

Passed by both Houses



New South Wales

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

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The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

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

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

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

appointed inspector means an officer appointed as an inspector under section 24AA(2).

appointed officer—see section 24AA(1).

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

Omit paragraphs (b) and (c). Insert instead—

(b) an appointed officer,

[3] Part 2A Powers of officers

Insert before Division 1—

Division 1AA Appointed officers

24AA Appointment of appointed officers and inspectors

- (1) The Minister may, by written instrument, appoint the following persons as an officer (an *appointed officer*) for this Act—
 - (a) an employee of an approved charitable organisation,
 - (b) a Public Service employee.
- (2) The Minister may, by written instrument, appoint an officer as an inspector for the purposes of Division 2.

24AB Terms on which appointment made

An appointment of an appointed officer or appointed inspector may be—

- (a) unconditional, or
- (b) subject to conditions or limitations.

24AC Period of appointment

- (1) An appointment of an appointed officer or appointed inspector has effect—
 - (a) for the period stated in the instrument of appointment, or
 - (b) if a period is not stated—until revoked by the Minister.
- (2) The Minister may, by written instrument, revoke or amend an appointment at any time.
- (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.

24AD Powers subject to instrument of appointment

- (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.
- (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

the officer's or inspector's instrument of appointment as an appointed officer or appointed inspector.

24AE Identification

- (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.
- (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.
- (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.
- (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.

[4] Section 24CB Officers' powers relating to animals kept by convicted persons

Omit section 24CB(9), table, Column 1. Insert instead—

Column 1

An officer other than an employee of an approved charitable organisation

An officer who is an employee of an approved charitable organisation

[5] Section 24D Definitions and application of Division

Omit section 24D(1), definition of *inspector*, paragraph (a). Insert instead—

- (a) an officer appointed as an inspector under section 24AA(2), or

[6] Section 24D(2)

Omit the subsection.

[7] Section 24R Recovery of costs of seizure and disposal

Omit "officer" from section 24R(7)(a).

Insert instead "appointed officer who is an employee".

[8] Section 26 Definitions

Omit "one or more" from the definition of *disqualification order*. Insert instead "any".

[9] Section 31, heading

Omit "conviction". Insert instead "findings of guilt etc".

[10] Section 31(1)

Omit "convicted a person of an animal cruelty offence" from section 31(1).

Insert instead "found a person guilty of an animal cruelty offence, or has made an order, entered a special verdict or made a qualified verdict of guilt under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, section 14, 19, 20, 31 or 62 in relation to an animal cruelty offence".

[11] Section 31(1AA)(b)

Omit “paragraph (a)”. Insert instead—

paragraph (a), (c) or (d), or

- (c) has found the person guilty of an offence against this Act, section 5 and the person has previously been found guilty of an offence against that section, or
- (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.

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

Omit “officer” from section 31A(1)(a).

Insert instead “appointed officer who is an employee”.

[13] Section 34B Approved charitable organisations

Omit “officers” from section 34B(1). Insert instead “employees”.

[14] Section 34B(3)

Omit “its officers”. Insert instead “appointed officers employed by the organisation”.

[15] Section 34B(5)–(7)

Insert after section 34B(4)—

- (5) The Minister must give an annual report received by the Minister under subsection (3) to the Presiding Officer of each House of Parliament.
- (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.
Example— personal information in the report that should not be made public
- (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] Section 34BA

Insert after section 34B—

34BA Collection, use and disclosure of information

- (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.
- (2) Without limiting subsection (1), a relevant agency may disclose information collected under subsection (1) to another relevant agency—
 - (a) for the purposes of issuing a direction, notice or order under this Act or the regulations, or
 - (b) for the purposes of exercising compliance and enforcement functions under this Act or the regulations, or
 - (c) for the purposes of conducting legal proceedings under this Act or the regulations, or

- (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.
- (3) In this section—
 - information** includes personal information.
 - personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.
 - relevant agency** means the following—
 - (a) a government sector agency, within the meaning of the *Government Sector Employment Act 2013*,
 - (b) an approved charitable organisation,
 - (c) a person exercising functions under this Act or the regulations in relation to enforcement, compliance or administration of this Act or the regulations,
 - (d) another entity prescribed by the regulations for this definition.

[17] Section 34BB

Insert before section 34C—

34BB Delegation by Minister

- (1) The Minister may delegate the exercise of a function of the Minister under this Act, other than this power of delegation, to—
 - (a) a person employed in the Department, or
 - (b) a person, or class of persons, authorised for this section by the regulations.
- (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—
 - (a) a person employed in the Department, or
 - (b) a person, or class of persons, authorised for this section by the regulations.

[18] Schedule 2 Savings and transitional provisions

Insert after clause 16—

Part 10 Provision consequent on enactment of Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Act 2024

17 Appointed officers and inspectors

- (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 **officer**, 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.
- (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 **inspector**, paragraph (a) continues to hold office as if the person were appointed under Part 2A, Division 1AA, as inserted by the amendment Act.

