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Prevention of Cruelty to Animals Amendment (Prosecutions) Bill 2007

About this Item

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Business - Bill, Division, Second Reading, Third Reading, Motion

PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (PROSECUTIONS) BILL 2007

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Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.17 p.m.], on behalf of the Hon. Ian Macdonald: I move:
That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Prevention of Cruelty to Animals Amendment (Prosecutions) bill 2007 brings an effective reform to prosecutions made under the Prevention of Cruelty to Animals Act 1979 and its associated Regulations.

The bill proposes one amendment. The amendment is to specify who may initiate proceedings to prosecute a breach of the Act or Regulations.

The Prevention of Cruelty to Animals Act 1979 provides for the prevention of cruelty to animals, and the promotion of animal welfare by carers.

Currently, neither the Act nor the Regulations specify who has the authority to prosecute. Therefore, by virtue of the Criminal Procedure Act 1986, anyone can institute a prosecution under the Prevention of Cruelty to Animals Act.

Specifically, section 14 of the Criminal Procedure Act enables anyone under any Act to institute proceedings, unless the right to do so is specified or constrained by that Act.

The present bill proposes a range of people and organisations who may bring forward court proceedings. They include:

an approved charitable organisation,

an officer of an approved charitable organisation,

the responsible Minister,

the Director-General of the Department of Primary Industries,

a person who has the written consent of the responsible Minister or the Director-General, and

a police officer, or any other person or body prescribed by the Regulations,

Unfortunately, the existing provisions have created an inefficient and costly situation in New South Wales.

In the past six years in New South Wales, private parties have brought forward several prosecutions of cruelty to animals offences. None of the cases have been successful.

Two of the parties withdrew their actions and in another case, issues arose because of the appropriateness of evidence.

These cases imposed unnecessary time and costs on the New South Wales judicial system.

The proposed amendment seeks to overcome this inefficient situation.

Currently, only authorised officers may enter and inspect premises to investigate reported breaches of animal cruelty.

Therefore, those authorised officers are best placed to bring forward a case for prosecution.

There has been significant concern that the Prevention of Cruelty to Animals Act may encourage trespass. This is because, like authorised officers, individuals need to collect evidence of a breach of animal cruelty. Individuals who are not authorised officers are unlikely to have the landowner's permission to collect evidence.

However, any evidence obtained during trespass is inadmissible in court, and the case could be struck out as a result.

By not specifying who may initiate a prosecution under the Act, there is a possibility that trespass may be seen to be tacitly encouraged.

There is another significant concern with trespass. This is concern about on-farm biosecurity. The ramifications of biosecurity breaches are all too clear in light of the current equine influenza crisis in New South Wales.

So far, the New South Wales Government has spent over \$20 million dollars to manage horse flu. Further, the Government has committed hundreds of employees and thousands of work hours to its management. As well, private sector vets have assisted enormously.

The New South Wales horse community has suffered significant hardship during this outbreak with all sectors of the industry, big and small business, affected.

The financial ramifications of a pest or disease incursion can be catastrophic to the viability of farming properties. In some circumstances, depending on the size of the farm, a pest or disease can also have significant implications to the industry, and the New South Wales economy.

An incursion or a pest or disease could mean that a farmer is required to provide expensive and timely treatment to affected animals and their associated equipment. In more dire circumstances, a farmer may need to destroy their entire stock.

Members of the house may recall an instance of this, with the devastating impact from the highly virulent Newcastle Disease in 1999. Poultry farmers on the New South Wales Central Coast had to endure significant financial and emotional hardship as a result of having to destroy entire livestock.

Almost two million poultry on sixty-five affected farms had to be destroyed. The stock provided more than 17% of the State's production of chicken meat and almost 7% of the Australian total.

Farmers lost significant income. In addition, to the loss of income from the diseased stock, farmers lost a further six months of income because of the inability to restock immediately. The sheer logistics of supplying chicks meant that some farmers had to wait more than six months to restock.

Due to the capital intensive nature of the industry most producers carry large loans. This loss of income meant that some farms were sold or are involved in Farm Debt Mediation, even today, almost ten years after the outbreak.

The virulency of the disease also meant that the community around Mangrove Mountain also had to endure the imposition of extraordinary quarantine restrictions.

Farm life offers many challenges to survival, besides plant and animal diseases. Farmers have to cope with droughts, floods, bushfires and volatile domestic and world markets.

