



New South Wales

Animal Welfare Legislation Amendment Bill 2009

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Exhibited Animals Protection Act 1986* (the *Act*):
 - (i) to specify the matters that the Director-General of the Department of Industry and Investment (the *Director-General*) may consider when deciding whether to grant or refuse an application by a person for an authority for the display or exhibition of animals, and
 - (ii) to enable the Director-General to disqualify a person who holds such an authority that is cancelled on misconduct grounds from holding an authority for a period of up to 5 years, and
 - (iii) to provide for applications for the review of certain decisions under the Act to be made to the Administrative Decisions Tribunal, instead of those decisions being subject to appeal to the Minister for Primary Industries (the *Minister*) or the Local Court, as is currently the case, and
- (b) to amend the *Prevention of Cruelty to Animals Act 1979* to enable an order made by a court in another State or a Territory that prohibits a person from buying or possessing any animal to be enforceable in New South Wales, and

- (c) to amend the *Apiaries Act 1985* to enable the regulations to exempt a person or class of persons from the requirement to be registered as a beekeeper.

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 Exhibited Animals Protection Act 1986 No 123

Schedule 1 [1] specifies the matters the Director-General may consider in considering whether to grant or refuse an application for a licence, approval or permit (an *authority*). In addition, the Director-General must refuse to grant an application to a person who is disqualified from holding an authority or to a corporation if any officer of that corporation is disqualified. **Schedule 1 [3]** defines an *officer* of a corporation to mean a director of the corporation or a person who is otherwise concerned in its management.

Schedule 1 [4] enables the Director-General, by order in writing served on a person, to disqualify the person from holding an authority for up to 5 years, if the person's authority is cancelled on misconduct grounds. If the person who is disqualified is a corporation, any person who was an officer of the corporation at the time the authority was cancelled may also be disqualified.

Schedule 1 [5] replaces the provisions that enable a person who is aggrieved by certain decisions made by the Director-General in relation to authorities to appeal to the Minister or the Local Court. Under the amendment, a person aggrieved by such a decision (and by a decision that results in a person being disqualified from holding an authority) will instead be able to apply to the Administrative Decisions Tribunal for a review of the decision. **Schedule 1 [2]** is a consequential amendment.

Schedule 1 [7] provides that the amendment in Schedule 1 [5] applies only to decisions made on or after the amendment and enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act. **Schedule 1 [6]** is a consequential amendment.

Schedule 2 Amendment of Prevention of Cruelty to Animals Act 1979 No 200

Schedule 2 enables the Minister to recognise, by order in writing, an order made by a court in another State or a Territory prohibiting a person from purchasing or acquiring, or taking possession or custody of, any animal. If a person who is served with notice of the Minister's decision to recognise the interstate order fails to comply

with the order in NSW, the person will be guilty of the same offence as a person who fails to comply with a NSW order (maximum penalty: 25 penalty units, currently \$2,750).

Schedule 3 Amendment of Apiaries Act 1985 No 16

Schedule 3 [1] enables the regulations to exempt a person or class of persons from the requirement to be registered as a beekeeper. **Schedule 3 [2]** is a related amendment.

First print



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New South Wales

Animal Welfare Legislation Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend certain Acts with respect to the keeping, protection and welfare of animals.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Animal Welfare Legislation Amendment Act 2009</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1 Amendment of Exhibited Animals Protection Act 1986 No 123

[1] Section 27 Applications

Insert after section 27 (3):

(3A) In considering whether to grant or refuse the application, the Director-General may consider the following:

- (a) whether the applicant has been convicted or found guilty of an offence under this Act, the *Prevention of Cruelty to Animals Act 1979*, the *Animal Research Act 1985*, the *National Parks and Wildlife Act 1974*, an instrument made under this Act or any of those Acts or any law of another State, a Territory or the Commonwealth relating to the keeping or protection of animals,
- (b) whether the applicant has previously failed to comply with any term or condition of an authority held by the applicant,
- (c) whether the applicant has previously held an authority that has been suspended or cancelled by the Director-General,
- (d) the capacity of the applicant to comply with this Act and any prescribed standards,
- (e) the capacity of the applicant to care for the animals,
- (f) whether the applicant has made a statement or furnished information in connection with the application that was, in the opinion of the Director-General, false or misleading in a material particular,
- (g) whether the applicant is a fit and proper person to hold the authority.

(3B) The Director-General must refuse to grant an application for the issue of an authority to a person if:

- (a) the person is disqualified from holding an authority under this Act, or
- (b) the person is a corporation and any officer of the corporation is disqualified from holding an authority under this Act.

[2] Section 27 (4)

Omit “appeal”. Insert instead “review”.

