - (b) produced in any court in proceedings against the person named in the statement as the driver for such an offence, is evidence without proof of signature that the person was the driver of the vehicle at the time of the alleged offence if the person does not appear before the court.
- (4) Expressions used in this section (other than *officer*), have the same meanings as in the *Road Transport (General) Act 1999*.

24C Supplying officer's details and giving warnings

- (1) An officer is required, in relation to the exercise of a power conferred on the officer by this Part, to provide the person who is subject to the exercise of the power with the following:
 - (a) evidence that the officer is an officer,
 - (b) the name of the officer,
 - (c) the reason for the exercise of the power,
 - (d) a warning that failure or refusal to comply with a request of the officer, in the exercise of the power, may be an offence.
- (2) An officer is to take the action required by subsection (1) before or at the time of exercising the power concerned or, if to take the action at that time is not reasonably practicable, as soon as is reasonably practicable after exercising the power.
- (3) If 2 or more officers are exercising a power to enter land, only one officer present is required to comply with this section.

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- (4) However, if a person asks another officer present for information as to the name of the officer, the officer must give to the person the information requested.

Division 2 Powers of inspectors

24D Interpretation and application of Division

- (1) In this Division:
inspector means an officer (other than a police officer) who is the holder of an authority issued under subsection (2) that is in force, or a police officer.
land includes premises or a vehicle, vessel or aircraft.
- (2) The Minister, or the Director-General or a Deputy Director-General of the Department of Primary Industries, may issue an officer with an authority for the purposes of this Division and may revoke any such authority.
- (3) An inspector may not exercise powers under this Division in relation to animal research carried out in accordance with the *Animal Research Act 1985* on designated land within the meaning of that Act unless the inspector is also an inspector within the meaning of that Act.

24E Power to enter land

- (1) An inspector may enter land for the purpose of exercising any function under this Division.
- (2) Despite subsection (1), an inspector may exercise a power under this Division to enter a dwelling only with the consent of the occupier of the dwelling, the authority of a search warrant or if the inspector believes on reasonable grounds that:
- (a) an animal has suffered significant physical injury, is in imminent danger of suffering significant physical injury or has a life threatening condition that requires immediate veterinary treatment, and
 - (b) it is necessary to exercise the power to prevent further physical injury or to prevent significant physical injury to the animal or to ensure that it is provided with veterinary treatment.

24F Search warrant

- (1) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

- (2) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that there is, in or on any land:
 - (a) an animal in respect of which an offence against this Act or the regulations is being or has been committed or is about to be committed, or
 - (b) evidence of an offence against this Act or the regulations that has been committed.
- (3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant, together with any person so named:
 - (a) to enter and search the land, and
 - (b) to exercise any functions of an inspector under this Division in or on the land.
- (4) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

24G Powers of inspectors in relation to land used for certain commercial purposes

- (1) This section applies to the following land:
 - (a) land used for the purpose of a sale-yard or an animal trade,
 - (b) land in or on which an animal is being used, or kept for use, in connection with any other trade, or any business or profession (including a place used by a veterinary surgeon for the purpose of carrying on his or her profession).
- (2) For the purposes of ensuring that the provisions of this Act or the regulations are not being contravened, an inspector may, in relation to land to which this section applies, do any or all of the following:
 - (a) inspect and examine the land, any animal that is in or on the land and any accommodation or shelter that is provided in or on the land for any animal,
 - (b) inspect and examine any register that is kept under this Act or the regulations and that is in or on the land,
 - (c) require any person found in or on the land to produce any such register,
 - (d) take copies of, or extracts or notes from, any such register.

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- (3) A person must not fail to comply with a requirement made by an inspector under subsection (2) (c).

Maximum penalty (subsection (3)): 25 penalty units.

24H Powers of police officers to detain vehicle or vessel

- (1) If a police officer suspects on reasonable grounds that a vehicle or vessel contains an animal in respect of which an offence against section 5, 6, 7 or 8 has been or is being committed and that the animal is in distress the police officer may:

- (a) stop the vehicle or vessel, and
- (b) enter the vehicle or vessel, and
- (c) enter any land for the purpose of entering the vehicle or vessel, and
- (d) examine the animal.

