

[Act 1997 No 83]



New South Wales

Prevention of Cruelty to Animals Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Prevention of Cruelty to Animals Act 1979* (the *Principal Act*) to make further provision for the prevention of cruelty to animals and generally to facilitate the more effective operation of the Principal Act in the following ways:

- (a) by expanding certain existing offences, and by creating certain new offences, under the Principal Act,
- (b) by increasing the penalties for offences under the Principal Act and by providing separate penalties in relation to certain offences when committed by corporations,
- (c) by enacting provisions dealing with offences by corporations, permitting or failing to prevent the commission or continuance of offences, complicity and common purpose and attempts,

* Amended in committee—see table at end of volume.

- (a) by providing that the Principal Act binds the Crown (except in certain specified cases),
- (b) by clarifying and expanding the powers of enforcement officers including, among other things, providing a power to seize things with respect to which offences have been committed or as evidence of the commission of offences,
- (c) by enabling a Local Court to make orders for the maintenance and care of animals in emergencies and the disposal of animals that have been seized under the Principal Act,
- (d) by enabling the managers of sale-yards and abattoirs to destroy injured or diseased stock,
- (e) by facilitating the disposal of stray or abandoned animals by charitable organisations that have possession of them,
- (f) by making provision for the prescribing, by regulation, of guidelines relating to the welfare of farm or companion animals with evidence of breaches of, or compliance with, such guidelines being admissible in evidence in proceedings under the Principal Act,
- (g) by making various amendments of a consequential or minor nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Prevention of Cruelty to Animals Act 1979* set out in Schedule 1.

Schedule 1 Amendments

Offences

Pinioning of birds

Schedule 1 [3] provides that pinioning a bird is not an act of cruelty if carried out in the manner prescribed by the regulations (that is, the carrying out of a surgical operation on the wings of a bird so that it cannot fly).

Carriage of dogs

Schedule 1 [6] provides that it is an offence for a person to carry a dog (other than a dog being used to work livestock) on the open back of a moving vehicle on a public street unless the dog is restrained or enclosed in a way that prevents the dog from falling from the vehicle.

Schedule 1 [41] enables appropriately authorised and identified officers to stop vehicles on which dogs are being carried in contravention of the above prohibition, and inserts a provision making it an offence for a person to refuse or fail to comply with a direction to stop.

Schedule 1 [42] makes a consequential amendment.

Provision of food, drink and shelter

Schedule 1 [7] and **[8]** amend an evidentiary provision to make it clear that a failure to provide clean water for an animal to drink during a period in excess of 24 hours is evidence of a failure to provide proper and sufficient drink.

Schedule 1 [9] amends an evidentiary provision dealing with the provision of food and shelter to animals *so* that a period, other than the current 24 hours, may be prescribed by the regulations as the maximum period during which it is not unlawful for food or shelter to be withheld from specified classes of animals.

Schedule 1 [40] makes consequential amendments to provisions dealing with the powers of authorised officers in situations in which animals have not been provided with proper and sufficient food or drink.

Tethering of sows

Schedule 1 [11] provides that it is an offence to tether a sow in a piggery.

Certain operations not to be performed on animals

Schedule 1 [12] prohibits the tail docking of dogs.

Schedule 1 [15] provides a defence if the dog concerned was less than 5 days old when the tail was docked.

Schedule 1 [16] exempts tail docking operations on dogs performed by a veterinary surgeon in circumstances, and in accordance with conditions, prescribed by the regulations.

Schedule 1 [14] inserts a provision to make it an offence to grind, trim or clip one or more teeth of a sheep.

Schedule 1 [18] exempts such procedures, if performed by a veterinary surgeon in circumstances, and in accordance with conditions, prescribed by the regulations.

Schedule 1 [19] provides definitions of *clip*, *grind* and *trim*, in relation to the teeth of a sheep, for the purposes of the offence provision.

Schedule 1 [13] and **[17]** make consequential amendments.

Poisons

Schedule 1 [22] redefines *poison*, for the purposes of a provision dealing with the administration of poisons to animals, to include glass or any other thing likely to kill or injure an animal.

Schedule 1 [24] makes it an offence to be in possession of a poison with the intention of using it to kill or injure a domestic animal.

Schedule 1 [23] makes a consequential amendment.

Animal baiting and fighting

Schedule 1 [26] extends an existing provision dealing with animal baiting to make it an offence for a person, among other things:

- to incite a fight in which one or more animals are pitted against another animal or animals, whether of the same species or not, or
- to advertise the intention to conduct such a fight, or
- to promote, organise or attend such a fight.

