



New South Wales

Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2022

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—

- (a) provide that the Royal Society for the Prevention of Cruelty to Animals, New South Wales and the Animal Welfare League NSW are approved charitable organisations for the purposes of the principal Act, and
- (b) establish and confer functions on the Independent Office of Animal Welfare, the office of Chief Animal Welfare Officer and the Independent Office of Animal Welfare Advisory Committee (the *Committee*), and
- (c) enable the regulations to prescribe or adopt guidelines relating to the welfare of an animal or class of animals if certain review and reporting requirements are satisfied, and
- (d) make it an offence for a person to contravene a provision of the guidelines that is prescribed as a mandatory provision.

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.

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

Schedule 1[1] designates the Royal Society for the Prevention of Cruelty to Animals, New South Wales and the Animal Welfare League NSW as approved charitable organisations. **Schedule 1[2], [6] and [7]** make consequential amendments.

Schedule 1[4] inserts proposed Part 2C into the principal Act. The proposed Part establishes and confers functions on the Independent Office of Animal Welfare, the office of Chief Animal Welfare Officer and the Committee. Proposed section 24Z provides that the main objects of the Independent Office of Animal Welfare are as follows—

- (a) to promote knowledge of animal welfare issues,
- (b) to improve animal welfare outcomes,
- (c) to ensure the State’s animal welfare policies and guidelines are independently reviewed and developed having regard to—
 - (i) contemporary scientific knowledge about animal welfare, and
 - (ii) advances in technology, and
 - (iii) community expectations and values,
- (d) to ensure the independent review of the administration and enforcement of the State’s animal welfare laws.

The functions of the Independent Office of Animal Welfare include assisting the Chief Animal Welfare Officer in the exercise of the Chief Animal Welfare Officer’s functions. Proposed section 24ZG sets out the following functions of the Chief Animal Welfare Officer—

- (a) reviewing and monitoring, including conducting inquiries, commissioning research and preparing reports on—
 - (i) the State’s animal welfare laws, policies and guidelines, and
 - (ii) compliance with, and the enforcement and effectiveness of, the State’s animal welfare laws, and
 - (iii) the treatment of animals in a particular industry or sector, including greyhound racing, horse racing, agriculture and medical and scientific research, and
 - (iv) the possible harmonisation of the State’s animal welfare laws with similar laws of the Commonwealth, other States and the Territories,
- (b) developing the State’s animal welfare policies and guidelines and liaising with bodies responsible for national policies and guidelines,
- (c) developing an animal welfare strategy that provides for a State-wide framework for—
 - (i) identifying and prioritising animal welfare issues, and
 - (ii) coordinating stakeholder action, and
 - (iii) improving consistency across all industries and sectors that use animals,
- (d) collecting and disseminating information about animal welfare issues in the State.

Proposed section 24ZL lists the members the Attorney General must appoint to the Committee, which must be dissolved and reconstituted every 3 years. Proposed section 24ZQ provides that the function of the Committee is to give advice and assistance to the Chief Animal Welfare Officer in relation to the exercise of the Chief Animal Welfare Officer’s functions. The proposed Part also contains provisions relating to the employment of the Chief Animal Welfare Officer and the constitution and procedures of the Committee.

Schedule 1[5] enables the regulations to prescribe or adopt guidelines relating to the welfare of an animal or class of animals if—

- (a) the Committee is first given an opportunity to review and comment on the proposed regulation, and

- (b) a report outlining the Committee's comments, including suggested amendments to the proposed regulation that were not made, has been published on the website of Regional NSW.

Currently, the Animal Welfare Advisory Council and representatives of relevant livestock industries must be given an opportunity to review and comment on a proposed regulation prescribing or adopting guidelines relating to the welfare of species of farm or companion animals before the regulation is made. The proposed section also makes it an offence for a person to contravene a provision of guidelines that the regulations provide is a mandatory provision.

Schedule 1[3] makes a consequential amendment.



New South Wales

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New South Wales

Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2022

No. , 2022

A Bill for

An Act to amend the *Prevention of Cruelty to Animals Act 1979* to establish an independent statutory body responsible for ensuring the welfare of animals in the State; and for other purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Act 2022*.