There is also the challenge of surviving the ageing of the farming population with the loss of younger people leaving for the cities and the subsequent shrinking of towns and villages. In addition, there is pressure for industry to be cleaner and greener.

Members will agree that introducing provisions under the Act to remove any encouragement to deliberately or inadvertently trespass to obtain inadmissible evidence is necessary to help prevent the financial and emotional hardship caused by pest or disease incursions.

The bill before the house today, proposes one amendment to the Act to specify who may institute proceedings for an offence against the Prevention of Cruelty to Animals Act and associated Regulations.

The bill provides that an approved charitable organisation or an officer of an approved charitable organisation will, rightfully, have the authority to prosecute.

The Australian Royal Society for the Protection of Cruelty to Animals – the RSPCA and the New South Wales Animal Welfare League are two such charitable organisations that will be able to continue to investigate and initiate court proceedings for breaches under this animal welfare legislation.

The mission of the RSPCA is to be the lead authority in Australia to prevent cruelty to animals. The RSPCA upholds this important mandate by actively promoting animal care and protection through education and enforcement.

Extensively trained RSPCA inspectors are empowered under the Prevention of Cruelty to Animals Act to investigate complaints against all kinds of animals in all kinds of situations.

Similarly, the Animal Welfare League of New South Wales also operates a team of inspectors who investigate allegations of cruelty to animals. The League is Australia's second largest animal welfare charity and is a leader in current practice relating to animal welfare issues and takes an active role in review and development of animal welfare legislation.

These organisations have extensively trained personnel that can appropriately manage situations of animal cruelty and the subsequent enforcement activities. The RSPCA and the Animal Welfare League also have decades of invaluable experience managing and successfully prosecuting breaches of animal cruelty.

During 2006 - 2007 the RSPCA brought forward 90% of prosecutions made under the Prevention of Cruelty to Animals Act.

Members of the House will agree that it is appropriate that trained personnel only should be given the power to inspect breaches of animal cruelty and consequently gather the appropriate information to successfully mount a prosecution.

Police officers will also be able to institute a prosecution for a breach of the Prevention to Cruelty to Animals Act or associated Regulations. Police officers are extensively trained in the lawful collection of evidence, including laws related to trespass. In addition, the New South Wales Police Force has for a number of years, also successfully prosecuted breaches of animal cruelty.

Members of the house will agree that it is appropriate that a police officer will continue to be able to bring forward a prosecution of animal cruelty.

I would also like to emphasise to the House that the proposed amendment in the bill is consistent with a trend in environmental legislation in New South Wales to regulate the manner in which private prosecutions are available.

One example of this trend is the Plantations and Reafforestation Act 1999. This New South Wales law deals with timber plantations and the reafforestation of land and permits only private prosecutions with the consent of the Minister administering the Act.

I seek the support of the house to progress the amendment to the Prevention of Cruelty to Animal Act 1979.

Only authorised officers may enter and inspect premises to investigate reported breaches of animal cruelty.

It follows that, only those authorised officers can legitimately and in practical terms, bring forward a case for prosecution without any impute of illegality or biosecurity breach.

I commend the bill to the House.

The Hon. DON HARWIN [4.18 p.m.]: The ill-treatment of animals is an unimaginably despicable act and it deserves the harshest of penalties. The Coalition parties have a long tradition of defending animals from mistreatment. Former Premier Askin left our side of politics with a very proud legacy on animal welfare policy. His support for the RSPCA and the imposition of harsher penalties under this legislation were an important part of that legacy. The Prevention of Cruelty to Animals Amendment (Prosecutions) Bill 2007 amends the Prevention of Cruelty to Animals Act 1979 to specify the organisations, persons and groups authorised to institute proceedings for an offence under the Act. Currently any person may initiate proceedings for an offence prescribed under the Act. Most proceedings are instituted by animal welfare organisations, but some are launched as private prosecutions.

According to the Government, over the past six years none of the proceedings initiated by private individuals has been successful. Apparently, the evidence adduced in such cases has been found to be questionable. Consequently, such cases are viewed as costly and inefficient for the judicial system. However, as my colleague the member for Terrigal noted in the other place, this contention is disputed by the Barristers Animal Welfare Panel. I refer honourable members to the remarks of the member for Terrigal. Also in the debate in the other

place, the Minister contended that private individuals do not have the authorised powers relating to the gathering of evidence needed for a case to be successfully prosecuted. For example, individuals have neither the necessary powers of entry nor the requisite powers to remove evidence.

