



New South Wales

Rural Crime Legislation Amendment Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to amend certain legislation in response to a review of laws relating to stock theft and trespass (the Bradshaw Review), as follows:

- (a) by including any vulnerability of the victim of a crime that arises from the victim's geographical isolation as an aggravating factor in sentencing for all crimes,
- (b) by creating an offence of aggravated trespass on inclosed land where a biosecurity risk is introduced or increased by the trespass, where the offender intends to engage in stock theft or where the offender is in possession of hunting equipment or accompanied by hunting dogs,
- (c) by giving owners of stock, and police officers, the power to apply to the Local Court for a stock mustering order authorising entry onto property owned by another person to muster and recover stock,
- (d) by increasing the maximum penalty for the offence of hunting on private land without the consent of the owner or occupier of the land,
- (e) by extending existing powers of inspectors and police officers to stop, search and detain vehicles and vessels, so that powers that currently apply only in relation to certain hunting offences will apply in the same way to the offence of hunting on private land without consent,
- (f) by empowering both inspectors and police officers to issue a notice to produce, which requires a vehicle or vessel stopped in connection with any hunting offence to be taken to a police station or other place for searching if it is not practicable to search it where it was stopped.

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 the date of assent to the proposed Act, except the amendment about stock mustering orders, which commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Acts

Animals Act 1977

Schedule 1.1 specifies the requirements for proving ownership of feral goats, as follows:

- (a) a feral goat that is held in captivity may be bought, sold or otherwise dealt with or disposed of,
- (b) if a feral goat ceases to be held in captivity, all property in the goat is immediately extinguished,
- (c) if a person captures a feral goat that is not held in captivity, the person becomes the owner of the goat.

Crimes (Sentencing Procedure) Act 1999

Schedule 1.2 includes any vulnerability of the victim arising from the geographical isolation of the victim as an aggravating factor in sentencing for any crime.

Game and Feral Animal Control Act 2002

Schedule 1.3 [1] inserts a note about a section that provides that police officers can exercise the functions of an inspector under the *Game and Feral Animal Control Act 2002*.

Schedule 1.3 [2] provides for inspectors (including police officers) to issue a notice to produce, requiring the person in charge of a vehicle or vessel that an inspector has stopped to take the vehicle or vessel to a specified place for the purpose of the carrying out of a search. A notice to produce may be issued only if it is not reasonably practicable to carry out the search where the vehicle or vessel is stopped. The amendment also extends the operation of existing powers of inspectors (including police officers) to stop and search vehicles and vessels in connection with the investigation and collection of evidence about certain hunting offences so that they also apply to the offence of hunting on private land (under section 28J of the *Summary Offences Act 1988*).

Schedule 1.3 [3] makes it clear that the power of an inspector (including a police officer) to seize anything that is found by the inspector in any authorised search, and that the inspector has reason to believe is connected with a game hunting offence, includes anything found in a search carried out after a vehicle or vessel was produced for inspection at a specified place, in compliance with a notice to produce.

Schedule 1.3 [4] also extends the operation of existing powers of inspectors (including police officers) to detain and seize vehicles in connection with the investigation and collection of evidence to the offence of hunting on private land (under section 28J of the *Summary Offences Act 1988*).

Inclosed Lands Protection Act 1901

Schedule 1.4 [1] amends the *Inclosed Lands Protection Act 1901* to create an offence of aggravated trespass where trespass occurs in circumstances that involve:

- (a) the introduction or increase of a biosecurity risk for a particular property, or
- (b) an intention to engage in stock theft, or
- (c) the presence of hunting equipment, including hunting dogs.

Schedule 1.4 [2] provides that proof of reasonable excuse under the proposed amendments lies on the person charged with the offence.

Law Enforcement (Powers and Responsibilities) Act 2002

Schedule 1.5 allows an owner of stock, or a police officer, to apply to the Local Court for a stock mustering order, by inserting the following provisions:

- (a) **Proposed section 210K** defines terms used in the proposed provisions.
- (b) **Proposed section 210L** provides that the Local Court may, on application by the owner of stock or a police officer, make a stock mustering order, which authorises a person named in the order to enter land to conduct a muster of stock, so as to locate and remove it. That person may only do so under the direction and supervision of a police officer, who is authorised to carry out those functions, including with use of any horse, dog, vehicle or equipment.

