



## NSW Legislative Council Hansard

### Crimes Amendment (Animal Cruelty) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 16 November 2005.

#### Second Reading

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [11.25 a.m.]: I move:

That this bill be now read a second time.

The second reading speech has been delivered in the other Chamber and I seek leave to have it incorporated in *Hansard*.

#### Leave granted.

I am pleased to introduce the *Crimes Amendment (Animal Cruelty) Bill 2005*. The Community was outraged earlier this year by a number of vicious attacks on animals earlier this year. In response the Government established the multi-agency Animal Cruelty Taskforce to consider changes to animal cruelty laws and procedures. The amendments contained in this Bill arise from the Taskforce Report to the Government.

Current animal cruelty offences are found in the *Prevention of Cruelty to Animals Act 1979*. The most serious of these offences carries a maximum penalty of 2 years imprisonment.

The Taskforce was concerned primarily with whether a new aggravated animal cruelty offence, carrying a higher penalty, should be created in the *Crimes Act 1900*. It was proposed that this new offence deal with the worst examples of animal cruelty, that is, cases where offences are committed with the intention of inflicting pain on the animal, in circumstances that amount to serious instances of animal cruelty, like torture and where the animal is killed, seriously injured or experiences prolonged suffering.

This Bill also creates a new offence designed to protect animals used for law enforcement purposes. This is in response to the killing of police dog Titan last year during a police operation. There have also been other reports of attempts to injure law enforcement animals such as throwing marbles under the hooves of police horses.

To reflect the seriousness of these two offences the maximum penalty for both of these new offences will be five years imprisonment.

The Taskforce also found that where matters were prosecuted by animal welfare organisations, like the RSPCA and the Animal Welfare League, with no involvement by police in the investigation, there was no guarantee that a guilty person's fingerprints would be taken and a subsequent notation made on their criminal record.

Accordingly, an amendment to the *Law Enforcement (Police Powers and Responsibilities) Act 2002* will provide that when offenders previously have not been fingerprinted for an offence of cruelty or aggravated cruelty to an animal under the *Prevention of Cruelty to Animals Act*, an application may be made to the court for a fingerprinting order. This will allow accurate criminal records to be maintained.

The introduction of the new offence under the *Crimes Act* will not affect the offences that currently exist in the *Prevention of Cruelty to Animals Act*. Those offences will remain unchanged and together with the new Crimes Act provisions create a scale of animal cruelty offences of increasing seriousness. Less serious matters of animal cruelty, therefore, will continue to be dealt with under the *Protection of Cruelty to Animals Act*.

I will now turn to the detail of the Bill.

**Clause 1** sets out the short title of the proposed Act.

**Clause 2** provides for the Act to commence on proclamation. New indictable offences are usually commenced in this way to provide certainty as to the exact commencement time and to allow the police and courts to put the necessary administrative and education measures in place.

#### Schedule 1 Amendment of Crimes Act 1900

The Schedule inserts proposed sections 530 and 531 into the *Crimes Act 1900*. Both offences will be indictable offences carrying maximum penalties of 5 years imprisonment.

Proposed section 530 makes it an offence, with the intention of inflicting severe pain on an animal:

(a) to torture, beat or commit any other act of serious cruelty on the animal, and

(b) to kill, seriously injure or cause prolonged suffering to the animal.

Specific defences provided for are:

- authorised animal research;
- routine agricultural and animal husbandry;
- recognised religious practices;
- pest extermination; and
- veterinary practice.

These specific defences, of course, do not limit other circumstances where there is no requisite intention to cause of severe pain or other general statutory or common law defences, like self-defence or necessity, that will naturally apply to both new offences.

**Animal** has been defined to mean mammals (other than humans), birds and reptiles.

Proposed section 531 makes it an offence to intentionally kill or seriously injure an animal knowing that the animal is being used in the execution of the officer's duty or to do so as a consequence of, or in retaliation for, such a use of the animal.

**Schedule 2.1** amends section 268 of, and Table 2 in Schedule 1 to, the Criminal Procedure Act 1986 to provide that the new indictable animal cruelty offences are to be dealt with summarily by a Local Court unless the prosecutor elects otherwise.

This is to ensure that the criminal justice system can efficiently deal with these matters. As with other indictable matters that can be dealt with summarily, however:

- the Local Court must have regard to the maximum penalty provided for by the Parliament as an indication of the seriousness of the offence; and
- Police must identify serious matters and elect to have them dealt with by the superior courts where it is likely that the criminality of the offence outstrips the sentencing capacity of the Local Court.

**Schedule 2.2** amends section 134 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable a court which finds an offence proven against a person under section 5 (Cruelty to animals) or section 6 (Aggravated cruelty to animals) of the *Prevention of Cruelty to Animals Act 1979* to order the person to attend a police station and submit to the taking of identification particulars. This will ensure that accurate criminal records can be maintained in relation to animal cruelty offences.

The *Law Enforcement (Powers and Responsibilities) Act 2002* is to commence on 1 December 2005. The equivalent provision is currently located at section 353A(7) of the *Crimes Act 1900*; this will be repealed when the LEPAR Act comes into force.

Unwarranted and unjustified cruelty to animals is unacceptable to our society and the Government wishes to send a strong message that such unacceptable actions will be dealt with as serious criminal offences and offenders can be assured of strong enforcement of these new laws.