



New South Wales

# Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2023

## 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 24ZA 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 24ZH 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 24ZN lists the members the Attorney General must appoint to the committee, which must be dissolved and reconstituted every 3 years. Proposed section 24ZO 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[10]** enables regulations to be made about the constitution and procedures of the committee. **Schedule 1[8] and [9]** make consequential amendments.

**Schedule 1[3]** makes a consequential amendment.



New South Wales

# Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2023

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New South Wales

# Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill 2023

No. \_\_\_\_\_, 2023

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## 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.

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**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 2023*.

3

4

**2 Commencement**

5

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

6

<b>Schedule 1</b>	<b>Amendment of Prevention of Cruelty to Animals Act 1979 No 200</b>	1
		2
<b>[1] Section 4 Definitions</b>		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, or	6
		7
	(b) the Animal Welfare League NSW, or	8
	(c) another charitable organisation approved by the Minister under section 34B.	9
		10
<b>[2] Section 4(1), definition of “charitable organisation”</b>		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
<b>[3] Section 4(1)</b>		18
	Insert in alphabetical order—	19
	<i>committee</i> means the Independent Office of Animal Welfare Advisory Committee constituted under section 24ZN.	20
		21
	<i>guidelines</i> includes codes of practice and standards.	22
<b>[4] Part 2C</b>		23
	Insert after Part 2B—	24
	<b>Part 2C Independent Office of Animal Welfare</b>	25
	<b>Division 1 Preliminary</b>	26
<b>24W Definitions</b>		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 24ZG 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
<i>committee member</i> means a member of the committee.	2
<b>Division 2 Independent Office of Animal Welfare</b>	3
<b>24X Establishment of Independent Office of Animal Welfare</b>	4
The Independent Office of Animal Welfare is established.	5
<b>24Y Status of Independent Office of Animal Welfare</b>	6
The Independent Office of Animal Welfare is—	7
(a) a corporation, and	8
(b) a NSW Government agency.	9
<b>Note—</b> See the <i>Interpretation Act 1987</i> , section 13A.	10
<b>24Z Ministerial control</b>	11
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.	12
<b>24ZA Objects of Independent Office of Animal Welfare</b>	13
The main objects of the Independent Office of Animal Welfare are as follows—	14
(a) to promote knowledge of animal welfare issues,	15
(b) to improve animal welfare outcomes,	16
(c) to ensure the State’s animal welfare policies and guidelines are independently reviewed and developed having regard to the following—	17
(i) contemporary scientific knowledge about animal welfare,	18
(ii) advances in technology,	19
(iii) community expectations and values,	20
(d) to ensure the independent review of the administration and enforcement of the State’s animal welfare laws.	21
<b>24ZB Functions of Independent Office of Animal Welfare</b>	22
(1) The Independent Office of Animal Welfare has the following functions—	23
(a) to assist the Chief Animal Welfare Officer in the exercise of the Chief Animal Welfare Officer’s functions,	24
(b) other functions conferred on the Independent Office of Animal Welfare by this Act or another Act or law,	25
(c) functions supplementary or incidental to the exercise of the Independent Office of Animal Welfare’s other functions.	26
(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.	27



