



## NSW Legislative Council Hansard

### Prevention of Cruelty to Animals Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Friday 6 May 2005.

#### Second Reading

**The Hon. TONY KELLY** (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.12 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 Act 1979* is the principal Act concerning the welfare of animals in this State. Its objects are to prevent cruelty to animals, and promote the welfare of animals through proper care and humane treatment. In terms of its practical application, much of the work under the Act is done by officers of the RSPCA and the Animal Welfare League. Both organisations are independent, approved charities, and they rely almost entirely upon community donations to fund their activities, including their enforcement and compliance activities under the Act. It should be noted that NSW Police officers also have enforcement powers under the Act.

The amendments will significantly improve the Act's operation and the officers' enforcement capabilities. The bill extends the powers of officers, introduces a system of penalty notices for offences, makes a number of amendments to improve the efficiency of enforcement and prosecutions, and also clarifies a number of provisions.

The major aim of the bill is to allow early intervention, with greater powers being given to officers to prevent harm to animals in the early stages. Perhaps most importantly, the bill gives officers the power to issue directions to people to care for their animals.

To a certain degree, the amendments are about education. By giving officers the power to intervene, they can provide essential welfare information about the specific needs of individual animals. Often, the cruelty that animals suffer is due to ignorance. The amendments will help overcome that ignorance by providing officers the ability to give directions about the care and welfare of an animal.

The other major aim of the bill is better responses once offences have been committed. In particular, the powers of police officers and inspectors are being expanded. The rules for conducting prosecutions are also being addressed. Overall, the amendments will significantly improve enforcement and compliance powers, as well as ensure efficiency in procedures when matters come before the courts.

The bill provides, therefore, a dual approach to improving animal welfare. On the one hand, there will be greater early intervention and education and, on the other, there will be improved enforcement and compliance provisions.

Before I explain the details of each amendment, there are two general points I wish to make. The first concerns the consultation that was conducted in preparing the bill.

There are several groups with an interest in this bill, including the farmers of New South Wales, the RSPCA and the Animal Welfare League. I am advised that talks were held with the RSPCA and the Animal Welfare League on a number of occasions, and that the New South Wales Farmers Association was consulted. I am further advised that there were positive responses to the bill. Additionally, the professional association of this State's vets—the New South Wales Division of the Australian Veterinary Association—was consulted. Once again, I am told that there was positive feedback.

The other point concerns the development of the bill. The bill is the result of a review and improvement process, which the Department of Primary Industries conducts on an ongoing basis in conjunction with stakeholders.

In recent years various shortcomings in the Act have been identified, and new and better ways of preventing cruelty to animals have been considered. As I have indicated, officers of the department routinely meet with staff of the RSPCA and the Animal Welfare League, as well as other groups. Many of the amendments in the bill have come about from discussions at those meetings.

The bill is a collection of sensible and practical reforms that have taken several years to develop. The Government has taken time to make sure that the changes are correct, and that proper consultation has taken place. The recent 2003 penalty amendment bill and the tail docking bill were required quickly to comply with election promises and other government commitments to the Commonwealth and the States, so those changes were introduced separately. Prior to that, the last time the Act was significantly amended was 1997.

So, although recent amendments to the Act have been split into three bills, they should be seen as one package. It is a comprehensive and sensible package, and one that is aimed at improving the welfare of animals.

I will now deal with each of the amendments, beginning with the changes to the powers of police officers and inspectors. These changes are perhaps the most significant reforms in the bill. They expand the powers to investigate offences and to protect animals from abuse. As well as adding new powers, the bill amends the existing provisions—such as those dealing with search warrants and seizure of animals—to make them more appropriate to the job of animal welfare. The provisions under part 3 of the Act dealing with officers' powers have also been rewritten and revised. This was necessary because a number of ad hoc amendments to the Act, which have been made over the years since it was enacted in 1979, have seen its structure and wording become cumbersome and unclear. The amendments clarify the provisions of part 3.

Turning now to each of the amendments, the bill expands the current power under section 27A for an officer to require a person's name and details. At present, the Act provides that an officer can demand the name and address of people who are committing an offence, or who are suspected of committing an offence. The bill extends this power to include the names and addresses of drivers committing an offence involving a vehicle, or drivers who are suspected of committing an offence involving a vehicle.