- (2) For the purpose of entering the vehicle or vessel or examining the animal concerned, the police officer may direct the person operating the vehicle or vessel to do any or all of the following:

- (a) to manoeuvre the vehicle or vessel in a specified manner or to a specified place (including a place that is appropriate for examining the animal concerned),
- (b) to park or secure the vehicle or vessel in a specified manner,
- (c) to remain in control of the vehicle or vessel while the police officer is exercising his or her functions.

- (3) A person must not fail to comply with a direction given to the person under this section.

Maximum penalty: 25 penalty units.

- (4) A direction under this section to stop a vehicle or vessel must be made in a manner prescribed by the regulations by a police officer who is identified in a manner so prescribed.

- (5) For the purposes of subsection (1), an animal is in distress if it is suffering from exposure to the elements, debility, exhaustion or significant physical injury.

24I Powers of inspectors generally to examine animals

An inspector may examine an animal if the inspector suspects, on reasonable grounds, that:

- (a) an offence against this Act or the regulations is being, has been or is about to be committed in respect of the animal, or

- (b) the animal has not been provided with proper and sufficient food or drink during the previous 24 hours (or, in the case of the provision of food to an animal of a class prescribed by the regulations, during the period prescribed for that class of animal) and is still not being provided with that food or drink, or
- (c) the animal is so severely injured, so diseased or in such a physical condition that it is necessary that the animal be provided with veterinary treatment and the animal is not being provided with that treatment, or
- (d) the animal is so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive, and the animal is not about to be destroyed, or is about to be destroyed in a manner that will inflict unnecessary pain on the animal.

24J Powers of inspectors in relation to care of animals

- (1) If, after examining an animal in accordance with this Division, an inspector suspects, on reasonable grounds, that the animal is in distress (as referred to in section 24H (5)) or any of the circumstances referred to in section 24I exist in relation to the animal, the inspector may do any or all of the following:
 - (a) take possession of the animal (or, if the animal is dead, the animal's carcass),
 - (b) if appropriate, remove the animal (or carcass) to such place as the inspector thinks fit,
 - (c) retain possession of the animal (or carcass),
 - (d) provide the animal with necessary food, drink or veterinary treatment,
 - (e) destroy the animal in a manner that causes it to die quickly and without unnecessary pain.
- (2) An animal (or carcass) to which section 24I (a) applies may be retained by an inspector for a period not exceeding 60 days or where, within that 60-day period proceedings are commenced in respect of the offence concerned, until the proceedings are finally determined (unless the court before which the proceedings are being taken otherwise directs).
- (3) Despite subsection (2), an animal retained under this section that is in distress or to which section 24I (b), (c) or (d) applies may be retained for such period of time as is sufficient for the animal to

be provided with necessary food, drink or veterinary treatment, or to be destroyed in a manner that causes it to die quickly and without unnecessary pain, as the case requires.

- (4) The reasonable expenses incurred by:
- (a) an inspector who is a police officer or another person on behalf of NSW Police, or
 - (b) an inspector who is an officer of a charitable organisation or another person on behalf of the organisation, or
 - (c) an inspector who is a member of staff of a Department (within the meaning of the *Public Sector Employment and Management Act 2002*) or another person on behalf of the Crown,

in the exercise of the powers conferred by this section in respect of an animal, or in complying with the related duties imposed by this Act or the regulations, may be recovered from the owner of the animal as a debt in a court of competent jurisdiction by the inspector or any other person acting on behalf of NSW Police, a charitable organisation or the Crown.

24K Power of seizure of evidence of offences

- (1) An inspector who is lawfully on any land investigating a suspected commission of an offence against this Act or the regulations may seize any thing that will afford evidence of the commission of the offence.
- (2) An inspector who seizes a thing under this section must provide the occupier of the land with a receipt acknowledging the seizure of the thing if the occupier is present and it is reasonably practical to do so.
- (3) If an inspector seizes a thing under this section, it may be retained by the inspector until the completion of any proceedings (including proceedings on appeal) in which it may be tendered in evidence.
- (4) However, an inspector may retain seized documents under subsection (3) only if the person from whom the documents were seized is provided, within a reasonable time after the seizure, with a copy of the documents certified by an inspector to be a true copy.
- (5) Subsection (3) ceases to have effect in relation to any thing seized if, on the application of the person aggrieved by the seizure, the court in which the proceedings referred to in that subsection are instituted orders the inspector to return the thing seized.