<b>24ZC</b>	<b>Delegations</b>	1
(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—	2 3 4
(a)	the Chief Executive Officer, or	5
(b)	a member of staff of the Independent Office of Animal Welfare, or	6
(c)	a person, or a class of persons, prescribed by the regulations.	7
(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.	8 9 10
<b>24ZD</b>	<b>Chief Executive Officer</b>	11
(1)	The Chief Executive Officer is responsible for the day-to-day operations of the Independent Office of Animal Welfare.	12 13
(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.	14 15 16
<b>24ZE</b>	<b>Staff</b>	17
	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.	18 19 20
	<b>Note</b> — 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.	21 22 23 24 25
<b>24ZF</b>	<b>Annual reporting</b>	26
	The annual reporting information under the <i>Government Sector Finance Act 2018</i> for the Independent Office of Animal Welfare must include—	27 28
(a)	a summary of the Independent Office of Animal Welfare's activities, and	29 30
(b)	an evaluation of the Independent Office of Animal Welfare's performance.	31 32
	<b>Division 3 Chief Animal Welfare Officer</b>	33
<b>24ZG</b>	<b>Appointment of Chief Animal Welfare Officer</b>	34
	The Attorney General must appoint the Chief Animal Welfare Officer on the recommendation of a majority of committee members.	35 36
<b>24ZH</b>	<b>Functions of Chief Animal Welfare Officer</b>	37
(1)	The Chief Animal Welfare Officer has the following functions—	38
(a)	reviewing and monitoring, including conducting inquiries, commissioning research and preparing reports on, the following—	39 40
(i)	the State's animal welfare laws, policies and guidelines,	41
(ii)	compliance with, and the enforcement and effectiveness of, the State's animal welfare laws,	42 43

	(iii)	the treatment of animals in a particular industry or sector, including greyhound racing, horse racing, agriculture and medical and scientific research,	1 2 3
	(iv)	the possible harmonisation of the State's animal welfare laws with similar laws of the Commonwealth, other States and the Territories,	4 5 6
	(b)	developing the State's animal welfare policies and guidelines and liaising with bodies responsible for national policies and guidelines,	7 8
	(c)	developing an animal welfare strategy that provides for a State-wide framework for—	9 10
		(i) identifying and prioritising animal welfare issues, and	11
		(ii) coordinating stakeholder action, and	12
		(iii) improving consistency across all industries and sectors that use animals,	13 14
	(d)	collecting and disseminating information about animal welfare issues in the State.	15 16
	(2)	The Chief Animal Welfare Officer is not subject to the control or direction of the Minister.	17 18
<b>24ZI</b>	<b>Term of office</b>		19
	(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.	20 21 22
	(2)	The Chief Animal Welfare Officer is eligible, if otherwise qualified, for reappointment.	23 24
	(3)	The Chief Animal Welfare Officer must not hold office for more than 2 terms, whether consecutive or not.	25 26
<b>24ZJ</b>	<b>Full-time appointment</b>		27
		The Chief Animal Welfare Officer must hold office on a full-time basis, except to the extent the Attorney General permits otherwise.	28 29
<b>24ZK</b>	<b>Employment and remuneration</b>		30
	(1)	The office of Chief Animal Welfare Officer is a statutory office.	31
	(2)	The following provisions of, or made under, the <i>Government Sector Employment Act 2013</i> relating to Public Service senior executives apply to the Chief Animal Welfare Officer as if a reference to the employer of the executive were a reference to the Attorney General—	32 33 34 35
		(a) provisions relating to the band in which the executive is employed,	36
		(b) provisions relating to the executive's contract of employment,	37
		(c) provisions relating to the executive's remuneration, employment benefits and allowances.	38 39
<b>24ZL</b>	<b>Acting Chief Animal Welfare Officer</b>		40
	(1)	The Attorney General may, from time to time, appoint a person to act in the office of Chief Animal Welfare Officer during—	41 42
		(a) the Chief Animal Welfare Officer's absence, or	43
		(b) a vacancy in the office of Chief Animal Welfare Officer, until a person is appointed by the Attorney General to fill the vacancy.	44 45

