

Passed by both Houses



New South Wales

Deer Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Deer Bill 2006

Act No , 2006

An Act with respect to the ownership, regulation and release of captive deer and the control of deer that are not captive; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Deer Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

authorised officer means a person appointed by the Minister under section 17.

compliance direction means a compliance direction given by an authorised officer under section 13.

deer means a living animal of the family cervidae.

deer control order means an order having effect under section 8.

Department means the Department of Primary Industries.

Director-General means the Director-General of the Department.

exercise a function includes perform a duty.

function includes a power, authority or duty.

occupier of land and ***public authority*** have the same meanings as they have in the *Rural Lands Protection Act 1998*.

Note. The *Rural Lands Protection Act 1998* defines ***occupier*** and ***public authority*** as follows:

occupier of land means the following:

- (a) the person for the time being entitled to possession of land and includes, if the person so entitled does not reside on the land, the resident manager or other person in charge of the land,
- (b) if the land is public land to which no person is entitled to possession—the person having the care, control and management of the land,
- (c) if the land is reserved or dedicated for any public use or purpose—the trustee or trustees of the land,
- (d) if the land consists of a public road—the roads authority for that road within the meaning of the *Roads Act 1993*,
- (e) if the land consists of a travelling stock reserve—the responsible board within the meaning of Part 8,
- (f) any other person designated by the regulations as an occupier of land for the purposes of this definition.

public authority includes:

- (a) a Minister of the Crown, or
 - (b) a local authority constituted by or under an Act, or
 - (c) a government department, or
 - (d) a statutory body representing the Crown, or
 - (e) the trustee or trustees of land reserved or dedicated for any public use or purpose, or
 - (f) a State owned corporation, or
 - (g) a member of staff or other person who exercises functions on behalf of any of the above.
- (2) Notes included in this Act do not form part of this Act.

4 Ownership of deer

- (1) A deer that is held in captivity may be bought, sold or otherwise dealt with or disposed of.
- (2) If a deer ceases to be held in captivity, all property in the deer is immediately extinguished.
- (3) If a person captures a deer that is not held in captivity, the person becomes the owner of the deer.
- (4) Despite subsections (2) and (3), if a person other than an authorised officer captures a deer within 2 kilometres of the enclosure or other place (not being a vehicle) in which the deer was last held in captivity, property in the deer is not extinguished.
- (5) Despite subsections (2), (3) and (4), any of the following persons (but no other person) may kill a deer that is within 2 kilometres of the enclosure or other place (not being a vehicle) in which the deer was last held in captivity:
 - (a) an authorised officer, or
 - (b) an occupier of land, or
 - (c) a person authorised by a person referred to in paragraph (a) or (b).

5 Regulations may specify how deer are to be held captive

- (1) The regulations may specify the requirements for holding deer in captivity, including requirements in relation to the keeping, management and identification of deer and the reporting of information.
- (2) A person must not cause or permit a deer to be held in captivity in contravention of the regulations.

Maximum penalty:

 - (a) in the case of a corporation—100 penalty units, or

(b) in the case of an individual—50 penalty units.

6 Offence of releasing deer

- (1) A person must not cause or permit the release of a deer from captivity.
Maximum penalty:
- (a) in the case of a corporation—100 penalty units, or
 - (b) in the case of an individual—50 penalty units.
- (2) It is a defence to prosecution for an offence under subsection (1) if the defendant can demonstrate that he or she took all reasonable steps to prevent the release of the deer and, after the release, took all reasonable steps to capture or kill the deer.

7 Operation of certain legislation not affected

Nothing in this Act affects the operation of the following:

- (a) the *Firearms Act 1996*,
- (b) the *Weapons Prohibition Act 1998*,
- (c) the *Prevention of Cruelty to Animals Act 1979*,
- (d) the *National Parks and Wildlife Act 1974*,
- (e) the *Non-Indigenous Animals Act 1987*,
- (f) the *Exhibited Animals Protection Act 1986*.