24L Period for search limited

- (1) An inspector who enters land under this Division must not remain on the land any longer than is reasonably necessary to achieve the purpose for which the land was entered.
- (2) A police officer who detains a vehicle or vessel under this Division must not detain the vehicle or vessel any longer than is reasonably necessary to achieve the purpose for which it is detained.

24M Inspectors may be assisted in exercising powers

An inspector may exercise a power conferred by this Division:

- (a) in a place other than residential premises—in the company and with the aid of such assistants as the inspector considers necessary, or
- (b) in residential premises—in the company and with the aid of such assistants, being persons of a class prescribed by the regulations, as the inspector considers necessary.

24N Notices in relation to care of animals

- (1) If an inspector is satisfied on reasonable grounds that a person is contravening a provision of this Act or the regulations in relation to the care of an animal, the inspector may give the person a notice in writing specifying the action that the inspector considers is required to be taken for the care of the animal in order to avoid any further contravention.
- (2) The notice (and any evidence of the taking or failure to take the action specified in the notice) is admissible in any proceedings against the person for an offence against this Act or the regulations relating to:
 - (a) the alleged contravention in respect of which the notice was given, or
 - (b) an alleged contravention of a similar kind occurring after the notice was given.

[15] Sections 25, 26, 26A, 27 and 27A

Omit the sections.

[16] Section 28A

Insert after section 28:

28A Offence of impersonating an authorised officer

A person must not impersonate, or falsely represent that the person is, an officer.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

[17] Section 30A Court may order payment of certain costs

Omit “section 26 (8), 26A” from section 30A (3).

Insert instead “section 24J (4), 26AA”.

[18] Section 31 Court may make further orders relating to convicted persons

Omit section 31 (1) and (2). Insert instead:

- (1) If a court has convicted a person of an offence against Part 2, or an offence against the regulations involving the way in which an animal was treated, and the court is satisfied that, were the person to be in charge of an animal, the person would be likely to commit another such offence, the court may make either or both of the following orders:
 - (a) such order as the court thinks fit for the disposal of any animal in respect of which the person is a person in charge,
 - (b) an order that the person is not to purchase or acquire, or take possession or custody of, any animal within such period as is specified in the order.
- (2) An order under subsection (1) may be made by the court in addition to any penalty that it may otherwise impose in relation to the person concerned.

[19] Section 31 (3)

Omit “or (2)”.

[20] Section 31 (4)

Omit the subsection. Insert instead:

- (4) If an officer has taken possession of an animal under section 24J (1) in relation to the alleged commission of an offence against this Act or the regulations, the officer may apply to the court

before which the proceedings for the offence are commenced for an order for the disposal of the animal before the proceedings are finally determined.

[21] Section 31A Sale of certain animals by charitable organisations

Omit section 31A (1A). Insert instead:

- (1A) A charitable organisation may sell or rehouse, either permanently or temporarily, an animal to which this section applies (other than an animal that was surrendered by its owner to the charitable organisation), or cause any such animal to be humanely killed and its body disposed of, if:
- (a) the animal has been kept by the charitable organisation for a period of not less than 21 days, and
 - (b) the charitable organisation has made reasonable inquiries to find the owner or person in charge of the animal, and
 - (c) within that 21-day period, the owner or person in charge of the animal has not been found or come forward to claim the animal or has refused to take care of the animal.
- (1B) A charitable organisation may at any time sell or rehouse, either permanently or temporarily, an animal to which this section applies that was surrendered by its owner to the charitable organisation, or cause any such animal to be humanely killed and its body disposed of.

[22] Section 32A Compensation not recoverable

Omit “26 (4), 26A (1)” from section 32A (1). Insert instead “26AA (1), 24J”.