The solution proposed by the Government is to appoint certain approved non-government organisations as the authorised bodies to institute prosecutions under the Act. The bill amends the Act to specify that only the following would be authorised to initiate a prosecution: an approved charitable organisation, an officer who is an authorised inspector under the Act with inspectorial powers and the power to issue penalty notices under the Act, a police officer, the Minister or the Director General of the Department of Primary Industries, a person with the written consent of the Minister or the director general or any other person or persons prescribed by the regulations for that purpose.

According to the Minister, at this stage the only approved charitable organisations will be the RSPCA and the New South Wales Animal Welfare League. Both of these organisations are well respected in the community and I note that both have given the bill their support. That is important to know given the serious acts of cruelty that we are talking about when we consider this legislation. Despite this, the Coalition is conscious that as charitable organisations neither can be said to be well resourced for the responsibility that the Government is placing on them. Both the RSPCA and the Animal Welfare League are volunteer-based groups funded through donations and bequests. Certainly, neither organisation will receive financial support from the Government, even though they will be performing the role of law enforcement as a result of this legislation.

However, as the Parliamentary Secretary noted in reply in the other place, 101 of 154 prosecutions they launched in 2006-07 have been successful. That is also something I think the House needs to take into consideration. The member for Terrigal made a number of other remarks outlining some concerns and asked the Government to adjourn debate on the bill in the other place for more time to consider the issues that gave rise to these concerns. This was not granted and we now have the legislation in this House. Therefore, the Opposition has to consider what it will do in those circumstances. We have concluded that while the bill does not represent an ideal outcome, the Opposition will not vote against it.

Mr IAN COHEN [4.22 p.m.]: The Greens do not support the Prevention of Cruelty to Animals Amendment (Prosecutions) Bill 2007, which seeks to restrict despite its name who may initiate proceedings for a breach of the Prevention of Cruelty to Animals Act or regulations. It seeks to ensure that proceedings can be brought only by an approved charitable organisation, an inspector authorised under the Act, the Minister or the Director General of the Department of Primary Industries, a person with the written consent of the Minister or the director general, or a police officer or another person prescribed by regulation. Animal protection groups feel that removal of the right of private parties to commence proceedings for animal cruelty breaches will be a major setback for animal rights. Apart from that, the Greens do not believe it is in the public interest to remove the right of third party prosecutions. Private party prosecutions are a strong English common law tradition and should not be done away with in a piecemeal manner.

By requiring private parties to get the approval of the Minister to launch a prosecution, the process becomes politicised as it would be subject to the consent of a political representative. This undermines prosecutorial independence. Moreover, charities such as the RSPCA do not have the resources to monitor compliance with the legislation so the Prevention of Cruelty to Animals Act will, in effect, become legislation that is not adequately policed. We have seen in this House issues with the Minister for Primary Industries—I do not have a great deal of faith in the opportunities that would be afforded under the new regime if the bill goes ahead. Although Opposition members in the lower House spoke with a degree of intention, I understand the Opposition does not oppose the bill, and that is a great pity. According to Brian Sherman, the Director of Voiceless, the fund for animals:

The right for third parties to commence prosecutions against animal cruelty crimes reflect a common law right that dates back hundreds of years. It is a fundamental aspect of the criminal justice system and the New South Wales Government is proposing to take it away. If this bill is successful, crimes against animals will be less vigorously prosecuted. We will have to rely chiefly on the RSPCA which is an overburdened charitable organisation, forced to focus on what the community perceives to be the most heinous crimes.

Great attention will then be given to domestic animals—dogs and cats and such like—but very often animals in rural areas as well as in commercial enterprises will suffer because they cannot receive adequate attention from the RSPCA. That is a great pity. The bill is also unnecessary. The Director of Public Prosecutions already has the power to take over and discontinue a private prosecution for an indictable offence or a prescribed summary offence. The Government has expressed that a reason for this legislation is "to remove any encouragement to deliberately or inadvertently trespass to obtain evidence". However, there are already well-established principles by which courts determine whether to admit or exclude evidence that has been illegally obtained. Similarly, there already exist laws to protect parties from trespass. There is no reason these could not be used in the relevance circumstances envisaged here. Of all the inspections leading to prosecution matters commence by Animal Liberation, no evidence was gathered unlawfully. In fact, it was often done with the assistance of police.