A related amendment is a new power to require disclosure by the person responsible for a vehicle, or another person who might have information, concerning the name and address of a driver who is thought to have committed an offence. This could apply, for example, where there is a failure to tether a dog on the back of a utility, or where heat-stressed dogs are locked in cars. It could also apply where a driver fails to alleviate the pain of an animal that they have hit, or to stop animals falling from a moving truck due to poor containment. This power is needed because alleged offences under the Act often involve a vehicle, but the only information available to identify the alleged offender is the registration number of the vehicle. The number discloses the owner, but not necessarily the alleged offending driver.

A further amendment improves police officers' current power to stop vehicles. Under the amendment in this bill, the police will have the power to stop vehicles and direct the driver to move the vehicle so that it can be inspected. These powers will apply where an animal is thought to be in distress as a result of cruelty or where an animal has not been provided with proper food, water or shelter.

The extended powers might be used, for example, in relation to stock transport vehicles where animals have collapsed, or they might be used where pigs are sunburned, or where animals have not received water in 24 hours. Where such cases come to the notice of inspectors, they will call the police and seek their help. These are sensible amendments, which will help to ensure that people provide the basic care and protection to animals under their control while the animals are in transit.

The bill makes several other amendments to powers under the Act. These powers will apply to both police officers and inspectors appointed under the Act, such as officers of the RSPCA and the Animal Welfare League.

Beginning with the power of entry, the amendments in this bill extend the power for police officers and inspectors to enter private property. At present, section 26 gives them the power to enter premises if they suspect that an animal is being treated cruelly, or if an animal is going to be treated cruelly. In section 4, "premises" is defined as any place that is not a public place.

The amendment in this bill expands the definition of "premises" to cover vehicles and other forms of transport.

Members would be aware that animals, particularly dogs, are sometimes left in cars. They can suffer heat exhaustion, or even stroke. Livestock too can be confined in vehicles such as trains, trucks, ships and planes. Under current provisions, police officers and inspectors do not have the power to enter the vehicles or vessels to examine animals or to relieve their suffering. The amendment in this bill fixes that problem.

Under this amendment, officers and inspectors will be able to enter or forcibly enter a vehicle if a cruelty offence is suspected. This provision will allow dogs to be rescued when locked in cars on hot days, something that is not legally possible at the present time. As everyone would agree, this is a much needed power.

However, not all the changes to officers' powers in this bill involve extensions. One of the amendments will restrict an existing power.

Currently, officers have an unrestricted ability to enter residences in the exercise of their duties. Under this bill, that power is to be limited to situations where the owner has given consent, or when the officers are authorised by a search warrant, or when it is likely that an animal welfare emergency exists. These emergencies will include situations where the officer believes that an animal has suffered a serious injury, or is in need of urgent veterinary treatment, or where the officer requires entry to prevent an animal suffering serious physical injury.

This amendment will assist in protecting privacy, while still allowing officers to look after the welfare of animals in need. I must point out that the amendment does not change the law in relation to non-residential places, where there is no need for a search warrant.

The next amendment also concerns search warrants. Under the Act, a search warrant can be obtained in relation to a search for an animal. The amendment in this bill extends the current provision to cover searches for things such as prohibited electrical devices, cockfighting spurs, incriminating documents or the carcass of an animal, in addition to searches for live animals.

Another amendment concerns officers' powers to seize animals.

Under the current provisions of the Act, officers can seize an animal that has been treated cruelly and take it elsewhere, but they cannot seize the animal and keep it where it is. This is a serious omission in the officers' powers, and it could result in even greater suffering for the animal. Imagine stock animals that were not fed or given water, or were very ill through poor treatment. In these cases, if the animals were moved, they would be put through additional distress and could even die.

It would be much better to water, feed or treat the animals where they are found. This bill will allow that to happen. By treating and caring for an animal where it is found, the distress, suffering and possible death associated with transporting the animal will be avoided. The care for the animal by the enforcement agency on the owner's land would terminate when the animal's proper care and health were ensured, or when they could be safely moved.

The last of the amendments concerning officers' powers that I will address is the power to give directions on the care of animals. This is a very important and useful amendment.

Currently, the only enforcement tool in the Act is a prosecution. This necessarily presumes that poor treatment or cruelty has already occurred. It is, therefore, a backward-looking means of protecting animals. There is no tool in the Act that is preventative in nature. The amendment in this bill fixes that shortcoming. A new power will allow inspectors to give directions to those responsible for animals. For example, an officer will be able to direct that an animal receive medical treatment, or water, or be provided with shelter. The range of possible directions to ensure the animal's wellbeing is very broad.

It is likely that this power will be used for first offenders, or in cases of less serious breaches of the Act. It gives people the chance to fix the problem. The power to issue directions will provide a new, more appropriate tool for inspectors to use in the care of animals. It also brings New South Wales into line with the approach in Western Australia, the Northern Territory and Queensland.

