

Passed by both Houses



New South Wales

Pastoral and Agricultural Crimes Legislation Amendment Bill 2002

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

Legislative Council

2002

Clerk of the Parliaments



New South Wales

Pastoral and Agricultural Crimes Legislation Amendment Bill 2002

Act No , 2002

An Act to amend the *Summary Offences Act 1988* to create an offence of hunting on private land; to amend the *Inclosed Lands Protection Act 1901* to make provision with respect to penalty notices and destruction of goats; to amend the *Rural Lands Protection Act 1998* with respect to documentation concerning transportation of stock by vehicles, the stopping and searching of vehicles transporting stock and the identification of authorised officers; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Pastoral and Agricultural Crimes Legislation Amendment Act 2002*.

2 Commencement

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

3 Amendment of Acts

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

4 Amendment of Rural Lands Protection (General) Regulation 2001

The *Rural Lands Protection (General) Regulation 2001* is amended by omitting Division 4 of Part 4.

Schedule 1 Amendment of Fines Act 1996

(Section 3)

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Inclosed Lands Protection Act 1901, section 10

Schedule 2 Amendment of Inclosed Lands Protection Act 1901

(Section 3)

[1] Section 7 Owner may destroy goats

Omit section 7 (2). Insert instead:

- (2) Subsection (1) does not authorise the destruction of any goat that:
 - (a) is legibly branded, or
 - (b) has around its neck a collar with the name and address of its owner legibly engraved on it, or
 - (c) has an ear mark, or
 - (d) is wearing an ear tag.

[2] Sections 10 and 11

Insert after section 9:

10 Penalty notice for certain offences

- (1) A police officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) Any such notice may be served personally or by post.
- (4) If the amount of any penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment of a penalty in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor in any way as affecting or prejudicing any civil claim, action or proceeding arising out of the same occurrence.

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- (6) The regulations may prescribe the amount of penalty payable for an offence against this Act if dealt with in accordance with this section.
 - (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which 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 which may be taken in respect of offences.

11 Regulations

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.

Schedule 3 Amendment of Rural Lands Protection Act 1998

(Section 3)

[1] Part 10A

Insert after Part 10:

Part 10A Transportation of stock by vehicle

140A Definitions

In this Part:

Accreditation Committee means the Stock Transportation Accreditation Committee constituted by section 140H.

authorised officer means an authorised officer who is:

- (a) a police officer, or
- (b) an authorised officer who is authorised to exercise functions conferred on authorised officers by this Part.

stock means the following:

- (a) cattle,
- (b) sheep,
- (c) any other kind of animal declared by the regulations to be stock for the purposes of this Part.

stock transportation particulars—see section 140B.

Note. *Vehicle* is defined in the Dictionary to this Act to include any means of road, rail, waterborne or airborne transport.

transported stock statement means a document that contains stock transportation particulars and that is in a form approved for the purposes of this Part under section 140J.

140B Stock transportation particulars

- (1) For the purposes of this Part, the following are stock transportation particulars in relation to stock:
- (a) the date the transportation of the stock commenced or is to commence,
 - (b) the address at which the stock were or are to be loaded to commence the transportation,
 - (c) details of the type and number of stock being or to be transported,
 - (d) if the stock are being or are to be transported for the owner or owners of the stock—the name and address of the owner of the stock (or, if there is more than one owner, of at least one of the owners),
 - (e) if the stock are being or are to be transported for a person other than the owner or owners of the stock who is an employee of the owner or owners or is otherwise responsible for the stock—the name and address of that person,
 - (f) the name and address of the person to whom the stock are being or are to be transported,
 - (g) the address to which the stock are being or are to be transported (if different from the address referred to in paragraph (f)),
 - (h) any other particulars prescribed by the regulations.
- (2) In this section:
- address* of a corporation means the registered office or sole or principal place of business of the corporation.

140C Restrictions on the transport of stock by vehicle on a road

- (1) An owner of stock that are to be transported by a vehicle on a road must:
- (a) duly complete a transported stock statement in relation to the stock, and

- (b) if a person other than an owner is to transport the stock, make a copy of the statement,

before the commencement of the transportation.