A person is not guilty of an offence against that provision for using a dog or other animal to catch or kill vermin or noxious animals. Evidence that a person was present at a place at which an animal fight was conducted is prima facie evidence that the person attended the fight for the purposes of the offence provision.

Animal-catching activities

Schedule 1 [27] amends a provision prohibiting the release of animals of species prescribed by the regulations from confinement so that they can be chased by removing the reference to prescribed species, thereby ensuring that the protection of the provision extends to all animals (as is currently provided for by the regulations in any event).

Coursing

Schedule 1 [28] restructures a provision prohibiting coursing and certain related activities to make it an offence for a person, among other things:

- to permit or encourage an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog, or
- to advertise the intention to conduct such an activity, or
- to promote, organise or attend such an activity, or
- to use an animal as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog, or
- to keep or be in charge of an animal for use as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog.

Certain evidentiary provisions are also made. Evidence that a person was present at a place at which an animal is used for the purpose of its being chased, caught or confined is prima facie evidence that the person attended the activity for the purposes of the offence provision.

Firing and tail nicking

Schedule 1 [29] makes it an offence for a person to apply a thermal stimulus to the leg of an animal with the intention of causing tissue damage and the development of scar tissue around the tendons and ligaments of the leg.

Schedule 1 [30] inserts a provision making it an offence for a person to cut a horse's tail with the intention of causing the horse to carry the tail high.

Steel-jawed traps

Schedule 1 [32] makes it an offence for a person to set a steel-jawed trap in any part of New South Wales or to possess a steel-jawed trap with the intention of using it to trap an animal. A definition of a *steel-jawed trap* is provided for the purposes of the provision.

Penalties

Schedule 1 [4], [5], [10], [20], [21], [25], [31], [35], [46]–[49], [52] and [60] increase various penalties that are imposed by the sections of the Principal Act referred to in those items. Provision is also made in some cases for the imposition of monetary penalties on corporations that are higher than the monetary penalties applicable to individuals (as corporations are not liable to the custodial penalties applicable to the offences concerned).

Schedule 1 [57] amends a provision dealing with proceedings for offences under the Principal Act to provide that jurisdiction may be exercised by the Supreme Court in its summary jurisdiction (as well as by Local Courts and on indictment, as is currently the case), and to provide that Local Courts may not impose pecuniary penalties of more than \$10,000 for offences.

Additional powers of officers

Officers may have the aid of assistants

Schedule 1 [34] inserts a provision enabling an enforcement officer, when exercising powers under the Principal Act in places used as sale-yards or for animal trades, to be accompanied by any assistants (including veterinary surgeons, as at present) that the officer considers necessary.

Schedule 1 [33] makes a consequential amendment.

Schedule 1 [43] inserts a similar power in a provision that enables enforcement officers to exercise wider powers with respect to the removal of animals from, and the entry on, premises. However, if residential premises are involved, the provision requires that the assistants must be persons of a class prescribed by the regulations (for example, veterinary surgeons or their assistants or employees of approved charitable organisations).

Power to take possession of animal carcasses

Schedule 1 [36]–[39] enable an enforcement officer who suspects, on reasonable grounds, that an offence against the Principal Act has been committed to take possession of, remove and retain possession of an animal carcass. (At present, officers can take possession of, remove and retain possession of animals under the provision concerned.)

Power of seizure

Schedule 1 [44] inserts a provision to enable officers who are lawfully in a place investigating a suspected breach of the Principal Act, or the regulations made under it, to seize things with which an offence has been committed, or that are evidence of the commission of an offence or that were used, or are intended to be used, for the purpose of committing an offence. An officer who seizes a thing under the provision must:

- provide the occupier of the place, if present, with a receipt for the thing, if this is reasonably practical, and

- provide a person from whom documents are seized with a certified copy of them, if it is proposed that the documents be retained and tendered in evidence, and
- if requested, produce the officer's authority for inspection.

Place is defined for the purposes of the provision to include premises and a vehicle.

Other matters relating to offences and law enforcement

False information

Schedule 1 [50] makes it an offence for a person knowingly to give false or misleading information when required by an officer to provide information in pursuance of a power conferred under Part 3 of the Principal Act to require provision of the information. A person does not commit an offence unless warned of the need to provide information that is not false or misleading and unless the officer identified himself or herself to the person.

Offences by corporations, permitting of failing to prevent offences, complicity and common purpose and attempts

Schedule 1 [56] inserts provisions dealing with the matters mentioned above.