The fact there have been several unsuccessful private prosecutions, including two that were withdrawn, is put forward by the Government as another reason for the legislation. I hardly think that is a substantive argument for removing the right of private prosecutions. Furthermore, I understand that there have been at least two successful

private prosecutions, including one against a manager of a battery farm of 320,000 hens, who pleaded guilty to animal cruelty. This was the first successful prosecution of a battery hen farmer in New South Wales. Another case was against a dairy farmer who pleaded guilty to repeatedly beating to the head with a heavy vat spanner a dairy cow confined in a milking stall because it kept kicking the milking cups due to pain from mastitis.

Animal Liberation has commenced nine prosecutions in the past nine years. Aside from the two successful ones already mentioned, another matter was settled with Australia Meat Holdings, with the feedlot company agreeing to provide shade for all cattle after 1,200 cattle had died from heat stress. Surely everyone in this House would acknowledge the appropriateness of such action. The matter was settled out of court and it was acknowledged to be an appropriate complaint, with remedial action having been taken and the problem being resolved. This bill is likely to inhibit the prospect of test cases about the protective reach of the statute. Many of the matters commenced by Animal Liberation, particularly in relation to intensive livestock industries, are complex and challenging. It is highly unlikely that such cases would be mounted by the people specified in the bill. It is an onerous task to attempt to expand and embrace elements of suffering and pain that the judiciary have not been presented with before. However, it is important to do so and this avenue should not be stifled by the Government.

A famous test case involved Arna, a solitary circus elephant. Numerous experts were called to give evidence that she suffered psychologically from solitude. Facts harnessed during the case are used internationally by wildlife protection organisations. In the early 1990s there was an important case in Tasmania whereby animal advocate Pam Clarke successfully brought a private prosecution against the Golden Egg Farm. The judge delivered an 18-page judgment finding the owners guilty of seven counts of cruelty to hens.

The organisation and individuals authorised by legislation to bring prosecutions are highly unlikely to take on corporate farming enterprises and challenge practices that can be described as institutionalised cruelty. While many practices undertaken by factory farms are exempt from prevention of cruelty to animals legislation, the boundaries are shifting as to what is acceptable. The European Union, for example, is phasing out the use of battery cages for hens. Sow stalls have been banned in some countries. But while there are practices that are seen by some as business as usual and under this bill would be highly unlikely to be challenged, there is certainly value in the avenue of challenge to be open to private individuals.

Another reason put forward by the Government for this bill is biosecurity risk. In a speech in the other place Michael Daley stated that the Act "may encourage trespass and raise biosecurity concerns because private individuals are permitted to commence proceedings for an offence under the Act". Such concerns can be addressed by the enforcement of existing laws against trespass. There is no evidence of any biosecurity risks or disease outbreaks that have been related in any way to private citizen prosecutions. Such concerns have primarily been caused by the activities of the livestock industries themselves.

Groups such as Animal Liberation, Voiceless and the Barristers Animal Welfare Panel have expressed great concern about this legislation. The Prevention of Cruelty to Animals Act is a public interest statute. It is desirable that its enforcement should be proper and wide ranging. The bill undermines that public interest by removing the right to private prosecutions. It is also inconsistent with other States, which permit private prosecutions for animal protection statutes. The bill is an attempt to restrain any significant investigations and prosecutions that could challenge approved routine practices by livestock industries and others that permit questionable practices on animals that may be proven to be in breach of the Prevention of Cruelty to Animals Act. The Greens do not support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.32 p.m.], in reply: I thank honourable members for their contributions to this debate. These amendments are sensible and necessary. They bring important reform in the areas of prosecutions made under the Prevention of Cruelty to Animals Act and associated regulations. The Hon. Don Harwin spoke about offences being investigated by charitable organisations. The Government is on record that charitable organisations such as the Animal Welfare League and the RSPCA have a proud history and record of protecting animal welfare in New South Wales. The RSPCA dates back to the 1870s in this State. With this long history the public has a clear understanding and recognition of the job they do in enforcing animal welfare laws. Importantly, the public holds these organisations in very high regard.