(2)	The person, while acting—	1
(a)	is taken to be the Chief Animal Welfare Officer, and	2
(b)	has all the functions of the Chief Animal Welfare Officer, and	3
(c)	is entitled to be paid remuneration, including travel and subsistence allowances, as determined by the Attorney General from time to time.	4 5
(3)	The Attorney General may revoke an appointment made under this section at any time.	6 7
<b>24ZM</b>	<b>Vacancy in office</b>	8
(1)	The office of Chief Animal Welfare Officer becomes vacant 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 notice given to the Attorney General, or	13
(d)	is removed from office by the Attorney General under this section, or	14
(e)	becomes bankrupt, or	15
(f)	applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, or	16 17
(g)	compounds with the Chief Animal Welfare Officer's creditors, or	18
(h)	makes an assignment of remuneration for the benefit of the Chief Animal Welfare Officer's creditors, or	19 20
(i)	becomes a mentally incapacitated person, or	21
(j)	is convicted in New South Wales of an offence punishable by imprisonment for 12 months or more, or	22 23
(k)	is convicted in another jurisdiction of an offence that, if committed in New South Wales, would be punishable by imprisonment for 12 months or more, or	24 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 in another jurisdiction of an offence that, if committed in New South Wales, would be punishable by imprisonment.	29 30 31
(2)	The Attorney General may remove the Chief Animal Welfare Officer from office, but only for incapacity, incompetence or misbehaviour.	32 33
(3)	If the office of Chief Animal Welfare Officer becomes vacant, the Attorney General must appoint a person to fill the vacancy.	34 35
(4)	The <i>Government Sector Employment Act 2013</i> , Part 6 does not apply to the Chief Animal Welfare Officer.	36 37
<b>Division 4</b>	<b>Advisory Committee</b>	38
<b>24ZN</b>	<b>Constitution of committee</b>	39
(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—	40 41 42
(a)	3 members representing non-government animal welfare organisations,	43
(b)	2 members representing approved charitable organisations,	44

(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 committee member is eligible, if otherwise qualified, for reappointment.	11
(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 committee members were selected.	12 13 14
<b>24ZO</b>	<b>Function of committee</b>	15
	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.	16 17 18
<b>24ZP</b>	<b>Remuneration</b>	19
(1)	Committee members are entitled to be paid remuneration, including travel and subsistence allowances, as determined by the Attorney General from time to time.	20 21 22
(2)	In this section— <i>committee members</i> includes persons appointed to act as committee members under section 24ZQ.	23 24 25
<b>24ZQ</b>	<b>Acting members</b>	26
(1)	The Attorney General may, from time to time, appoint a person to act in a committee member's place during—	27 28
(a)	the member's absence, or	29
(b)	a vacancy in the office of the member, until a person is appointed by the Attorney General to fill the vacancy.	30 31
(2)	The person, while acting—	32
(a)	has all the functions of the committee member, and	33
(b)	is taken to be a committee member.	34
(3)	The Attorney General may revoke an appointment made under this section at any time.	35 36
<b>24ZR</b>	<b>Vacancy in office</b>	37
(1)	The office of a committee member becomes vacant if the member—	38
(a)	dies, or	39
(b)	is not reappointed when the Attorney General reconstitutes the committee, or	40 41
(c)	resigns from office by written notice given to the Attorney General, or	42

(d)	is removed from office by the Attorney General under this section, or	1
(e)	is absent from 3 consecutive meetings of the committee of which reasonable notice has been given to the member, unless—	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 in another jurisdiction of an offence that, if committed in New South Wales, would be punishable by imprisonment for 12 months or more, or	16 17 18
(m)	is imprisoned after being convicted in New South Wales of an offence punishable by imprisonment, or	19 20
(n)	is imprisoned after being convicted in another jurisdiction of an offence that, if committed in New South Wales, would be punishable by imprisonment.	21 22 23
(2)	The Attorney General may remove a member from office at any time.	24
(3)	If the office of a committee member becomes vacant, the Attorney General must appoint a person to fill the vacancy.	25 26
<b>24ZS</b>	<b>Effect of certain other Acts</b>	27
(1)	The provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to committee members.	28 29
(2)	A provision of another Act does not disqualify a person from holding a specified office and also the office of a committee member, or from accepting remuneration payable to the person under section 24ZP, because the provision—	30 31 32 33
(a)	requires the person who holds the specified office to devote the whole of the person’s time to the duties of the office, or	34 35
(b)	prohibits the person from engaging in employment outside the duties of the specified office.	36 37
<b>24ZT</b>	<b>Committee meetings</b>	38
(1)	Subject to this division, the procedure for calling and conducting business at meetings of the committee is to be determined by the Chief Animal Welfare Officer.	39 40 41
(2)	The quorum for a meeting of the committee is a majority of members.	42
(3)	Subject to subsection (4), the Chief Animal Welfare Officer must preside at a meeting of the committee.	43 44