3

4

2 Commencement

5

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

6

Schedule 1	Amendment of Prevention of Cruelty to Animals Act 1979 No 200	1
		2
[1] Section 4 Definitions		3
	Omit section 4(1), definition of <i>approved charitable organisation</i> . Insert instead—	4
	<i>approved charitable organisation</i> means—	5
	(a) the Royal Society for the Prevention of Cruelty to Animals, New South Wales, and	6
		7
	(b) the Animal Welfare League NSW, and	8
	(c) another charitable organisation approved by the Minister under section 34B.	9
		10
[2] Section 4(1), definition of “charitable organisation”		11
	Omit the definition. Insert instead—	12
	<i>charitable organisation</i> means a non-profit organisation whose objects include—	13
		14
	(a) promoting the welfare of, or preventing cruelty to, animals or a class of animals, and	15
		16
	(b) a charitable, benevolent or philanthropic purpose.	17
[3] Section 4(1)		18
	Insert in alphabetical order—	19
	<i>Committee</i> means the Independent Office of Animal Welfare Advisory Committee constituted under section 24ZL.	20
		21
	<i>guidelines</i> includes a code of practice and standards.	22
[4] Part 2C		23
	Insert after Part 2B—	24
	Part 2C Independent Office of Animal Welfare	25
	Division 1 Preliminary	26
24W Definitions		27
	In this Part—	28
	<i>animal welfare laws</i> means the following, as in force from time to time—	29
	(a) the <i>Animal Research Act 1985</i> ,	30
	(b) the <i>Companion Animals Act 1998</i> ,	31
	(c) the <i>Exhibited Animals Protection Act 1986</i> ,	32
	(d) the <i>Prevention of Cruelty to Animals Act 1979</i> ,	33
	(e) regulations made under an Act referred to in paragraphs (a)–(d),	34
	(f) another Act or law relating to the prevention of cruelty to, or the welfare of, animals in the State.	35
		36
	<i>Chief Animal Welfare Officer</i> means the person appointed under section 24ZF as the Chief Animal Welfare Officer of the Independent Office of Animal Welfare.	37
		38
		39

<i>Chief Executive Officer</i> means the person employed in the Public Service as the Chief Executive Officer of the Independent Office of Animal Welfare.	1 2
Division 2 Independent Office of Animal Welfare	3
24X Constitution of Independent Office of Animal Welfare	4
There is constituted by this Act a body corporate with the corporate name of the Independent Office of Animal Welfare.	5 6
24Y Status of Independent Office of Animal Welfare	7
(1) The Independent Office of Animal Welfare is a NSW Government agency.	8
Note— See the <i>Interpretation Act 1987</i> , section 13A.	9
(2) The Independent Office of Animal Welfare is not subject to the control or direction of the Minister in the exercise of its functions, except as expressly provided by this or another Act.	10 11 12
24Z Objects of Independent Office of Animal Welfare	13
The main objects of the Independent Office of Animal Welfare are as follows—	14 15
(a) to promote knowledge of animal welfare issues,	16
(b) to improve animal welfare outcomes,	17
(c) to ensure the State’s animal welfare policies and guidelines are independently reviewed and developed having regard to the following—	18 19 20
(i) contemporary scientific knowledge about animal welfare,	21
(ii) advances in technology,	22
(iii) community expectations and values,	23
(d) to ensure the independent review of the administration and enforcement of the State’s animal welfare laws.	24 25
24ZA Functions of Independent Office of Animal Welfare	26
(1) The Independent Office of Animal Welfare has the following functions—	27
(a) to assist the Chief Animal Welfare Officer in the exercise of the Chief Animal Welfare Officer’s functions,	28 29
(b) other functions conferred on the Independent Office of Animal Welfare by this Act or another Act or law,	30 31
(c) functions supplementary or incidental to the exercise of the Independent Office of Animal Welfare’s other functions.	32 33
(2) Anything done on behalf of the Independent Office of Animal Welfare by, or with the authority of, the Chief Animal Welfare Officer or the Chief Executive Officer is taken to have been done by the Independent Office of Animal Welfare.	34 35 36 37
24ZB Delegations	38
(1) The Independent Office of Animal Welfare and the Chief Animal Welfare Officer may delegate the exercise of a function, other than this power of delegation, to—	39 40 41
(a) the Chief Executive Officer, or	42
(b) a member of staff of the Independent Office of Animal Welfare, or	43