For those reasons the Government believes it is entirely appropriate that they continue their enforcement role which, in New South Wales, is adequately resourced. It is important to note that in the last financial year the New South Wales Government provided \$420,000 to the RSPCA. It is important to note also that under this scheme police are regarded as an enforcement agency. To assist the RSPCA, further expertise is legally provided through the Department of Primary Industries and the rural lands protection boards. The charitable agencies can also request further assistance and expertise as they may require, such as veterinary or wildlife advice.

In relation to the issues raised by Mr Ian Cohen, there are many examples in legislation in New South Wales and other jurisdictions in Australia where the right to bring a private prosecution is denied. This legislation does not completely deny it; this legislation is different in that it does not attempt to deny the right of a private individual to bring a prosecution under the Act. However, it means that such a prosecution proposal must undergo a review to ensure it has some reasonable chance of standing before the court. There have been some claims and counterclaims during debate about whether or not certain cases have been successful. It is my advice that in the

last six years there have been no successful private prosecutions in this State under this Act.

The prosecution will be subject to a review, which will ensure that there is a better chance of it standing up in court. This includes presenting admissible evidence and an understanding of what constitutes an offence under the Act. Significantly, the review also means that where action may already be underway, for instance by the RSPCA, duplication can be avoided. The issue is not about whether there is evidence that a private prosecution has previously caused a biosecurity breach; it is about responsible management of biosecurity risks. If the recent equine influenza outbreak has taught us anything, it is that prevention is better than cure.

Private prosecutions have the real potential to pose a biosecurity risk because private individuals do not have the authority to obtain evidence without consent, neither do private individuals necessarily have the requisite training, understanding and experience in investigations, part of which is how to manage biosecurity risks. This is especially the case if groups of people are involved in the trespass. There is a further potential biosecurity risk. A trespass may not be detected immediately, especially if no animal welfare issues are found by trespassers. Time is the crucial factor in preventing disease transmission, whether within a property or outside a property. Unnoticed trespass could create the right circumstances for widespread biosecurity risk.

Mr Ian Cohen referred also to the politicisation of the decision-making process. I put on record the following. The processes to which the Director of Public Prosecutions and the Minister are subject both provide for transparent review. In particular, the Minister is directly accountable to Parliament and to the electorate for his actions. The Minister and the Director General of the Department of Primary Industries will carefully consider any application to bring a third party prosecution in light of the available evidence and the objects of the Act. Further, they have the knowledge to include in their considerations any other regulatory activity on the issue, for example, by the RSPCA or the New South Wales Animal Welfare League. As well, they will take into account regulatory activity under such Acts as the Animal Research Act and the Exhibited Animals Act.

The Hon. Don Harwin: This reply is longer than the two speakers who spoke in the second reading debate.

The Hon. PENNY SHARPE: I hope that the honourable member is very pleased that I am providing such a detailed response to the issues raised. The Department of Primary Industries has a unit dedicated to animal welfare that can provide the Minister with objective, expert advice on prosecutions proposed under the Act. Further, it has a litigation unit. While it does not undertake prosecutions under the Prevention of Cruelty to Animals Act, it can provide objective legal advice to the Minister. Importantly, the organisations with authority to prosecute also have a hierarchy of other animal welfare interventions before they need to bring a prosecution. These interventions often bring about a behaviour change in the owner or care of the animal without having to resort to prosecutions. Neither the Director of Public Prosecutions nor individuals attempting to bring a prosecution have these means at their disposal. I thank all members for their contributions and commend the bill to the House.

Question—That this bill be now read a second time—put.

The House divided.

Ayes, 28

Mr Brown	Ms Griffin	Ms Sharpe
Mr Catanzariti	Mr Kelly	Mr Smith
Mr Clarke	Mr Khan	Mr Tsang
Mr Colless	Mr Lynn	Mr Veitch
Mr Costa	Mr Macdonald	Mr West
Ms Cusack	Mr Mason-Cox	Ms Westwood
Ms Fazio	Reverend Dr Moyes	
Ms Ficarra	Reverend Nile	<i>Tellers,</i>
Miss Gardiner	Mrs Pavey	Mr Donnelly
Mr Gay	Ms Robertson	Mr Harwin

Noes, 4

Ms Hale	
Ms Rhiannon	

<i>Tellers,</i> Mr Cohen Dr Kaye	
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Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

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