[23] Sections 33E and 33F

Insert after section 33D:

33E Penalty notices

- (1) An inspector (within the meaning of Division 2 of Part 2A) may serve a penalty notice on a person if it appears to the inspector that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.

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- (3) A penalty notice may be served personally or by post.
 - (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
 - (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
 - (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
 - (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
 - (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

33F Offences in respect of more than one animal

- (1) In proceedings for an offence against section 5, 6, 7 or 8, an allegation may be made that the act or omission that constituted the alleged offence related to more than one animal.
- (2) In sentencing a person for an offence against section 5, 6, 7 or 8, a court may take into account whether the act or omission that constituted the offence related to more than one animal. However, if the person has already been prosecuted in respect of that act or omission, the court is to take into account any penalty that was imposed on the person as a result of that prosecution.

[24] Section 34 Proceedings for offences

Insert after section 34 (3):

- (4) Despite the *Criminal Procedure Act 1986* or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than 12 months after the date alleged to be the date on which the offence was committed.

[25] Section 34A

Omit the section. Insert instead:

34A Guidelines relating to welfare of farm or companion animals

- (1) The regulations may prescribe guidelines, or may adopt a document in the nature of guidelines or a code of practice as guidelines, relating to the welfare of species of farm or companion animals.
- (2) Before any regulations are made as referred to in subsection (1), the Animal Welfare Advisory Council, and representatives of any relevant livestock industry, are to be given an opportunity to review and comment on the provisions of the proposed regulation relating to the welfare of species of farm or companion animals.
- (3) Compliance, or failure to comply, with any guidelines prescribed or adopted by the regulations for the purposes of subsection (1) is admissible in evidence in proceedings under this Act of compliance, or failure to comply, with this Act or the regulations.
- (4) A document adopted as referred to in subsection (1) may be adopted wholly or in part, with or without modification and as in force at a particular time or as in force from time to time.

[26] Section 34B Approved charitable organisations

Omit section 34B (3). Insert instead:

- (3) A charitable organisation that has been approved in accordance with this section must, within 3 months after 30 June in each year, provide the Minister with a report addressing such matters in relation to the exercise by itself or its officers of functions under this Act as may be prescribed by the regulations.

[27] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Prevention of Cruelty to Animals Amendment Act 2005

[28] Schedule 2, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Prevention of Cruelty to Animals
Amendment Act 2005**

6 Inspectors

An officer who, immediately before the repeal of section 25, 26 or 26A, was the holder of a prescribed authority issued for the purposes of that section is taken on and from that repeal to have been issued with an authority by the Minister as referred to in the definition of *inspector* in section 24D (1).

7 Proceedings for offences

- (1) The repeal of section 24 (1) (d) does not affect any proceedings for an offence committed before the repeal.
- (2) Section 34 (4) applies to offences whether committed before, on or after the commencement of that subsection.

Schedule 2 Amendment of Acts

(Section 4)

2.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order of names of Acts:

Prevention of Cruelty to Animals Act 1979, section 33E

2.2 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 4 Amendment of other Acts and instrument

Omit Schedule 4.71. Insert instead:

4.71 Prevention of Cruelty to Animals Act 1979 No 200

[1] Section 24F Search warrant

Omit section 24F (1). Insert instead:

(1) In this section:

authorised officer has the same meaning as it has in the
Law Enforcement (Powers and Responsibilities) Act 2002.

[2] Section 24F (2) and (3)

Omit “authorised justice” wherever occurring.

Insert instead “authorised officer”.

[3] Section 24F (4)

Omit “Part 3 of the *Search Warrants Act 1985*”.

Insert instead “Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

2.3 Prevention of Cruelty to Animals Act 1979 No 200

[1] Section 24CA

Insert after section 24C (as inserted by Schedule 1 [14]):

24CA Extension of certain powers of officers

The powers of an officer or inspector under this Part may be exercised in relation to an offence, or suspected offence, against section 9 (1) of the *Veterinary Practice Act 2003*.

[2] Section 27B Extension of certain powers of officers (as inserted by the Veterinary Practice Act 2003)

Omit the section.