(4)	If the committee is considering a matter relating to nominating a person for the office of Chief Animal Welfare Officer—	1
	(a) the Chief Animal Welfare Officer must leave the meeting while the matter is being considered, and	2
	(b) 1 of the committee members present at the meeting, as elected by the other members present, must preside.	3
(5)	The person presiding at the meeting has—	4
	(a) a deliberative vote, and	5
	(b) in the event of an equality of votes—a second or casting vote.	6
(6)	A decision supported by a majority of the votes cast at a meeting of the committee at which a quorum is present is a decision of the committee.	7
<b>24ZU</b>	<b>Disclosure of conflicts of interest</b>	8
(1)	A committee member must disclose the nature of a conflict of interest at a meeting of the committee as soon as practicable after the member becomes aware of the conflict of interest.	9
(2)	A committee member has a conflict of interest if—	10
	(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	11
	(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.	12
(3)	A disclosure by a committee member of one of the following is a sufficient disclosure of the nature of a conflict of interest in a matter relating to a corporation or other body, or a person, which may arise after the disclosure is made—	13
	(a) the member is a member of, or employed by, a specified corporation or other body,	14
	(b) the member is a partner of, or employed by, a specified person,	15
	(c) the member has another interest relating to a specified corporation or other body, or a specified person.	16
(4)	A committee member who has made a disclosure under subsection (1) must not, unless the Chief Animal Welfare Officer otherwise determines—	17
	(a) be present during a deliberation of the committee about the matter the disclosure relates to, or	18
	(b) take part in a decision of the committee about the matter.	19
(5)	A contravention of this section does not invalidate a decision of the committee.	20
<b>[5]</b>	<b>Section 34A</b>	21
	Omit the section. Insert instead—	22
<b>34A</b>	<b>Guidelines relating to animal welfare</b>	23
(1)	The regulations may prescribe or adopt guidelines relating to the welfare of an animal or class of animals.	24
(2)	A document may be adopted under subsection (1)—	25
	(a) in whole or in part, and	26
	(b) with or without modification, and	27

(c)	as in force—	1
(i)	at a particular time, or	2
(ii)	from time to time.	3
(3)	A regulation must not be made under subsection (1) unless—	4
(a)	the committee is first given an opportunity to review and comment on the proposed regulation, and	5 6
(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.	7 8 9
(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.	10 11 12 13
(5)	The regulations may provide that a provision of guidelines prescribed or adopted under subsection (1) is a mandatory provision.	14 15
(6)	A person must not contravene a mandatory provision. Maximum penalty—50 penalty units.	16 17
<b>[6]</b>	<b>Section 34B Approved charitable organisations</b>	18
	Omit “A charitable organisation that has been approved in accordance with this section” from section 34B(3).	19 20
	Insert instead “An approved charitable organisation”.	21
<b>[7]</b>	<b>Section 34B(4)</b>	22
	Omit “In addition, a charitable organisation that has been approved in accordance with this section”.	23 24
	Insert instead “An approved charitable organisation”.	25
<b>[8]</b>	<b>Section 35 Regulations</b>	26
	Insert “the following” after “particular, for or with respect to” in section 35(1).	27
<b>[9]</b>	<b>Section 35(1)(f)</b>	28
	Omit “and”.	29
<b>[10]</b>	<b>Section 35(1)(h)</b>	30
	Insert after section 35(1)(g)—	31
	(h) the constitution or procedures of the committee.	32