Maximum penalty: 20 penalty units.

Note. Section 140E requires records of transported stock statements to be retained.

- (2) If the owner of stock causes another person to transport the stock by vehicle on a road, the owner must provide the person in charge of the vehicle at the commencement of the transportation with a transported stock statement in relation to the stock before the commencement of the transportation.

Maximum penalty: 20 penalty units.

- (3) The person who is in charge of a vehicle in which stock are being transported on a road must:
 - (a) be in possession of a transported stock statement in relation to the stock, and
 - (b) ensure that the stock correspond with the description of the stock specified in the document.

Maximum penalty: 20 penalty units.

- (4) A person is not guilty of an offence under this section if the stock concerned are transported or are to be transported under the authority of:
 - (a) a stock permit, or
 - (b) an order made or a permit issued under the *Stock Diseases Act 1923*.
- (5) This section does not apply to the transport of stock by vehicle on a road in the following circumstances:
 - (a) stock transported into New South Wales from another State or the Australian Capital Territory and transported within New South Wales for up to 30 kilometres before proceeding back into the other State or that Territory as part of an unbroken journey,
 - (b) stock transported across or along a road from one part of a holding to another part that would be contiguous with the first-mentioned part but for being separated by the road,

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- (c) stock transported to or from a place for treatment by a veterinary surgeon,
 - (d) stock transported in any other circumstances prescribed by the regulations.
- (6) In this section:
- owner** of stock includes:
- (a) an employee of the owner of the stock, and
 - (b) a person other than the owner of the stock who is responsible for the stock, and
 - (c) an employee of a person referred to in paragraph (b).

140D Restriction on the consignment of stock by rail, water or air transport

- (1) A person must not consign stock that are to be transported by any form of rail, water or air transport to another person (the **consignee**) unless the person has provided the consignee with a duly completed transported stock statement in respect of the stock.

Maximum penalty: 20 penalty units.

- (2) A consignee who is provided with a transported stock statement must (unless the consignee is to be responsible for the stock during the transport) provide a copy of the statement to the person who is to be responsible for the stock during the transport.

Maximum penalty: 20 penalty units.

- (3) A person who is provided by a consignee with a copy of a transported stock statement under subsection (2) must be in possession of the copy until the end of the transport of the stock concerned.

Maximum penalty: 20 penalty units.

- (4) A person is not guilty of an offence under this section if the stock concerned are consigned under the authority of:
- (a) a stock permit, or
 - (b) an order made or a permit issued under the *Stock Diseases Act 1923*.

140E Records of transported stock statements to be retained

- (1) An owner of stock who completes a transported stock statement under section 140C (1) in relation to stock that the owner transports by a vehicle must retain the statement for at least 2 years after the day on which the transportation ends.
- (2) An owner of stock who provides another person with a transported stock statement under section 140C (2) or 140D (1) must retain a copy of the statement for at least 2 years after the day on which the transportation ends.
- (3) A person in charge of a vehicle who is provided with a transported stock statement under section 140C (2) must retain the statement for at least 2 years after the day the transportation ends.
- (4) A consignee who is provided with a transported stock statement under section 140D must retain the statement for at least 2 years after the day on which it is provided.

Maximum penalty: 20 penalty units.

140F Powers to stop and search vehicles transporting stock

- (1) **Vehicle search powers**
An authorised officer may exercise any one or more of the vehicle search powers in respect of a vehicle if the authorised officer has reasonable grounds to believe that the vehicle is being used to transport stock.
- (2) **Power to give reasonable directions**
An authorised officer who exercises a vehicle search power under this section has the power to give reasonable directions (to facilitate the exercise of the power) to any person:
 - (a) in or on the vehicle concerned, or
 - (b) in the vicinity of the vehicle concerned.
- (3) **Preconditions for exercise of vehicle search power**
An authorised officer may give a direction referred to in subsection (2) only if, before giving the direction, the authorised officer:
 - (a) provides evidence to the person that he or she is an authorised officer (unless the authorised officer is a police officer in uniform), and

- (b) in the case of a police officer in uniform—provides his or her name and place of duty, and
- (c) informs the person of the reason for the direction, and
- (d) warns the person that a failure to comply with the direction may be an offence.

