



New South Wales

Rural Crime Legislation Amendment Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to amend certain legislation in response to a review of laws relating to stock theft and trespass (the Bradshaw Review), as follows:

- (a) by including any vulnerability of the victim of a crime that arises from the victim's geographical isolation as an aggravating factor in sentencing for all crimes,
- (b) by creating an offence of aggravated trespass on inclosed land where a biosecurity risk is introduced or increased by the trespass, where the offender intends to engage in stock theft or where the offender is in possession of hunting equipment or accompanied by hunting dogs,
- (c) by giving owners of stock, and police officers, the power to apply to the Local Court for a stock mustering order authorising entry onto property owned by another person to muster and recover stock,
- (d) by increasing the maximum penalty for the offence of hunting on private land without the consent of the owner or occupier of the land,
- (e) by extending existing powers of inspectors and police officers to stop, search and detain vehicles and vessels, so that powers that currently apply only in relation to certain hunting offences will apply in the same way to the offence of hunting on private land without consent,
- (f) by empowering both inspectors and police officers to issue a notice to produce, which requires a vehicle or vessel stopped in connection with any hunting offence to be taken to a police station or other place for searching if it is not practicable to search it where it was stopped.

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, except the amendment about stock mustering orders, which commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Acts

Animals Act 1977

Schedule 1.1 specifies the requirements for proving ownership of feral goats, as follows:

- (a) a feral goat that is held in captivity may be bought, sold or otherwise dealt with or disposed of,
- (b) if a feral goat ceases to be held in captivity, all property in the goat is immediately extinguished,
- (c) if a person captures a feral goat that is not held in captivity, the person becomes the owner of the goat.

Crimes (Sentencing Procedure) Act 1999

Schedule 1.2 includes any vulnerability of the victim arising from the geographical isolation of the victim as an aggravating factor in sentencing for any crime.

Game and Feral Animal Control Act 2002

Schedule 1.3 [1] inserts a note about a section that provides that police officers can exercise the functions of an inspector under the *Game and Feral Animal Control Act 2002*.

Schedule 1.3 [2] provides for inspectors (including police officers) to issue a notice to produce, requiring the person in charge of a vehicle or vessel that an inspector has stopped to take the vehicle or vessel to a specified place for the purpose of the carrying out of a search. A notice to produce may be issued only if it is not reasonably practicable to carry out the search where the vehicle or vessel is stopped. The amendment also extends the operation of existing powers of inspectors (including police officers) to stop and search vehicles and vessels in connection with the investigation and collection of evidence about certain hunting offences so that they also apply to the offence of hunting on private land (under section 28J of the *Summary Offences Act 1988*).

Schedule 1.3 [3] makes it clear that the power of an inspector (including a police officer) to seize anything that is found by the inspector in any authorised search, and that the inspector has reason to believe is connected with a game hunting offence, includes anything found in a search carried out after a vehicle or vessel was produced for inspection at a specified place, in compliance with a notice to produce.

Schedule 1.3 [4] also extends the operation of existing powers of inspectors (including police officers) to detain and seize vehicles in connection with the investigation and collection of evidence to the offence of hunting on private land (under section 28J of the *Summary Offences Act 1988*).

Inclosed Lands Protection Act 1901

Schedule 1.4 [1] amends the *Inclosed Lands Protection Act 1901* to create an offence of aggravated trespass where trespass occurs in circumstances that involve:

- (a) the introduction or increase of a biosecurity risk for a particular property, or
- (b) an intention to engage in stock theft, or
- (c) the presence of hunting equipment, including hunting dogs.

Schedule 1.4 [2] provides that proof of reasonable excuse under the proposed amendments lies on the person charged with the offence.

Law Enforcement (Powers and Responsibilities) Act 2002

Schedule 1.5 allows an owner of stock, or a police officer, to apply to the Local Court for a stock mustering order, by inserting the following provisions:

- (a) **Proposed section 210K** defines terms used in the proposed provisions.
- (b) **Proposed section 210L** provides that the Local Court may, on application by the owner of stock or a police officer, make a stock mustering order, which authorises a person named in the order to enter land to conduct a muster of stock, so as to locate and remove it. That person may only do so under the direction and supervision of a police officer, who is authorised to carry out those functions, including with use of any horse, dog, vehicle or equipment.

The proposed section also provides that the Local Court is to make a stock mustering order only if satisfied that the owner of stock or police officer who applied for the order has reasonable grounds for believing that the owner's stock is on land managed or controlled by another person, and either the person managing or controlling the land has unreasonably refused to permit the owner of stock or police officer who applied for the order to enter the land to search for, locate and remove the stock or it is impracticable for the owner of stock or the police officer to obtain such permission.

- (c) **Proposed section 210M** details how an application for a stock mustering order is to be made.
- (d) **Proposed section 210N** requires notice to be given of the making of a stock mustering order to the person managing or controlling the land to which the order relates, if that person did not appear, or was not represented, before the Local Court on the making of the order, and to the police if no police officer was a party to the proceedings for the order.
- (e) **Proposed section 210O** provides that the person authorised by a stock mustering order to enter land may enter the land and do the things that the person is authorised to do by the order. The proposed order also requires notice to be given before the entry is made and makes it clear that a stock mustering order does not authorise a police officer or any other person to enter any part of land that is used for residential purposes.
- (f) **Proposed section 210P** makes it an offence for a person who has knowledge of a stock mustering order to do or omit to do anything with the intention of frustrating action under the order or to obstruct a person who is acting under the order. The maximum penalty for the offence is 50 penalty units (currently \$5,500) or 6 months imprisonment.

Summary Offences Act 1988

Schedule 1.6 [1] increases the maximum penalty for the offence of hunting on private land without the consent of the owner or occupier of the land from 10 penalty units (currently \$1,100) to 20 penalty units (currently \$2,200).

Schedule 1.6 [2] and [3] provide for inspectors appointed under the *Game and Feral Animal Control Act 2002* to issue penalty notices for the offence of hunting on private land. Currently only police officers can issue such penalty notices.