



New South Wales

# Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024

## Explanatory note

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

## Overview of Bill

The object of this Bill is to —

- (a) amend the *Prevention of Cruelty to Animals Act 1979* (the **POCTA Act**) and the *Prevention of Cruelty to Animals Regulation 2012* to expand and improve the transparency of animal welfare enforcement, and
- (b) amend the *Government Information (Public Access) Regulation 2018* to declare a charitable organisation approved by the Minister (an **approved charitable organisation**) as a public authority under the *Government Information (Public Access) Act 2009* (the **GIPA Act**), and
- (c) amend the *Ombudsman Regulation 2016* to declare an approved charitable organisation as a public authority under the *Ombudsman Act 1974* (the **OA**), and
- (d) make consequential amendments to certain Acts and a regulation.

## 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.

## Schedule 1      **Amendment of Prevention of Cruelty to Animals Act 1979 No 200**

**Schedule 1[3]** inserts proposed Division 1AA into Part 2A, which provides that the Minister may, by written instrument, appoint—

- (a) an employee of an approved charitable organisation or a Public Service employee as an officer for the POCTA Act (an *appointed officer*), and
- (b) an officer as an inspector for the purposes of the POCTA Act, Part 2A, Division 2 (an *appointed inspector*).

The proposed division sets out the following in relation to an appointed officer or appointed inspector—

- (a) the terms and period of an appointment,
- (b) that the powers are subject to the instrument of appointment,
- (c) the identification requirements.

The proposed division provides that the Minister may direct a person who ceases to be an appointed officer or appointed inspector to return to the Minister the evidence of the person's authority as an appointed officer or appointed inspector. Proposed section 24AE provides that a person is guilty of an offence for failing to comply with a direction from the Minister, with a maximum penalty of 25 penalty units. **Schedule 1[1] and [2], [4]–[7] and [10]** make consequential amendments.

**Schedule 1[8]** amends the definition of *disqualification order*.

**Schedule 1[9]** provides that a court must make an order that a person must not, for the period specified in the order, do certain actions (a *disqualification order*) when a person has been found guilty of—

- (a) an act of cruelty on an animal and the person has been previously convicted of an act of cruelty on an animal, or
- (b) more than one offence of an act of cruelty on an animal and the offences arose out of separate acts or omissions.

**Schedule 1[13]** provides that the Minister must give the annual report of an approved charitable organisation to the Presiding Officer of each House of Parliament, and may redact any information in the annual report the Minister considers should not be made public before giving the annual report to the Presiding Officers. A copy of the annual report must be laid before the House within 5 sitting days of the House after it is received by the Presiding Officer. **Schedule 1[11] and [12]** make consequential amendments.

**Schedule 1[14]** sets out the circumstances when relevant agencies may collect, use or disclose information, including *personal information* under the *Privacy and Personal Information Protection Act 1998*, if reasonably necessary for the purposes of administering or enforcing the POCTA Act.

**Schedule 1[15]** sets out the circumstances when the Minister may delegate certain functions of the Minister to certain persons.

**Schedule 1[16]** contains a proposed transitional provision consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Prevention of Cruelty to Animals Regulation 2012**

**Schedule 2[4]** provides that an annual report of an approved charitable organisation must include the following—

- (a) certain information about access applications made to the organisation under the GIPA Act,
- (b) details of the number of complaints made under the OA about the organisation and the outcome of the complaints,
- (c) a list of certain agreements the organisation has with the State or other organisations.

**Schedule 2[5]** omits the definition of *officer*, which is made redundant by amendments to the POCTA Act.

**Schedule 2[6]** provides that POCTA Act, proposed section 24AE is a penalty notice offence with a maximum penalty of \$500.

**Schedule 2[1]–[3]** make amendments consequential on amendments made by Schedule 1[3].

### **Schedule 3      Amendment of Government Information (Public Access) Regulation 2018**

**Schedule 3** provides that an approved charitable organisation is declared to be a public authority under the GIPA Act—

- (a) for the purposes of the GIPA Act, except section 6 and Part 3, and
- (b) to the extent the organisation's conduct relates to the exercise of functions under the POCTA Act.