Part 2 Deer control orders

8 Orders requiring deer to be controlled

- (1) The Minister may, by order published in the Gazette (a *deer control order*), require that the occupier of the land specified in the order do either or both of the following:
 - (a) ensure that deer on the land (other than deer held in captivity) are controlled in a manner and in the circumstances specified in the order and within the time specified in the order,
 - (b) notify the Minister, in the manner specified in the order, as soon as practicable after becoming aware of the presence of deer on the land (other than deer held in captivity).

Note. The Minister may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.

- (2) A deer control order applies to the land specified in the order and has effect (unless sooner revoked) for the period (not exceeding 5 years) specified in the order.
- (3) Nothing in this section authorises a person to contravene any other Act or law.
- (4) Despite subsection (3), the holder of a game hunting licence under the *Game and Feral Animal Control Act 2002* does not contravene conditions of that licence relating to the manner of hunting deer if the holder hunts deer on land to which a deer control order applies and the manner of hunting is specified in that order.

Note. A person is not required to hold a game hunting licence under the *Game and Feral Animal Control Act 2002* if the person is hunting deer in accordance with a duty imposed on the person or the person's employer (or on any corporation of which the person is an officer) because of a deer control order (see section 17 (1) (d1) of that Act).
- (5) A deer control order may apply to any land and may apply generally or may be limited in any way specified in the order.
- (6) A deer control order must not specify the use of lethal poison as a manner in which deer are to be controlled.

9 Consultation and approval before making deer control order

- (1) Before making a deer control order the Minister is to consult with each of the following:
 - (a) the Department,
 - (b) the State Council of Rural Lands Protection Boards,
 - (c) each rural lands protection board constituted for a district in which there is land to which the order is to apply,

- (d) the Game Council of New South Wales,
 - (e) each local council for a local government area in which there is land to which the order is to apply,
 - (f) each public authority that occupies land to which the order is to apply,
 - (g) the New South Wales branch of the Deer Industry Association of Australia or such other body as may be prescribed by the regulations.
- (2) Failure to comply with this section does not invalidate a deer control order.

10 Occupier of land must comply with deer control order

An occupier of land (other than a public authority) to which a deer control order applies must not fail to comply with the order.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in the case of an individual—50 penalty units.

11 Commencement of deer control order

A deer control order takes effect on the day that it is published in the Gazette or on a later day specified in the order.

12 Notification of making deer control order

- (1) The Minister is to take such steps as are reasonable to notify the occupier of any land to which a deer control order applies of the order, as soon as practicable after the order is made and published in the Gazette.
- (2) Failure to comply with this section does not invalidate a deer control order.

Part 3 Compliance directions

13 Compliance directions by authorised officers

- (1) An authorised officer may give a compliance direction to any person (other than a public authority) who holds deer in captivity requiring the person to take or cease the action specified in the direction for the purpose of ensuring that the person complies with this Act and the regulations.
- (2) An authorised officer may give a compliance direction to an occupier of land (other than a public authority) to which a deer control order applies requiring the person to take or cease the action specified in the direction for the purpose of ensuring that the person complies with the deer control order.
- (3) A compliance direction may specify a reasonable time in which a particular action must be taken or ceased.
- (4) A person who is given a compliance direction under this section must not, without reasonable excuse, fail to comply with the direction.
Maximum penalty:
 - (a) in the case of a corporation—80 penalty units, or
 - (b) in the case of an individual—40 penalty units.
- (5) An authorised officer may amend or revoke a compliance direction in the same manner that the authorised officer may give the direction.

14 Costs of complying with a compliance direction

- (1) A person given a compliance direction is liable for any costs incurred in complying with the direction.
- (2) An authorised officer, or a person engaged by the authorised officer, may carry out some or all of the requirements of a compliance direction if:
 - (a) the person to whom the direction is given fails, without reasonable excuse, to comply with the direction within a reasonable time, or
 - (b) the authorised officer considers that the requirements of the direction need to be carried out urgently.
- (3) If an authorised officer, or a person engaged by the authorised officer, carries out some or all of the requirements of a compliance direction in accordance with this section, the reasonable costs of carrying out those requirements may be recovered as a debt by the Director-General in a court of competent jurisdiction from the person to whom the direction was given.

- (4) In any proceedings for the recovery of any debt referred to in this section, a certificate signed by the Director-General stating the amount of the costs and the manner in which they were incurred is evidence of the matters certified.