[3] Section 27 (7)	1
Insert after section 27 (6):	2
(7) In this section, an <i>officer</i> of a corporation means a director of the corporation or a person who is otherwise concerned in its management.	3 4 5
[4] Section 30A	6
Insert after section 30:	7
30A Disqualification	8
(1) The Director-General may, by order in writing served on a person, declare the person to be disqualified from holding an authority.	9 10 11
(2) A declaration may be made in respect of a person only if the person holds an authority that is cancelled by the Director-General on misconduct grounds.	12 13 14
(3) A person who is declared to be disqualified from holding an authority is disqualified from holding an authority under this Act during the disqualification period specified in the order.	15 16 17
(4) If the person who is the subject of the declaration is a corporation, any person who was an officer of the corporation at the time that the authority was cancelled on misconduct grounds is taken, unless the declaration otherwise provides, to also be disqualified from holding an authority under this Act during the disqualification period specified in the order.	18 19 20 21 22 23
(5) An order may specify a separate disqualification period for officers of the corporation or for particular officers of the corporation, or may provide that no disqualification period applies to officers of the corporation or to particular officers of the corporation.	24 25 26 27 28
(6) It is not necessary for the order to name individual officers of a corporation.	29 30
(7) A disqualification period specified in an order must not exceed 5 years from the date on which the relevant authority is cancelled on misconduct grounds.	31 32 33
(8) For the purposes of this section, an authority is cancelled on <i>misconduct grounds</i> if it is cancelled for any reason other than because it was issued in error or because the holder of the authority requested the cancellation.	34 35 36 37

(9)	In this section, an <i>officer</i> of a corporation means a director of the corporation or a person who is otherwise concerned in its management.	1 2 3
[5] Part 3, Division 5		4
	Omit the Division. Insert instead:	5
Division 5	Reviews by Administrative Decisions Tribunal	6 7
32	Applications for review by Administrative Decisions Tribunal	8
(1)	A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:	9 10
(a)	a decision to refuse an application by the person for the issue, renewal, variation or transfer of an authority,	11 12
(b)	a decision to suspend or cancel an authority held by the person,	13 14
(c)	a decision to impose a term or condition on an authority held by the person or vary any such term or condition (other than a term or condition prescribed by the regulations),	15 16 17 18
(d)	a decision that results in the person being disqualified from holding an authority under this Act.	19 20
(2)	If an application for a review of a decision is made to the Tribunal under this section, the cancellation or expiry of the authority, the imposition or variation of the term or condition or the disqualification of the person (as the case may be) is stayed by lodgment of the application, pending its outcome. This subsection has effect despite the provisions of Division 2 of Part 3 of Chapter 5 of the <i>Administrative Decisions Tribunal Act 1997</i> .	21 22 23 24 25 26 27 28
(3)	In this section, <i>authority</i> means a licence, an approval or a permit.	29 30
[6] Section 55 Savings and transitional provisions		31
	Omit the section.	32

[7] Schedule 5	1
Omit the Schedule. Insert instead:	2
Schedule 5 Savings, transitional and other provisions	3 4
Part 1 Preliminary	5
1 Regulations	6
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	7 8 9
<i>Animal Welfare Legislation Amendment Act 2009</i>	10
(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.	11 12
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	13 14 15
(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	16 17 18
(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.	19 20 21
Part 2 Provision consequent on enactment of Animal Welfare Legislation Amendment Act 2009	22 23 24
2 Appeals and reviews	25
Division 5 of Part 3, as substituted by the <i>Animal Welfare Legislation Amendment Act 2009</i> , applies to decisions made on or after the substitution of that Division. Division 5 of Part 3, as in force immediately before that substitution, continues to apply to decisions made before that substitution.	26 27 28 29 30

Schedule 2	Amendment of Prevention of Cruelty to Animals Act 1979 No 200	1
		2
Section 31AA		3
Insert after section 31:		4
31AA	Recognition of interstate orders	5
(1)	The Minister may, by order in writing, recognise any interstate prohibition order made against a person, for the purposes of its enforcement in New South Wales.	6 7 8
(2)	An <i>interstate prohibition order</i> is an order made by a court under the law of another State or a Territory, or a part of such an order, that has the effect of prohibiting a person from purchasing or acquiring, or taking possession or custody of, any animal.	9 10 11 12
(3)	If an interstate prohibition order is recognised by the Minister under this section, the NSW offence provision applies in respect of the interstate prohibition order as if a reference in that provision to an order included a reference to an interstate prohibition order recognised under this section (as in force from time to time).	13 14 15 16 17 18
(4)	The NSW offence provision applies only to those provisions of the recognised interstate prohibition order that can be included in an order of a kind made under section 31 (1).	19 20 21
(5)	A person who is served with notice that the Minister has recognised an interstate prohibition order made against the person is taken, for the purposes of the NSW offence provision, to have been served with the order as made under section 31 (1).	22 23 24 25
(6)	In this section, the <i>NSW offence provision</i> means section 31 (3).	26

Schedule 3	Amendment of Apiaries Act 1985 No 16	1
[1]	Section 6 Unregistered persons not to keep bees	2
	Insert after section 6 (5):	3
	(6) The regulations may, unconditionally or subject to conditions, exempt any person or class of persons from the requirement under this section to be registered as a beekeeper.	4 5 6
[2]	Section 17 Abandoned or neglected bees or associated things	7
	Insert after section 17 (2):	8
	(3) A person who is exempted from the requirement to be registered as a beekeeper by the regulations is taken to be a registered beekeeper for the purposes of this section.	9 10 11