### **Schedule 4      Amendment of Ombudsman Regulation 2016**

**Schedule 4** provides that an approved charitable organisation is declared to be a public authority for the purposes of the OA to the extent the conduct relates to the exercise of functions under the POCTA Act.

### **Schedule 5      Consequential amendments of other legislation**

**Schedule 5** makes amendments to certain Acts and a regulation consequential on amendments made by Schedule 1[3].



New South Wales

# Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024

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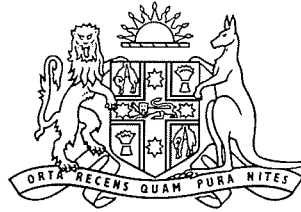
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*This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments*



New South Wales

# **Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024**

No. \_\_\_\_\_, 2024

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## **A Bill for**

An Act to amend the *Prevention of Cruelty to Animals Act 1979* to improve transparency in animal welfare enforcement activities; to provide for matters for certain convicted persons; and for related purposes.

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*The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Act 2024*.

3

4

**2 Commencement**

5

This Act commences on the date of assent to this Act.

6

<b>Schedule 1</b>	<b>Amendment of Prevention of Cruelty to Animals Act 1979 No 200</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
	Insert in alphabetical order in section 4(1)—	4
	<i>appointed inspector</i> means an officer appointed as an inspector under section 24AA(2).	5
	<i>appointed officer</i> —see section 24AA(1).	6
<b>[2] Section 4(1), definition of “officer”</b>		8
	Omit paragraphs (b) and (c). Insert instead—	9
	(b) an appointed officer,	10
<b>[3] Part 2A Powers of officers</b>		11
	Insert before Division 1—	12
	<b>Division 1AA Appointed officers</b>	13
<b>24AA Appointment of appointed officers and inspectors</b>		14
	(1) The Minister may, by written instrument, appoint the following persons as an officer (an <i>appointed officer</i> ) for this Act—	15
	(a) an employee of an approved charitable organisation,	16
	(b) a Public Service employee.	17
	(2) The Minister may, by written instrument, appoint an officer as an inspector for the purposes of Division 2.	18
<b>24AB Terms on which appointment made</b>		19
	An appointment of an appointed officer or appointed inspector may be—	20
	(a) unconditional, or	21
	(b) subject to conditions or limitations.	22
<b>24AC Period of appointment</b>		23
	(1) An appointment of an appointed officer or appointed inspector has effect—	24
	(a) for the period stated in the instrument of appointment, or	25
	(b) if a period is not stated—until revoked by the Minister.	26
	(2) The Minister may, by written instrument, revoke or amend an appointment at any time.	27
	(3) If an appointment of an appointed officer or appointed inspector is made by reference to a particular office, the person appointed ceases to be an appointed officer or appointed inspector if the person ceases to hold the office.	28
<b>24AD Powers subject to instrument of appointment</b>		29
	(1) An appointed officer or appointed inspector may exercise the functions of an officer or inspector under this Act, subject to any conditions or limitations specified in the officer’s or inspector’s instrument of appointment.	30
	(2) Nothing in this Act authorises or requires an appointed officer or appointed inspector to act in contravention of the conditions or limitations specified in	31
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the officer’s or inspector’s instrument of appointment as an appointed officer or appointed inspector.	1 2
<b>24AE Identification</b>	3
(1) Each person appointed as an appointed officer or appointed inspector must be given evidence of the person’s authority as an appointed officer or appointed inspector.	4 5 6
(2) In exercising functions under this Act or the regulations, an appointed officer or appointed inspector must, if asked by a person affected by the exercise of the function, produce to the person the officer’s or inspector’s evidence of authority under this Act.	7 8 9 10
(3) The Minister may direct a person who ceases to be an appointed officer or appointed inspector to return to the Minister the evidence of the person’s authority as an appointed officer or appointed inspector.	11 12 13
(4) A person who fails to comply with a direction under subsection (3) is guilty of an offence. Maximum penalty for subsection (4)—25 penalty units.	14 15 16
<b>[4] Section 24CB Officers’ powers relating to animals kept by convicted persons</b>	17
Omit section 24CB(9), table, Column 1. Insert instead—	18
<b>Column 1</b>	
An officer other than an employee of an approved charitable organisation	
An officer who is an employee of an approved charitable organisation	
<b>[5] Section 24D Definitions and application of Division</b>	19
Omit section 24D(1), definition of <i>inspector</i> , paragraph (a). Insert instead—	20
(a) an officer appointed as an inspector under section 24AA(2), or	21
<b>[6] Section 24D(2)</b>	22
Omit the subsection.	23
<b>[7] Section 24R Recovery of costs of seizure and disposal</b>	24
Omit “officer” from section 24R(7)(a).	25
Insert instead “appointed officer who is an employee”.	26
<b>[8] Section 26 Definitions</b>	27
Omit “one or more” from the definition of <i>disqualification order</i> . Insert instead “any”.	28
<b>[9] Section 31 Court may make further orders following conviction</b>	29
Omit “paragraph (a).” from section 31(1AA)(b). Insert instead—	30
paragraph (a), (c) or (d), or	31
(c) has found the person guilty of an offence against this Act, section 5 and the person has previously been convicted of an offence against that section, or	32 33 34
(d) has found the person guilty of more than one offence against this Act, section 5 and the offences arose out of separate acts or omissions.	35 36