The proposed section also provides that the Local Court is to make a stock mustering order only if satisfied that the owner of stock or police officer who applied for the order has reasonable grounds for believing that the owner's stock is on land managed or controlled by another person, and either the person managing or controlling the land has unreasonably refused to permit the owner of stock or police officer who applied for the order to enter the land to search for, locate and remove the stock or it is impracticable for the owner of stock or the police officer to obtain such permission.

- (c) **Proposed section 210M** details how an application for a stock mustering order is to be made.
- (d) **Proposed section 210N** requires notice to be given of the making of a stock mustering order to the person managing or controlling the land to which the order relates, if that person did not appear, or was not represented, before the Local Court on the making of the order, and to the police if no police officer was a party to the proceedings for the order.
- (e) **Proposed section 210O** provides that the person authorised by a stock mustering order to enter land may enter the land and do the things that the person is authorised to do by the order. The proposed order also requires notice to be given before the entry is made and makes it clear that a stock mustering order does not authorise a police officer or any other person to enter any part of land that is used for residential purposes.
- (f) **Proposed section 210P** makes it an offence for a person who has knowledge of a stock mustering order to do or omit to do anything with the intention of frustrating action under the order or to obstruct a person who is acting under the order. The maximum penalty for the offence is 50 penalty units (currently \$5,500) or 6 months imprisonment.

Summary Offences Act 1988

Schedule 1.6 [1] increases the maximum penalty for the offence of hunting on private land without the consent of the owner or occupier of the land from 10 penalty units (currently \$1,100) to 20 penalty units (currently \$2,200).

Schedule 1.6 [2] and [3] provide for inspectors appointed under the *Game and Feral Animal Control Act 2002* to issue penalty notices for the offence of hunting on private land. Currently only police officers can issue such penalty notices.



New South Wales

Rural Crime Legislation Amendment Bill 2017

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Acts	3

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Rural Crime Legislation Amendment Act 2017*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1.5 commences on a day or days to be appointed by proclamation.

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Schedule 1	Amendment of Acts	1
1.1	Animals Act 1977 No 25	2
[1]	Section 10A Ownership of deer and feral goats	3
	Insert “or feral goat” after “deer” wherever occurring in section 10A (1)–(3).	4
[2]	Section 10A (4)	5
	Insert in alphabetical order:	6
	<i>feral goat</i> means a living animal of the species <i>Capra aegagrus hircus</i> that has become established in the wild, has not been born as a result of a managed breeding program and has not been subject to any animal husbandry procedure or treatment.	7 8 9 10
1.2	Crimes (Sentencing Procedure) Act 1999 No 92	11
	Section 21A Aggravating, mitigating and other factors in sentencing	12
	Insert “because of the geographical isolation of the victim” after “disability,” in section 21A (2) (1).	13 14
1.3	Game and Feral Animal Control Act 2002 No 64	15
[1]	Section 4 Definitions	16
	Insert after the definition of <i>inspector</i> :	17
	Note. Section 34 provides that a police officer may exercise the functions of an inspector under this Act, and for that purpose is taken to be an inspector.	18 19
[2]	Section 44 Power to detain and search vehicles or vessels	20
	Omit section 44 (2). Insert instead:	21
	(2) An inspector may, by notice to produce, require a person in charge of the vehicle or vessel to take the vehicle or vessel to a specified place for the purposes of searching the vehicle or vessel if it is not reasonably practicable to carry out the search where the vehicle or vessel is stopped.	22 23 24 25
	(3) For the purposes of this section, <i>game hunting offence</i> includes an offence under section 28J of the <i>Summary Offences Act 1988</i> and any such offence that there are reasonable grounds for believing has been, or is to be, committed.	26 27 28
[3]	Section 45 Power of seizure	29
	Insert “(including any search of a vehicle or vessel conducted after a notice to produce was issued under section 44 (2))” after “Division” in section 45 (1).	30 31
[4]	Section 45 (9)	32
	Insert after section 45 (8):	33
	(9) For the purposes of this section, <i>game hunting offence</i> includes an offence under section 28J of the <i>Summary Offences Act 1988</i> and any such offence that there are reasonable grounds for believing has been, or is to be, committed.	34 35 36