(4) **Offence**

A person must (unless the person has a reasonable excuse for not doing so):

- (a) stop a vehicle the person is in charge of when directed under this section to do so by an authorised officer, or
- (b) comply with any other direction given under this section by an authorised officer.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

(5) **Definition**

In this section:

vehicle search power means any of the following powers:

- (a) a power to stop a vehicle transporting stock for the purposes of determining whether or not:
 - (i) the person in charge of the vehicle is in possession of the transported stock statements required by section 140C, or
 - (ii) the person responsible for the stock is in possession of the transported stock statements required by section 140D (2),
- (b) the power to inspect any of the statements referred to in paragraph (a),
- (c) the power to search a vehicle (whether or not stopped under paragraph (a)) transporting stock for the purposes of determining whether stock being transported appear to be the stock to which transported stock statements in the possession of the person in charge of the vehicle, or who is responsible for the stock, relate and to give reasonable directions to any person in the vehicle for the purpose of facilitating the search,

- (d) the power to take possession of any stock or object found in the course of such a search that the authorised officer conducting the search suspects on reasonable grounds constitutes evidence of an offence under this Act or under any other law.

140G Person in charge of vehicle transporting stock to give name and other particulars

- (1) An authorised officer may request the person in charge of a vehicle that the authorised officer has reasonable grounds to believe is being used to transport stock to give the person's name or residential address, or both.
- (2) An authorised officer may make a request referred to in subsection (1) only if, before making the request, the authorised officer:
 - (a) provides evidence to the person that he or she is an authorised officer (unless the authorised officer is a police officer in uniform), and
 - (b) in the case of a police officer in uniform—provides his or her name and place of duty, and
 - (c) informs the person of the reason for the request, and
 - (d) warns the person that a failure to comply with the request may be an offence.
- (3) A person who (without reasonable excuse):
 - (a) fails to comply with a request under this section, or
 - (b) in response to the request, gives a name or address that is false or misleading,

is guilty of an offence.

Maximum penalty: 10 penalty units.

140H Stock Transportation Accreditation Committee

- (1) There is constituted by this section a Stock Transportation Accreditation Committee.
- (2) The Accreditation Committee consists of 3 members of whom:
 - (a) one is to be a person nominated by the Director-General, and

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- (b) one is to be a person nominated by the Commissioner of Police, and
 - (c) one is to be a person nominated by the Livestock Transporters Association of NSW.
 - (3) The member referred to in subsection (2) (b) is to be the Chairperson of the Accreditation Committee.
 - (4) The Accreditation Committee has such functions as are conferred or imposed on the Committee by or under this Act.
 - (5) The procedure for the calling of meetings of the Accreditation Committee, and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Committee.
 - (6) Two members constitute a quorum at a meeting of the Committee.
 - (7) A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.
 - (8) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

140I Application for accreditation

- (1) An application for approval of the form of a consignment note or document as a transported stock statement made to the Accreditation Committee must be:
 - (a) made in such manner and form as the Accreditation Committee may approve, and
 - (b) supported by such information as the Accreditation Committee may require, and
 - (c) accompanied by the application fee (if any) prescribed by the regulations.
- (2) The Accreditation Committee may require an applicant to furnish to the Accreditation Committee, within such time as may be specified, such further particulars as the Accreditation Committee considers necessary to determine the suitability of the proposed form of consignment note or stock transportation document for accreditation.

140J Approval of form of transported stock statement

- (1) The Accreditation Committee may, by order in writing, approve as a transported stock statement a form of consignment note or other document for the purposes of this Part on application made to the Committee under section 140I.
- (2) The Director-General may, by order published in the Gazette, approve as a transported stock statement a consignment note or other document for the purposes of this Part.
- (3) An approval may be given subject to the condition that a document be compiled or identified in a manner specified by the Accreditation Committee or Director-General.