Importantly, these directions will prevent serious cruelty from occurring in many cases.

A related amendment is the change to the definition of "veterinary treatment". It is being expanded to cover consultations and diagnostic procedures.

When read with the directions powers, this change will allow inspectors to direct people to have their animal properly examined and its condition diagnosed. In turn, this will improve the chances of the animal receiving effective treatment.

I need to point out some limitations on the directions power amendment. Let me assure members that the power will not be a free-for-all. The bill introduces several safeguards to make sure the power is used properly.

Firstly, the power to give directions can be used only if an officer has reasonable grounds to think that a person has committed an offence under the Act. Officers will not, therefore, be free to make orders without some objective grounds for thinking that cruelty has already occurred.

Secondly, a failure to follow a direction will not be an offence in itself, and there will be no penalty. Failure to follow a direction could, however, be considered in court proceedings for an offence arising from the situation or a similar matter.

Looking more generally, the bill introduces other safeguards on the powers I have described so far. These safeguards were developed in consultation with the Attorney General's Department. In exercising the powers,

officers will be obliged to identify themselves. They will have to inform the person why they are using the power, and they will have to warn that a failure to comply with an order could be an offence. Also, as I have previously noted, only police officers will have the power to stop and direct drivers of vehicles.

Therefore, even though many of the powers are being broadened, there will be appropriate protection for the public.

The next amendment relates to penalty notices.

Under the Act as it currently stands, the only way to penalise a person is through court proceedings. Therefore, enforcement agencies are obliged to mount a prosecution if an alleged offender is to be penalised.

But prosecuting offenders, particularly when an offence might be considered in the lower range, imposes a considerable burden on enforcement agencies. There are costs in time and money, particularly legal costs. Therefore, enforcement agencies may exercise discretion to refrain from bringing proceedings where the alleged offence is regarded as less serious in nature. Consequently, the alleged offender is left unpenalised and deterrence is not achieved.

To overcome this shortcoming in the Act, the bill introduces a system of penalty notices. Members would be aware of the many other statutes that have adopted the penalty notice system. It has proven extremely successful in dealing with less serious offences by avoiding the costs of court proceedings.

The amendments to the Act currently before the House bring the benefits of the penalty notice system to the protection of animals. Under a new section 33E, inspectors or police officers will be able to issue penalty notices where the facts are clear and it appears to them that a person has committed an offence. For example, a penalty notice could be issued where someone failed to tether a dog in the back of a utility, or where someone has not provided proper water, food or shelter for an animal. Penalty notices could also be used for first offences where the offence has been committed through ignorance or carelessness.

I must stress, however, that penalty notices will not replace prosecutions as an enforcement tool. Agencies will still be able to bring proceedings for offences, particularly serious offences.

The amendment does not specify the offences covered by the penalty notice system. These will be addressed in the regulations and will include a number of the offences under the Act. Similarly, the amount of the penalty notice will be set in the regulations. At this stage I can indicate that they will range from 2 penalty units, or \$220, to 5 penalty units, or \$550. This is in line with the amounts set for offences under other statutes. It is expected that a full public review of the regulations will occur during 2005. The recommended amendments to the regulations following this review should include a number of penalty notice offences.

The penalty notice amendment will greatly increase the efficiency of the Act's administration. The system will cover many types of offences that were often not prosecuted in the past. It will also free up resources that would be tied up with court proceedings, allowing these resources to be directed to more serious cases. However, the amendment will not take away a person's right to defend himself or herself in court. A person who is given a penalty notice will be able to defend it in the Local Court and the matter will then be heard before a magistrate in the usual way.

The next amendment concerns guidelines. The bill amends section 34A to clarify the use of guidelines for the welfare of farm and companion animals.

This amendment is required because there has been some doubt expressed about whether codes of practice can be considered as guidelines. It is a technical amendment, but it will make sure that the various national codes of practice for the care and welfare of animals come within section 34A. This also means that any reference to guidelines or codes of practice within the Act can be easily found.

Another amendment in this bill removes the existing defence for veterinary surgeons against charges of cruelty under the Act.

This change is consistent with national competition policy. A review of the Act found that veterinarians were unnecessarily protected from prosecution if they were involved in the treatment of an animal or if they were conducting surgery. This defence also provides a significant barrier to disciplinary procedures against vets by the Board of Veterinary Surgeons.

The defence provision once served a purpose, particularly when painful operations were performed without pain relief. This was at a time when the techniques of analgesia were less advanced and public expectations were lower. For example, the firing of horses' legs was done without painkillers. In such cases it would have been inappropriate to charge the vet with an offence under the Act.