	(c) a person, or a person of a class, prescribed by the regulations.	1
	(2) The Chief Executive Officer may delegate or subdelegate the exercise of a function, other than this power of delegation or subdelegation, to a member of staff of the Independent Office of Animal Welfare.	2 3 4
24ZC	Chief Executive Officer	5
	(1) The Chief Executive Officer is responsible for the day-to-day management of the affairs of the Independent Office of Animal Welfare.	6 7
	(2) The Chief Executive Officer must exercise the Chief Executive Officer's functions in accordance with the general directions, including policies, of the Chief Animal Welfare Officer.	8 9 10
24ZD	Staff	11
	Persons may be employed in the Public Service under the <i>Government Sector Employment Act 2013</i> to enable the Independent Office of Animal Welfare to exercise its functions.	12 13 14
	Note— The <i>Government Sector Employment Act 2013</i> , section 59 provides that the persons employed, or whose services the Independent Office of Animal Welfare makes use of, may be referred to as officers or employees, or members of staff, of the Independent Office of Animal Welfare. The <i>Constitution Act 1902</i> , section 47A precludes the Independent Office of Animal Welfare from employing staff.	15 16 17 18 19
24ZE	Annual report	20
	The annual report of the Independent Office of Animal Welfare required to be prepared under the <i>Annual Reports (Departments) Act 1985</i> must include—	21 22
	(a) a summary of the Independent Office of Animal Welfare's activities, and	23 24
	(b) an evaluation of the Independent Office of Animal Welfare's performance.	25 26
	Division 3 Chief Animal Welfare Officer	27
24ZF	Appointment of Chief Animal Welfare Officer	28
	The Attorney General must appoint the Chief Animal Welfare Officer on the recommendation of a majority of the Committee.	29 30
24ZG	Functions of Chief Animal Welfare Officer	31
	(1) The Chief Animal Welfare Officer has the following functions—	32
	(a) reviewing and monitoring, including conducting inquiries, commissioning research and preparing reports on, the following—	33 34
	(i) the State's animal welfare laws, policies and guidelines,	35
	(ii) compliance with, and the enforcement and effectiveness of, the State's animal welfare laws,	36 37
	(iii) the treatment of animals in a particular industry or sector, including greyhound racing, horse racing, agriculture and medical and scientific research,	38 39 40
	(iv) the possible harmonisation of the State's animal welfare laws with similar laws of the Commonwealth, other States and the Territories,	41 42 43
	(b) developing the State's animal welfare policies and guidelines and liaising with bodies responsible for national policies and guidelines,	44 45

	(c) developing an animal welfare strategy that provides for a State-wide framework for—	1 2
	(i) identifying and prioritising animal welfare issues, and	3
	(ii) coordinating stakeholder action, and	4
	(iii) improving consistency across all industries and sectors that use animals,	5 6
	(d) collecting and disseminating information about animal welfare issues in the State.	7 8
	(2) The Chief Animal Welfare Officer is not subject to the control or direction of the Minister.	9 10
24ZH	Term of office	11
	(1) The Chief Animal Welfare Officer holds office for the period of not more than 5 years specified in the Chief Animal Welfare Officer's instrument of appointment.	12 13 14
	(2) The Chief Animal Welfare Officer is eligible, if otherwise qualified, for reappointment.	15 16
	(3) The Chief Animal Welfare Officer must not hold office for more than 2 terms, whether consecutive or not.	17 18
	(4) The Chief Animal Welfare Officer must hold office on a full-time basis, except to the extent the Attorney General permits otherwise.	19 20
24ZI	Employment and remuneration	21
	(1) The employment of the Chief Animal Welfare Officer is, subject to this Division, to be governed by a contract of employment between the Chief Animal Welfare Officer and the Attorney General.	22 23 24
	(2) The following provisions of, or made under, the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service senior executives apply to the Chief Animal Welfare Officer as if a reference to the employer of a Public Service senior executive is a reference to the Attorney General—	25 26 27 28 29
	(a) provisions relating to the band in which an executive is employed,	30
	(b) provisions relating to an executive's contract of employment,	31
	(c) provisions relating to an executive's remuneration, employment benefits and allowances.	32 33
	(3) The office of Chief Animal Welfare Officer is a statutory office.	34
	(4) The provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to the office, except as provided by this section.	35 36 37
24ZJ	Acting Chief Animal Welfare Officer	38
	(1) The Attorney General may, from time to time, appoint a person to act in the office of Chief Animal Welfare Officer during—	39 40
	(a) the Chief Animal Welfare Officer's absence, or	41
	(b) a vacancy in the office of Chief Animal Welfare Officer, until a person is appointed to fill the vacancy.	42 43
	(2) The person, while acting—	44