[2] Section 187 Identification

Insert “, other than a police officer,” after “authorised officer” in section 187 (1).

[3] Section 187 (2) and (2A)

Omit subsection (2). Insert instead:

- (2) In the course of exercising the functions of an authorised officer under this Act, an authorised officer, other than a police officer, must, if requested to do so by any person affected by the exercise of the functions, produce the officer’s identification card to the person.
- (2A) In the course of exercising the functions of an authorised officer under this Act, an authorised officer who is a police officer must, if requested to do so by any person affected by the exercise of the functions, produce his or her identification as a police officer (unless he or she is in uniform).

[4] Section 244 Exemptions

Omit “Part 7 or 8”. Insert instead “Part 7, 8 or 10A”.

[5] Schedule 7 Savings and transitional provisions

Insert at the end of clause 1 (1):

Pastoral and Agricultural Crimes Legislation Amendment Act 2002, to the extent that it amends this Act.

[6] Schedule 7, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on Pastoral and
Agricultural Crimes Legislation Amendment
Act 2002**

35 Transported stock statements

- (1) A valid transported stock statement within the meaning of clause 39 (3) of the *Rural Lands Protection (General) Regulation 2001*, as in force immediately before the commencement of this clause, is taken to be a transported stock statement within the meaning of Part 10A.
- (2) The person who filled out and signed such a statement must retain a copy of the statement for 2 years after the end of the journey to which it relates.

Schedule 4 Amendment of Summary Offences Act 1988

(Section 3)

[1] Part 5A

Insert after Part 5:

28J Offence of hunting on private land

- (1) In this section:

animal means any vertebrate animal but does not include a fish within the meaning of the *Fisheries Management Act 1994*.

hunt an animal includes search for, pursue, trail, stalk or drive out the animal in order to capture, trap, harm or kill the animal.

occupier and ***owner*** have the same meanings as they have in the *Rural Lands Protection Act 1998*.

private land has the same meaning as it has in the *Rural Lands Protection Act 1998*.

- (2) A person who, without reasonable excuse (proof of which lies on the person) enters private land and hunts for any animal on the land, without the consent of the owner or occupier of the land, is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

- (3) Without limiting subsection (2), a person is taken to have reasonable excuse for the purposes of that section if:
- (a) the person did not know that the land was private land, or
 - (b) the person is an Aboriginal person:
 - (i) who is a member, or in the company of a member, of a Local Aboriginal Land Council and who is undertaking traditional cultural hunting within the area of the Council in accordance with a permit issued under section 48 of the *Aboriginal Land Rights Act 1983*, or

- (ii) who enters the land and hunts an animal pursuant to a native title right or interest that is the subject of an approved determination of native title or of a registered native title claim, or
- (c) the person enters the land and hunts animals in accordance with a duty imposed on the person under the *Rural Lands Protection Act 1998* or the *Wild Dog Destruction Act 1921* to suppress and destroy the animals, or
- (d) the person is of a class, or enters the land and hunts in the circumstances, prescribed by the regulations.

[2] Section 29B

Insert after section 29A:

29B Penalty notices: hunting on private land without consent of owner or occupier of the land

- (1) A police officer to whom it appears that a person has committed an offence under section 28J may serve on the person a notice to the effect that, if it is not desired to have the matter determined by a court, the person may, within a time specified in the notice, pay an amount prescribed by the regulations to an officer so specified.
- (2) A notice under this section may be served personally or by post.
- (3) If the amount prescribed for an alleged offence under section 28J is paid under this section, no person is liable for any further proceedings for the alleged offence.
- (4) Payment under this section is not be regarded as an admission of liability for the purpose of, nor in any way affects or prejudices, any civil claim, action or proceeding arising out of the same occurrence.

- (5) This section is to be read as supplementing, and not as derogating from:
- (a) any other provisions of this Act or the regulations, or
 - (b) a provision of any other Act or statutory rule,
- in relation to proceedings which may be taken in respect of offences.