A director of a corporation or person concerned in the management of the corporation is taken to be liable for a contravention of the Principal Act or regulations by the corporation if the person authorised or permitted the contravention concerned. This does not affect the liability of the corporation for the contravention.

A person who owns or has charge of an animal and who permits or fails to prevent, without reasonable excuse, the commission of an offence in respect of the animal under the Principal Act or the regulations is guilty of an offence. Similarly, a person who owns or occupies land on which an animal is located and who permits or fails to prevent, without reasonable excuse, the commission on the land of an offence in respect of the animal under the Principal Act or the regulations is guilty of an offence. The penalty for an offence committed under this provision is the same as the penalty for the offence that the person permitted or failed to prevent.

A person who aids, abets, counsels or procures the commission of an offence against the Principal Act or the regulations by another person is taken to have committed that offence and is liable for the penalty prescribed for that offence.

A person who attempts to commit an offence against the Principal Act or the regulations is liable for the penalty prescribed for the offence.

Institution of proceedings

Schedule 1 [58] provides that proceedings for an offence under the Principal Act may be instituted only by an officer (as defined by the Principal Act).

Miscellaneous issues

Power of sale-yard or abattoir managers to destroy animals

Schedule 1 [45] authorises the managers of sale-yards and abattoirs to destroy injured or diseased animals that are in sale-yards or abattoirs quickly and without unnecessary pain. When acting under this provision, sale-yard and abattoir managers have the same powers as authorised officers have to destroy animals under the Principal Act.

Court orders regarding disposal or care of animals

Schedule 1 [51] inserts a provision to enable an officer to apply to a Local Court for an order permitting the officer to enter and use the facilities of a place to provide urgent maintenance and care for animals in that place where their owner is dead or cannot be located and no other person can be found who is responsible for their maintenance and care. Before applying for the order, the officer must obtain expert advice as to the requirements for the care of the animals concerned. An order may operate for no longer than 30 days. The court may grant a further order before the expiration of a previous order but the maximum duration of all orders made in relation to the same animals must not exceed 90 days. *Facilities* is defined for the purposes of the provision to include (among other things) stock-yards, watering equipment and stock feed growing or stored on the place.

Schedule 1 [53] enables an officer who has taken possession of an animal under the Principal Act to apply to the Local Court that is to hear any proceedings concerning the animal for an order permitting the sale or other disposal of the animal before the proceedings are finally determined. The court may make orders concerning the method of disposal, the holding of any proceeds of the disposal in trust and any other matters that the court considers appropriate.

Schedule 1 [55] makes a consequential amendment to prevent persons from recovering compensation as the result of the making of a court order for the disposal or care of animals under either of the provisions mentioned above.

Sale of animals by charitable organisations

Schedule 1 [54] extends an existing provision relating to the sale of animals that have been taken into the possession of officers of certain charitable organisations (such as the Royal Society for the Prevention of Cruelty to Animals, New South Wales) in the exercise of powers under the Principal Act to stray or abandoned animals delivered to or otherwise coming into the possession of the organisations and to animals that are surrendered to the organisations.

Guidelines for the welfare of farm and companion animals

Schedule 1 [59] provides that the regulations may prescribe guidelines relating to the welfare of species of farm or companion animals and that evidence of a breach of, or compliance with, such guidelines is admissible in evidence in proceedings under the Principal Act of a breach of, or compliance with, the Principal Act or the regulations.

Approval of charitable organisations

Schedule 1 [59] also inserts a provision that enables the Minister, by order published in the Gazette, to approve of charitable organisations for the purpose of enabling their employees to exercise law enforcement functions under the Principal Act. The provision requires charitable organisations that are so approved to provide the Minister with an annual report concerning their law enforcement functions and with separate reports on particular matters, if requested by the Minister.

Schedule 1 [2] amends the definition of *officer* with the effect that, so far as charitable organisations are concerned, only officers of charitable organisations that are approved by the Minister may exercise functions under the Principal Act.

Schedule 1 [1] provides a definition of *approved charitable organisation*, and **Schedule 1 [66]** inserts certain consequential savings and transitional provisions.

Principal Act binds Crown

Schedule 1 [61] provides that the Principal Act binds the Crown. However, the Principal Act does not apply to the following:

- the use and handling of police dogs and police horses by police officers, or drug detection dogs by officers of the Department of Corrective Services, in the course of their duties,
- other cases prescribed by the regulations.

Savings and transitional provisions

Schedule 1 [62] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [63] and **[64]** make consequential amendments.

Schedule 1 [65] repeals certain obsolete savings provisions by way of statute law revision.