15 How compliance direction is to be given

- (1) A compliance direction is to be given in writing either personally or by post or in any other manner permitted by this section.
- (2) A compliance direction concerning specified land may also be given:
- (a) by fixing a copy of the direction addressed to the occupier, either by name or as the occupier, on a conspicuous part of the land or any building or other structure on the land, or
 - (b) if the address of the occupier is unknown, publishing the direction in a newspaper circulating in the local area.
- (3) A compliance direction given by post to a person for the purposes of this Act is to be treated as being properly addressed if it is addressed to the last known address of the person known to the authorised officer giving the direction.

16 Review by Administrative Decisions Tribunal

A person aggrieved by the decision of an authorised officer to give, amend or revoke a compliance direction under this Part may apply to the Administrative Decisions Tribunal for a review of that decision.

Note. Section 47 of the *Administrative Decisions Tribunal Act 1997* sets out a summary of the review process for a reviewable decision.

Part 4 Authorised officers

17 Appointment of authorised officers

- (1) The Minister may appoint a member of staff of the Department or a person of a class prescribed by the regulations to be an authorised officer for the purposes of this Act.
- (2) The Minister is to provide each authorised officer appointed under this section (other than an authorised officer who is a police officer) with an identification card that:
 - (a) states that it is issued under this Act, and
 - (b) gives the name of the person to whom it is issued, and
 - (c) describes the nature of the powers conferred, and
 - (d) states the date (if any) on which it expires, and
 - (e) is signed by the Minister.

18 Functions of authorised officers

- (1) An authorised officer may exercise any function of an authorised officer under this Act.
- (2) Despite subsection (1), the functions of an authorised officer may be limited by the relevant instrument of appointment.
- (3) In the course of exercising his or her functions, an authorised officer must, if requested to do so by any person affected by the exercise of the functions, produce the authorised officer's identification to the person unless the authorised officer is a police officer in uniform.
- (4) In this section:

authorised officer's identification means:

 - (a) the authorised officer's identification card issued under this Part—if the authorised officer is not a police officer, or
 - (b) the authorised officer's identification as a police officer—if the authorised officer is a police officer.

19 Purposes for which functions under Part may be exercised

The functions of an authorised officer under this Part may be exercised for the following purposes:

- (a) determining whether there has been compliance with or a contravention of this Act or the regulations or any order or direction made or given under this Act,

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Part 4 Authorised officers

- (b) enabling the authorised officer or any other person to exercise a function of the authorised officer or person under this or any other Act.

20 Power of entry

- (1) An authorised officer may enter any premises to exercise any function of the authorised officer under this Act.
- (2) An authorised officer may enter any premises at any reasonable time.
- (3) This section does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant issued under this Part.

21 Search warrant

- (1) An authorised officer under this Act may apply to an issuing officer for a search warrant if the applicant has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An authorised officer may not apply for a search warrant unless the authorised officer has notified the Minister of the intended application.
- (3) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
 - (a) to enter the premises concerned, and
 - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section:
issuing officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

22 Powers of authorised officers on premises

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Act, including (but not limited to) the things specified in subsection (2).

-
- (2) An authorised officer who enters premises may do any or all of the following:
- (a) inspect the premises,
 - (b) search the premises,
 - (c) examine, seize, detain or remove any deer in or about those premises,
 - (d) examine, seize, detain or remove any other thing that the authorised officer has reasonable grounds to believe is being used to contravene this Act or the regulations,
 - (e) require the production of and inspect any records in or about those premises,
 - (f) take copies of, or extracts or notes from, any such records,
 - (g) require any person in or about those premises to answer questions or otherwise furnish information,
 - (h) require the occupier of those premises to provide the authorised officer with such assistance and facilities as are reasonably necessary to enable the authorised officer to exercise his or her functions,
 - (i) remove or destroy or cause to be removed or destroyed any deer found in or about those premises unless the deer are being held in captivity in accordance with the regulations,
 - (j) break open and search any box, container, package or receptacle (including any place that could be used as a receptacle) in or about those premises.