- (3) In this clause—
amendment Act means the *Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Act 2024*.

Schedule 2 Amendment of Prevention of Cruelty to Animals Regulation 2012

[1] Clause 34 Reports of approved charitable organisations

Omit “officers of” from clause 34(1)(e).

Insert instead “appointed officers employed by”.

[2] Clause 34(1)(f)

Omit “its officers”. Insert instead “appointed officers employed by the organisation”.

[3] Clause 34(2)

Omit “officers of” wherever occurring. Insert instead “appointed officers employed by”.

[4] Clause 34(2)(m)–(o)

Insert after clause 34(2)(l)—

- (m) the following information about access applications made to the organisation under the *Government Information (Public Access) Act 2009*—
 - (i) the number of access applications,
 - (ii) the subject matter to which each access application related,
- (n) details of the number of complaints made under the *Ombudsman Act 1974* about the organisation and appointed officers employed by the organisation, and the outcome of the complaints,
- (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.

[5] Clause 34(3)

Omit the subclause.

[6] Schedule 2 Penalty notice offences

Insert in appropriate order—

Section 24AE(4)	\$500	—
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Schedule 3 Amendment of Government Information (Public Access) Regulation 2018

Clause 12 Bodies declared to be public authorities

Insert at the end of the clause—

- (2) Also, an approved charitable organisation is declared to be a public authority—
 - (a) for the purposes of the Act, except section 6 and Part 3, and
 - (b) to the extent the organisation's conduct relates to the exercise of functions under the *Prevention of Cruelty to Animals Act 1979*.
- (3) In this clause—

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

Schedule 4 Amendment of Ombudsman Act 1974 No 68

Section 5 Definitions

Insert after section 5(1), definition of *public authority*, paragraph (g1)—

- (g2) an approved charitable organisation, within the meaning of the *Prevention of Cruelty to Animals Act 1979*, to the extent the organisation's conduct relates to the exercise of functions under that Act,

Schedule 5 Consequential amendments of other legislation

5.1 Companion Animals Act 1998 No 87

[1] Section 6B Duty to provide certain information to councils

Omit section 6B(3)(b). Insert instead—

- (b) a person who, under the *Prevention of Cruelty to Animals Act 1979*, is an appointed officer employed by an approved charitable organisation.

[2] Section 83B, heading

Omit “of Department of Industry”.

[3] Section 83B(1)

Omit “of Industry, and any person authorised by the Secretary for the purposes of the administration and enforcement of the *Prevention of Cruelty to Animals Act 1979*”.

Insert instead “of the Department of Regional NSW, and any person appointed under the *Prevention of Cruelty to Animals Act 1979*, section 24AA”.

5.2 Crimes Act 1900 No 40

Section 60AA Definitions

Omit definition of *law enforcement officer*, paragraph (q). Insert instead—

- (q) a person who, under the *Prevention of Cruelty to Animals Act 1979*, is an appointed officer who—
- (i) is employed by an approved charitable organisation, and
 - (ii) exercises investigation, confiscation or other law enforcement functions.

5.3 Crimes (Appeal and Review) Act 2001 No 120

Section 70 Limit on costs awarded against public prosecutor

Omit “an officer of an approved charitable organisation (within the meaning of the *Prevention of Cruelty to Animals Act 1979*)” from section 70(3).

Insert instead “a person who, under the *Prevention of Cruelty to Animals Act 1979*, is an appointed officer employed by an approved charitable organisation”.

5.4 Criminal Procedure Act 1986 No 209

[1] Section 214 Limit on award of professional costs to accused person against prosecutor acting in public capacity

Omit “An officer of an approved charitable organisation under the *Prevention of Cruelty to Animals Act 1979*” from section 214(3).

Insert instead “A person who, under the *Prevention of Cruelty to Animals Act 1979*, is an appointed officer employed by an approved charitable organisation”.

[2] Section 257D Limit on award of professional costs against a prosecutor acting in public capacity

Omit “An officer of an approved charitable organisation under the *Prevention of Cruelty to Animals Act 1979*” from section 257D(3).

Insert instead “A person who, under the *Prevention of Cruelty to Animals Act 1979*, is an appointed officer employed by an approved charitable organisation”.

5.5 Crimes (Sentencing Procedure) Regulation 2017

Clause 4 Lists of additional charges

Omit clause 4(2)(l). Insert instead—

- (l) persons who—
 - (i) under the *Prevention of Cruelty to Animals Act 1979*, are appointed officers employed by an approved charitable organisation, and
 - (ii) are designated by the chief executive of the approved charitable organisation.

5.6 Firearms Act 1996 No 46

Section 12 Genuine reasons for having a licence

Omit section 12, Table, matter relating to “*Reason: animal welfare*”, paragraph (a).

Insert instead—

- (a) a person who, under the *Prevention of Cruelty to Animals Act 1979*, is an appointed officer employed by an approved charitable organisation,
or