1.4 Inclosed Lands Protection Act 1901 No 33	1
[1] Section 4B Aggravated unlawful entry on inclosed lands	2
Insert at the end of section 4B (1) (b):	3
, or	4
(c) introduces or increases a risk of a biosecurity impact (within the meaning of the <i>Biosecurity Act 2015</i>) for those inclosed lands, or	5
(d) intends to commit on those inclosed lands an offence under any of the following provisions:	6
(i) section 126, 503, 505 or 506 of the <i>Crimes Act 1900</i> ,	7
(ii) section 16 of the <i>Game and Feral Animal Control Act 2002</i> ,	8
(iii) section 28J of the <i>Summary Offences Act 1988</i> , or	9
(e) without reasonable excuse, possesses, places or uses any net, trap, snare, poison, explosive, ammunition, knife, hunting device or hunting equipment, or	10
(f) without reasonable excuse, possesses or discharges a firearm (within the meaning of the <i>Firearms Act 1996</i>) or a prohibited weapon (within the meaning of the <i>Weapons Prohibition Act 1998</i>), or	11
(g) is accompanied by a dog of a breed ordinarily used for hunting.	12
[2] Section 4B (3)	13
Insert after section 4B (2):	14
(3) Proof of reasonable excuse under this section lies on the person charged with the offence.	15
1.5 Law Enforcement (Powers and Responsibilities) Act 2002 No 103	16
Part 16B	17
Insert after Part 16A:	18
Part 16B Entry onto land to muster stock	19
210K Definitions	20
In this Part:	21
stock means any of the following:	22
(a) camels, dromedaries, alpacas, llamas and vicunas,	23
(b) cattle (that is, bulls, cows, oxen, heifers, steers, calves and buffalo),	24
(c) deer,	25
(d) goats (including bucks, does, wethers and kids),	26
(e) horses (that is, horses, mares, geldings, colts, fillies, foals, hinnies, mules, donkeys and asses),	27
(f) pigs (including boars, sows, barrows, piglets and suckers),	28
(g) sheep (including rams, ewes, wethers and lambs).	29
stock mustering order —see section 210L.	30

210L Stock mustering orders

- (1) The Local Court may, on application by the owner of stock or a police officer, make an order (a **stock mustering order**) that authorises a person named in the order to do one or more of the following:
- (a) enter the land specified in the order, including the airspace above the land, to conduct, under the direction and supervision of a police officer, a muster of the stock identified in the order, so as to locate and remove the stock,
 - (b) search for and take possession of stock found at the land that matches the description of the stock identified in the order,
 - (c) draft, cut out, and take any other action necessary to identify and separate the stock from other stock, but only for the purposes of conducting the muster,
 - (d) bring onto the land specified in the order any agent, assistant, horse, dog, vehicle or equipment reasonably necessary for the search, or for the taking possession of stock, that is authorised by the order.
- (2) A stock mustering order is taken to also authorise any police officer to do either or both of the following:
- (a) enter the land specified in the order, including the airspace above the land, to direct and supervise the muster of the stock identified in the order, so as to locate and remove the stock,
 - (b) bring onto the land any horse, dog, vehicle or equipment that is reasonably necessary for directing and supervising the muster.
- (3) The Local Court is to make a stock mustering order only if satisfied that:
- (a) the owner of stock or police officer who applied for the order has reasonable grounds for believing that the owner's stock is on land managed or controlled by another person, and
 - (b) either the person managing or controlling the land has unreasonably refused to permit the owner of stock or police officer who applied for the order to enter the land to search for, locate and remove the stock or it is impracticable for the owner of stock or the police officer to obtain such permission.
- (4) A stock mustering order must state:
- (a) the general grounds on which the order is made, and
 - (b) the period for which it applies.
- (5) Part 4 of the *Local Court Act 2007* applies, subject to any modifications provided for by this Part or by the regulations, to proceedings for a stock mustering order under this Part, as if those provisions were application proceedings against the person managing or controlling the land in relation to which the order is sought.
- Note.** Section 70 of the *Local Court Act 2007* provides for appeals in relation to matters dealt with under Part 4 of that Act.