23 Notice of entry

- (1) Before an authorised officer enters premises under this Part, the Minister must give the occupier of the premises oral or written notice of the intention to enter the occupier's premises on a day or within a period of days specified in the notice.
- (2) The day or any day within the period of days specified must not be the day on which the notice is given.
- (3) This section does not require notice to be given in any one or more of the following circumstances:
 - (a) if entry to the premises is made with the consent of the occupier of the premises,
 - (b) if entry has been authorised by a search warrant issued under this Part,

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- (c) if entry is required urgently and the Minister has authorised in writing (either generally or in the particular case) entry without notice,
- (d) if entry is required to enable an authorised officer to carry out the requirements of a compliance direction and the authorised officer considers that the requirements of the direction need to be carried out urgently.

24 Use of force

- (1) Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under this Part but only if authorised by the Minister in accordance with this section and in accordance with any guidelines.
- (2) No force is to be exercised in any case unless the Minister has authorised in writing (either in a specified class of cases or in the particular case) the use of force in the circumstances of the case.
- (3) A general authority given by the Minister for the use of force is invalid. The authority is to specify the circumstances that are required to exist in a case before force is used.

25 Notification of use of force or urgent entry

- (1) An authorised officer must give the Minister prompt oral or written advice of:
 - (a) any use of force by the authorised officer for the purpose of gaining entry to premises, or
 - (b) any entry to premises by the authorised officer without notice having been given to the occupier of the premises of the intention to enter as required by this Part.
- (2) The Minister must give notice of the entry to such persons or authorities as appear to be appropriate in the circumstances.

26 Care to be taken

In the exercise of a function under this Part, an authorised officer must do as little damage as possible.

27 Compensation

The Minister must compensate all interested parties for any damage caused by an authorised officer who enters premises under this Part in entering the premises (but not any damage caused by exercising any other function), unless the occupier of the premises obstructed, hindered or restricted the authorised officer in the exercise of the power of entry.

28 Authorised officer may request assistance

- (1) An authorised officer may request the assistance of any police officer if the authorised officer reasonably believes that the exercise of the authorised officer's functions under this Act will be obstructed.
- (2) An authorised officer may request the assistance of any person the authorised officer believes to be capable of providing assistance in the exercise of the authorised officer's functions under this Act.

29 Obstruction of authorised officers

A person must not, without reasonable excuse, delay, hinder or obstruct an authorised officer in the exercise of the authorised officer's functions under this Act.

Maximum penalty: 50 penalty units.

Note. Section 307B of the *Crimes Act 1900* makes it an offence to provide false or misleading information to an authorised officer.

Part 5 Miscellaneous

30 Onus of proof regarding reasonable excuse

In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.

31 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

32 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

33 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

34 Delegation

The Minister may delegate the exercise of any function of the Minister under this Act (other than making deer control orders and this power of delegation) to:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

35 Disputes between Minister and public authority

- (1) If a dispute arises in connection with a deer control order, between the Minister and the Minister responsible for a public authority affected by such an order, a party to the dispute may submit the dispute to the Premier for settlement.
- (2) On submission of a dispute to the Premier, the Premier may hold an inquiry into the dispute and may make such decision about the dispute as the Premier thinks fit, having regard to the public interest and the circumstances.
- (3) A Minister, the Director-General and the public authority must comply with a decision of the Premier under this section and for that purpose is empowered to do so, despite the provisions of this or any other Act or law.

36 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

37 Description of land

Land is sufficiently described in a deer control order made, or a compliance direction given, under this Act if the description of the land allows no reasonable doubt as to the land to which the order or direction relates.

38 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences with a maximum penalty not exceeding 50 penalty units.

39 Savings, transitional and other provisions

Schedule 1 has effect.

40 Amendment of Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

41 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

(Section 39)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Schedule 2 Amendment of Acts

(Section 40)

2.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Deer Act 2006, section 33

2.2 Game and Feral Animal Control Act 2002 No 64

Section 17 Exemptions from licensing

Insert after section 17 (1) (d):

- (d1) a person who is hunting deer in accordance with a duty imposed on the person or the person's employer (or on any corporation of which the person is an officer) because of a deer control order or compliance direction under the *Deer Act 2006*,

2.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Insert in alphabetical order:

Deer Act 2006, section 21