(a)	is taken to be the Chief Animal Welfare Officer, and	1
(b)	has all the functions of the Chief Animal Welfare Officer.	2
(3)	The person is entitled to be paid remuneration, including travelling and subsistence allowances, as determined by the Attorney General from time to time.	3 4 5
(4)	The Attorney General may revoke an appointment made under this section at any time.	6 7
24ZK	Vacancy in office	8
(1)	The Chief Animal Welfare Officer vacates office if the Chief Animal Welfare Officer—	9 10
(a)	dies, or	11
(b)	completes a term of office and is not reappointed, or	12
(c)	resigns from office by written instrument addressed to the Attorney General, or	13 14
(d)	is removed from office by the Attorney General under this section, or	15
(e)	becomes bankrupt, or	16
(f)	applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, or	17 18
(g)	compounds with the Chief Animal Welfare Officer's creditors, or	19
(h)	makes an assignment of remuneration for the benefit of the Chief Animal Welfare Officer's creditors, or	20 21
(i)	becomes a mentally incapacitated person, or	22
(j)	is convicted in New South Wales of an offence punishable by imprisonment for 12 months or more, or	23 24
(k)	is convicted elsewhere of an offence that, if committed in New South Wales, would be punishable by imprisonment for 12 months or more, or	25 26
(l)	is imprisoned after being convicted in New South Wales of an offence punishable by imprisonment, or	27 28
(m)	is imprisoned after being convicted elsewhere of an offence that, if committed in New South Wales, would be punishable by imprisonment.	29 30
(2)	The Attorney General may remove the Chief Animal Welfare Officer from office, but only for incapacity, incompetence or misbehaviour.	31 32
(3)	The Chief Animal Welfare Officer must not be removed from office under the <i>Government Sector Employment Act 2013</i> , Part 6.	33 34
(4)	If the office of Chief Animal Welfare Officer becomes vacant, a person must be appointed to fill the vacancy.	35 36
Division 4	Advisory Committee	37
24ZL	Constitution of Committee	38
(1)	The Attorney General must, as soon as practicable after this Part commences, appoint the following members to the Independent Office of Animal Welfare Advisory Committee—	39 40 41
(a)	3 members representing non-government animal welfare organisations,	42
(b)	2 members representing approved charitable organisations,	43

(c)	2 members who are scientists with expertise in animal welfare,	1
(d)	1 member representing a consumer rights organisation,	2
(e)	1 member representing—	3
(i)	commercial breeders, sellers or purchasers of animals, or	4
(ii)	commercial producers or purchasers of animal products,	5
(f)	1 member representing the Department,	6
(g)	1 member representing local councils,	7
(h)	1 member with expertise in ethics as it relates to animal welfare.	8
(2)	The Attorney General must dissolve the Committee and appoint new members every 3 years.	9 10
(3)	A member of the Committee is eligible, if otherwise qualified, for reappointment.	11 12
(4)	The Attorney General must, as soon as practicable after the Committee is constituted or reconstituted, provide a report to both Houses of Parliament on how the members of the Committee were selected.	13 14 15
24ZM	Remuneration	16
(1)	A member of the Committee is entitled to be paid remuneration, including travelling and subsistence allowances, as determined by the Attorney General from time to time.	17 18 19
(2)	In this section— <i>member of the Committee</i> includes a person appointed to act as a member under section 24ZN.	20 21 22
24ZN	Acting members	23
(1)	The Attorney General may, from time to time, appoint a person to act in the office of a member of the Committee during—	24 25
(a)	the member's absence, or	26
(b)	a vacancy in the office of the member, until a person is appointed to fill the vacancy.	27 28
(2)	The person, while acting—	29
(a)	is taken to be a member, and	30
(b)	has all the functions of a member.	31
(3)	The Attorney General may revoke an appointment made under this section at any time.	32 33
24ZO	Member vacancies	34
(1)	A member of the Committee vacates office if the member—	35
(a)	dies, or	36
(b)	is not reappointed when the Attorney General reconstitutes the Committee, or	37 38
(c)	resigns from office by written instrument addressed to the Attorney General, or	39 40
(d)	is removed from office by the Attorney General under this section, or	41