<b>[10] Section 31A Sale of certain animals by charitable organisations</b>	1
Omit “officer” from section 31A(1)(a).	2
Insert instead “appointed officer who is an employee”.	3
<b>[11] Section 34B Approved charitable organisations</b>	4
Omit “officers” from section 34B(1). Insert instead “employees”.	5
<b>[12] Section 34B(3)</b>	6
Omit “its officers”. Insert instead “appointed officers employed by the organisation”.	7
<b>[13] Section 34B(5)–(7)</b>	8
Insert after section 34B(4)—	9
(5) The Minister must give an annual report received by the Minister under subsection (3) to the Presiding Officer of each House of Parliament.	10 11
(6) The Minister may, before giving the annual report to the Presiding Officers, redact any information in the report the Minister considers should not be made public.	12 13 14
<b>Example—</b> personal information in the report that should not be made public	15
(7) A copy of a report given to the Presiding Officer of a House of Parliament under subsection (5) must be laid before the House within 5 sitting days of the House after it is received by the Presiding Officer.	16 17 18
<b>[14] Section 34BA</b>	19
Insert after section 34B—	20
<b>34BA Collection, use and disclosure of information</b>	21
(1) A relevant agency may collect, use or disclose information if it is reasonably necessary for the purposes of administering or enforcing this Act or the regulations.	22 23 24
(2) Without limiting subsection (1), a relevant agency may disclose information collected under subsection (1) to another relevant agency—	25 26
(a) for the purposes of issuing a direction, notice or order under this Act or the regulations, or	27 28
(b) for the purposes of exercising compliance and enforcement functions under this Act or the regulations, or	29 30
(c) for the purposes of conducting legal proceedings under this Act or the regulations, or	31 32
(d) if, in the relevant agency’s opinion, it is appropriate to give the information to the other relevant agency in relation to a significant risk to safety.	33 34 35
(3) In this section—	36
<b>information</b> includes personal information.	37
<b>personal information</b> has the same meaning as in the <i>Privacy and Personal Information Protection Act 1998</i> .	38 39
<b>relevant agency</b> means the following—	40
(a) a government sector agency, within the meaning of the <i>Government Sector Employment Act 2013</i> ,	41 42
(b) an approved charitable organisation,	43