210M Application for stock mustering order

- (1) An application for a stock mustering order is to be made by issuing and filing an application notice in accordance with Part 4 of the *Local Court Act 2007*.
- (2) An application for a stock mustering order must specify the grounds for the application, including any belief of the applicant, in the manner prescribed by the regulations.

(3)	Despite section 49 of that Act, the application notice must be served:	1
(a)	personally on the owner of, or person managing or controlling, the land to which the application relates, or	2 3
(b)	if personal service cannot be effected promptly, by causing a copy of the application notice to be affixed to or near at least one of the entrances to the land.	4 5 6
(4)	The application notice must also be served on the police officer in charge of the police station closest to the land to which the application relates, unless the application is made by a police officer.	7 8 9
(5)	The Commissioner is a party to any application for a stock mustering order under this Part and the Commissioner or any police officer may be represented by a legal practitioner at any proceedings for such an order.	10 11 12
(6)	Despite subsection (1), section 51 of the <i>Local Court Act 2007</i> does not apply to an application for a stock mustering order.	13 14
210N	Notice of order required in certain circumstances	15
(1)	If the person managing or controlling the land to which a stock mustering order relates did not appear, or was not represented, before the Local Court on the making of the order, the owner of the relevant stock, or the police officer who applied for the order, is to cause a copy of the order to be served:	16 17 18 19
(a)	personally on the person managing or controlling the land named in the order, or	20 21
(b)	if personal service cannot be effected promptly, by causing a copy of the order to be affixed to or near at least one of the entrances to the land.	22 23
(2)	If no police officer was a party to the proceedings for the stock mustering order, the owner of the relevant stock is to also cause a copy of the order to be served on the police officer in charge of the police station closest to the land to which the notice relates.	24 25 26 27
210O	Entering land to enforce stock mustering order	28
(1)	A person authorised by a stock mustering order to enter land may enter the land and do the things that the person is authorised to do by the stock mustering order.	29 30 31
(2)	Before land is first entered under the authority of a stock mustering order, the owner of the relevant stock, or the police officer who applied for the order, must cause a notice to be prepared that:	32 33 34
(a)	contains a summary of the stock mustering order, and	35
(b)	specifies the intention of the person named in the order, or any police officer, to enter, or to authorise entry to, the land to act in accordance with the order on or from a date specified in the order (the <i>enforcement date</i>).	36 37 38 39
(3)	A copy of the notice must be served, not less than 7 days before the enforcement date:	40 41
(a)	personally on the owner of, or person managing or controlling, the land to which the application relates, or	42 43
(b)	if personal service cannot be effected promptly, by causing a copy of the notice to be affixed to or near at least one of the entrances to the land.	44 45

(4)	A copy of the notice must also be served on the police officer in charge of the police station closest to the land to which the notice relates, not less than 7 days before the enforcement date.	1 2 3
(5)	A stock mustering order does not authorise a police officer or any other person to enter any part of land that is used for residential purposes.	4 5
210P	Preventing, hindering or obstructing enforcement of stock mustering order	6
	A person who has knowledge of a stock mustering order must not:	7
(a)	do an act or make an omission with intent to frustrate action under the order, or	8 9
(b)	obstruct a person who is acting under the order.	10
	Maximum penalty: 50 penalty units or imprisonment for 6 months.	11
1.6	Summary Offences Act 1988 No 25	12
[1]	Section 28J Offence of hunting on private land	13
	Omit “10 penalty units” from section 28J (2). Insert instead “20 penalty units”.	14
[2]	Section 29B Penalty notices: hunting on private land without consent of owner or occupier of the land	15 16
	Insert “, or inspector appointed under Division 1 of Part 4 of the <i>Game and Feral Animal Control Act 2002</i> ,” after “police officer” in section 29B (1).	17 18
[3]	Section 29B (1)	19
	Omit “an officer”. Insert instead “a person”.	20