However, times have changed, and there have been major improvements to animal care. Veterinary science and public expectations regarding professional behaviour and the humane treatment of animals have greatly progressed. It is no longer acceptable to exempt vets from prosecution for cruel treatment of animals during a medical treatment or surgical procedure. Therefore, this bill removes that defence.

Discussions with members of the New South Wales Division of the Australian Veterinary Association have raised no significant concerns about the repeal of the defence. This change will bring New South Wales into line with Tasmania, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory.

The removal of the defence is not significant in practical terms. Animal welfare concerns and contemporary standards of veterinary practice are intimately related and are not at odds with each other. Indeed, the Australian Veterinary Association has recently redrafted its code of practice and this is now under consideration by the association's members. In the code the foremost principle of practice states:

*Veterinarians shall always consider the welfare of the animal first in the provision of veterinary services.*

The Act also contains a variety of modifications and other changes. Members can consider these for themselves, but I will point out a few.

Firstly, the bill introduces changes to the reporting obligations of charities, providing that they can report at the end of September instead of the end of July.

Secondly, the power of the courts to prohibit convicted offenders from having animals is expanded to cover any person who is convicted under the Act.

Thirdly, the limitation period for prosecutions is extended from 6 months to 12 months and the requirement that a separate summons for each offence is modified so that a court can consider whether an offence involved more than one animal. In this way the court will be able to examine the seriousness of offences where they relate to herds, flocks or other groups of animals of the same species at the same place.

Fourthly, the requirements for charities to advertise animals for sale are being replaced by other more cost-effective and appropriate means of publicising that the animal is to be sold.

Fifthly, a defence of feeding predatory animals live food is being introduced. However, this defence is subject to several safeguards to ensure that only predatory animals are given live food.

Sixthly, the definition of "stock animal" is being expanded to include deer, which are currently included by means of regulation. This change recognises that deer are commonly farmed these days. However, the amendment has no bearing or influence on other legislation where deer may be separately considered as pest animals or as wild game. Also, the word "swine" is being changed to "pig" to bring the Act up to date.

The seventh change concerns the tethering of birds. Section 10 of the Act currently provides that where an animal may be lawfully tethered, the animal must not be tethered for an unreasonable length of time or by means of an unreasonably heavy or unreasonably short rope, chain or cord.

However, the words in section 10 are inadequate. They mean that animals can still be improperly tethered by means of other materials, which may include a leather thong, a fishing line or wire.

The bill amends section 10, therefore, so that specific mention of tether material or construction is omitted. In this way the full intention behind the prohibition will be reflected in the wording.

Another section of the Act dealing with tethering is also being amended. Section 21D prohibits the chaining of a bird by the use of a leg ring and chain. It, too, is inadequate at present. For example, cockfighting birds can be tethered with a number of different materials and methods that are not presently caught by the words of the Act. To overcome this problem the bill extends section 21D to make it an offence to fasten a bird by any kind of tethering device.

These amendments will not affect the proper use of jesses for birds of prey. In fact, there will be a specific defence for the use of jesses. In case members do not know, a jess is a strip of leather attached to the leg of a raptor. However, the defence is to apply only when a raptor is tethered to its handler.

Also, as a matter of housekeeping, the two provisions concerning tethering will be incorporated in section 10.

The last amendment I wish to address concerns the prohibition in section 21 of the Act. This is the prohibition against sporting-type activities, such as coursing, where an animal is kept or confined and then released so dogs can chase, catch or confine the animal.

There has been concern expressed that the word "used" in relation to a chased animal, which currently appears in section 21, could broaden the scope of the section so that vertebrate pest control and other legitimate activities are caught by the section. For example, it is possible that the section covers the chasing of rabbits by dogs to confine the rabbits in burrows before warren destruction, or it could cover the moving of sheep during dog trials or mustering.

To make sure that there is certainty as to the scope of the offence, the section is to be amended by replacing the word "used" with the more specific words "released from confinement". In this way the offence will be limited to sporting-type activities where animals are kept and released to be chased, caught or confined by dogs. There will also be a specific exemption for sheep dog trials, mustering of stock, working of stock in yards and other animal husbandry activities.

This bill brings a number of significant improvements to the Act. It allows for early intervention and greater public education. But the bill does not ignore the powers of compliance. As I have explained, the powers of officers, inspectors and the courts are to be improved and expanded. It is expected that the combination of the two approaches will greatly improve the welfare of animals.

I commend the bill to the House.