(c)	a person exercising functions under this Act or the regulations in relation to enforcement, compliance or administration of this Act or the regulations,	1 2 3
(d)	another entity prescribed by the regulations for this definition.	4
<b>[15]</b>	<b>Section 34BB</b>	5
	Insert before section 34C—	6
<b>34BB</b>	<b>Delegation by Minister</b>	7
(1)	The Minister may delegate the exercise of a function of the Minister under this Act, other than this power of delegation, to—	8 9
(a)	a person employed in the Department, or	10
(b)	a person, or class of persons, authorised for this section by the regulations.	11 12
(2)	A person to whom the exercise of a function is delegated under subsection (1) may subdelegate the exercise of the function, other than this power of subdelegation, to—	13 14 15
(a)	a person employed in the Department, or	16
(b)	a person, or class of persons, authorised for this section by the regulations.	17 18
<b>[16]</b>	<b>Schedule 2 Savings and transitional provisions</b>	19
	Insert after clause 16—	20
<b>Part 10</b>	<b>Provision consequent on enactment of Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Act 2024</b>	21 22 23
<b>17</b>	<b>Appointed officers and inspectors</b>	24
(1)	A person who, immediately before the commencement of the amendment Act, Schedule 1[3], held office as an officer under section 4(1), definition of <i>officer</i> , paragraph (b) or (c) continues to hold office as if the person were appointed under Part 2A, Division 1AA, as inserted by the amendment Act.	25 26 27 28
(2)	A person who, immediately before the commencement of the amendment Act, Schedule 1[3], held office as an inspector under section 24D(1), definition of <i>inspector</i> , paragraph (a) continues to hold office as if the person were appointed under Part 2A, Division 1AA, as inserted by the amendment Act.	29 30 31 32
(3)	In this clause—	33
	<i>amendment Act</i> means the <i>Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Act 2024</i> .	34 35

<b>Schedule 2</b>	<b>Amendment of Prevention of Cruelty to Animals Regulation 2012</b>	1
		2
<b>[1] Clause 34 Reports of approved charitable organisations</b>		3
	Omit “officers of” from clause 34(1)(e).	4
	Insert instead “appointed officers employed by”.	5
<b>[2] Clause 34(1)(f)</b>		6
	Omit “its officers”. Insert instead “appointed officers employed by the organisation”.	7
<b>[3] Clause 34(2)</b>		8
	Omit “officers of” wherever occurring. Insert instead “appointed officers employed by”.	9
<b>[4] Clause 34(2)(m)–(o)</b>		10
	Insert after clause 34(2)(l)—	11
	(m) the following information about access applications made to the organisation under the <i>Government Information (Public Access) Act 2009</i> —	12
	(i) the number of access applications,	13
	(ii) the subject matter to which each access application related,	14
	(n) details of the number of complaints made under the <i>Ombudsman Act 1974</i> about the organisation and appointed officers employed by the organisation, and the outcome of the complaints,	15
	(o) a list of current memorandums of understanding or other service-level agreements, however described, between the organisation and the State or another approved charitable organisation.	16
<b>[5] Clause 34(3)</b>		17
	Omit the subclause.	18
<b>[6] Schedule 2 Penalty notice offences</b>		19
	Insert in appropriate order—	20
	Section 24AE(4)	21
	\$500	22
	—	23
		24
		25
		26

**Schedule 3      Amendment of Government Information (Public Access) Regulation 2018**      1  
2

**Clause 12 Bodies declared to be public authorities**      3

Insert at the end of the clause—      4

(2) Also, an approved charitable organisation is declared to be a public authority—      5  
6

(a) for the purposes of the Act, except section 6 and Part 3, and      7

(b) to the extent the organisation's conduct relates to the exercise of functions under the *Prevention of Cruelty to Animals Act 1979*.      8  
9

(3) In this clause—      10

***approved charitable organisation*** has the same meaning as in the *Prevention of Cruelty to Animals Act 1979*.      11  
12

<b>Schedule 4</b>	<b>Amendment of Ombudsman Regulation 2016</b>	1
<b>Clause 4</b>		2
Insert after clause 3—		3
<b>4</b>	<b>Declaration of certain organisations to be public authorities—the Act, s 5</b>	4
(1)	For the Act, section 5(1), definition of <i>public authority</i> , paragraph (f2), an approved charitable organisation is declared to be a public authority for the purposes of the Act to the extent the organisation’s conduct relates to the exercise of functions under the <i>Prevention of Cruelty to Animals Act 1979</i> .	5 6 7 8
(2)	In this clause— <i>approved charitable organisation</i> has the same meaning as in the <i>Prevention of Cruelty to Animals Act 1979</i> .	9 10 11