(e)	is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or by post, unless—	1 2 3
(i)	the member is on leave granted by the Committee, or	4
(ii)	within 6 weeks of the third meeting, the member is excused by the Committee for having been absent from the meetings, or	5 6
(f)	becomes bankrupt, or	7
(g)	applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, or	8 9
(h)	compounds with the member's creditors, or	10
(i)	makes an assignment of remuneration for the benefit of the member's creditors, or	11 12
(j)	becomes a mentally incapacitated person, or	13
(k)	is convicted in New South Wales of an offence punishable by imprisonment for 12 months or more, or	14 15
(l)	is convicted elsewhere of an offence that, if committed in New South Wales, would be punishable by imprisonment for 12 months or more, or	16 17
(m)	is imprisoned after being convicted in New South Wales of an offence punishable by imprisonment, or	18 19
(n)	is imprisoned after being convicted elsewhere of an offence that, if committed in New South Wales, would be punishable by imprisonment	20 21
(2)	The Attorney General may remove a member from office at any time.	22
(3)	If the office of a member becomes vacant, a person must be appointed to fill the vacancy.	23 24
24ZP	Effect of certain other Acts	25
(1)	The provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to a member of the Committee.	26 27 28
(2)	A provision of another Act does not disqualify a person from holding a specified office and also the office of a member, or from accepting and retaining remuneration payable to the person under section 24ZM, merely because the provision—	29 30 31 32
(a)	requires a person who is the holder of the specified office to devote the whole of the person's time to the duties of the office, or	33 34
(b)	prohibits the person from engaging in employment outside the duties of the office.	35 36
24ZQ	Functions and meetings of Committee	37
(1)	The function of the Committee is to give advice and assistance to the Chief Animal Welfare Officer in relation to the exercise of the Chief Animal Welfare Officer's functions.	38 39 40
(2)	The procedure for calling a meeting of the Committee and for conducting business at meetings is to be as determined by the Chief Animal Welfare Officer.	41 42 43
(3)	The quorum for a meeting of the Committee is a majority of members of the Committee for the time being.	44 45

(4)	The Chief Animal Welfare Officer must preside at a meeting of the Committee, subject to subsection (5).	1 2
(5)	For the duration of the consideration of a matter relating to nominating a person for the office of Chief Animal Welfare Officer—	3 4
(a)	the current Chief Animal Welfare Officer must leave the meeting, and	5
(b)	1 of the members of the Committee present at the meeting, as elected by the other members present, must preside.	6 7
(6)	The person presiding at a meeting has—	8
(a)	a deliberative vote, and	9
(b)	in the event of an equality of votes—a second or casting vote.	10
(7)	A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.	11 12
24ZR	Disclosure of pecuniary or other interests	13
(1)	A member of the Committee must disclose the nature of a pecuniary or other interest at a meeting of the Committee as soon as possible after the relevant facts have come to the member's knowledge.	14 15 16
(2)	A member has a pecuniary or other interest if—	17
(a)	the member has a direct or indirect pecuniary interest, or another interest, in a matter being considered, or about to be considered, at a meeting of the Committee, and	18 19 20
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter.	21 22
(3)	A disclosure is a sufficient disclosure of the nature of an interest in a matter relating to a corporation or other body, or to a person, which may arise after the date of the disclosure and which is required to be disclosed under subsection (1), if the disclosure is that the member—	23 24 25 26
(a)	is a member of, or employed by, a specified corporation or other body, or	27 28
(b)	is a partner of, or employed by, a specified person, or	29
(c)	has another interest relating to a specified corporation or other body, or to a specified person.	30 31
(4)	After a member has disclosed the nature of an interest in a matter, the member must not, unless the Chief Animal Welfare Officer otherwise determines—	32 33
(a)	be present during a deliberation of the Committee about the matter, or	34
(b)	take part in a decision of the Committee about the matter.	35
(5)	A contravention of this section does not invalidate a decision of the Committee.	36 37
[5]	Section 34A	38
	Omit the section. Insert instead—	39
34A	Guidelines relating to animal welfare	40
(1)	The regulations may prescribe or adopt guidelines relating to the welfare of an animal or class of animals.	41 42
(2)	A document may be adopted under subsection (1)—	43

(a)	in whole or in part, and	1
(b)	with or without modification, and	2
(c)	as in force—	3
(i)	at a particular time, or	4
(ii)	from time to time.	5
(3)	A regulation must not be made under subsection (1) unless—	6
(a)	the Committee is first given an opportunity to review and comment on the proposed regulation, and	7
(b)	a report outlining the Committee’s comments, including suggested amendments to the proposed regulation that have not been made, has been published on the Department’s website.	8
(4)	Compliance, or a failure to comply, with guidelines prescribed or adopted under subsection (1) is admissible in evidence in proceedings under this Act as evidence of compliance, or a failure to comply, with this Act or the regulations.	9
(5)	The regulations may provide that a provision of guidelines prescribed or adopted under subsection (1) is a mandatory provision.	10
(6)	A person must not contravene a mandatory provision.	11
	Maximum penalty—50 penalty units.	12
[6]	Section 34B Approved charitable organisations	13
	Omit “A charitable organisation that has been approved in accordance with this section” from section 34B(3).	14
	Insert instead “An approved charitable organisation”.	15
[7]	Section 34B(4)	16
	Omit “In addition, a charitable organisation that has been approved in accordance with this section”.	17
	Insert instead “An approved charitable organisation”.	18