<b>Schedule 5</b>	<b>Consequential amendments of other legislation</b>	1
<b>5.1</b>	<b>Companion Animals Act 1998 No 87</b>	2
<b>[1]</b>	<b>Section 6B Duty to provide certain information to councils</b>	3
	Omit section 6B(3)(b). Insert instead—	4
	(b) a person who, under the <i>Prevention of Cruelty to Animals Act 1979</i> , is an appointed officer employed by an approved charitable organisation.	5 6
<b>[2]</b>	<b>Section 83B, heading</b>	7
	Omit “of Department of Industry”.	8
<b>[3]</b>	<b>Section 83B(1)</b>	9
	Omit “of Industry, and any person authorised by the Secretary for the purposes of the administration and enforcement of the <i>Prevention of Cruelty to Animals Act 1979</i> ”.	10 11
	Insert instead “of the Department of Regional NSW, and any person appointed under the <i>Prevention of Cruelty to Animals Act 1979</i> , section 24AA”.	12 13
<b>5.2</b>	<b>Crimes Act 1900 No 40</b>	14
	<b>Section 60AA Definitions</b>	15
	Omit definition of <i>law enforcement officer</i> , paragraph (q). Insert instead—	16
	(q) a person who, under the <i>Prevention of Cruelty to Animals Act 1979</i> , is an appointed officer who—	17 18
	(i) is employed by an approved charitable organisation, and	19
	(ii) exercises investigation, confiscation or other law enforcement functions.	20 21
<b>5.3</b>	<b>Crimes (Appeal and Review) Act 2001 No 120</b>	22
	<b>Section 70 Limit on costs awarded against public prosecutor</b>	23
	Omit “an officer of an approved charitable organisation (within the meaning of the <i>Prevention of Cruelty to Animals Act 1979</i> )” from section 70(3).	24 25
	Insert instead “a person who, under the <i>Prevention of Cruelty to Animals Act 1979</i> , is an appointed officer employed by an approved charitable organisation”.	26 27
<b>5.4</b>	<b>Criminal Procedure Act 1986 No 209</b>	28
<b>[1]</b>	<b>Section 214 Limit on award of professional costs to accused person against prosecutor acting in public capacity</b>	29 30
	Omit “An officer of an approved charitable organisation under the <i>Prevention of Cruelty to Animals Act 1979</i> ” from section 214(3).	31 32
	Insert instead “A person who, under the <i>Prevention of Cruelty to Animals Act 1979</i> , is an appointed officer employed by an approved charitable organisation”.	33 34
<b>[2]</b>	<b>Section 257D Limit on award of professional costs against a prosecutor acting in public capacity</b>	35 36
	Omit “An officer of an approved charitable organisation under the <i>Prevention of Cruelty to Animals Act 1979</i> ” from section 257D(3).	37 38

Insert instead “A person who, under the <i>Prevention of Cruelty to Animals Act 1979</i> , is an appointed officer employed by an approved charitable organisation”.	1 2
<b>5.5 Crimes (Sentencing Procedure) Regulation 2017</b>	3
<b>Clause 4 Lists of additional charges</b>	4
Omit clause 4(2)(l). Insert instead—	5
(l) persons who—	6
(i) under the <i>Prevention of Cruelty to Animals Act 1979</i> , are appointed officers employed by an approved charitable organisation, and	7 8 9
(ii) are designated by the chief executive of the approved charitable organisation.	10 11
<b>5.6 Firearms Act 1996 No 46</b>	12
<b>Section 12 Genuine reasons for having a licence</b>	13
Omit section 12, Table, matter relating to “ <i>Reason: animal welfare</i> ”, paragraph (a).	14
Insert instead—	15
(a) a person who, under the <i>Prevention of Cruelty to Animals Act 1979</i> , is an appointed officer employed by an approved charitable organisation, or	16 17 18