

Prevention of Cruelty to Animals Amendment Bill 2004

New South Wales

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)*:

- (a) to expand the definitions of **stock animal** and **veterinary treatment** for the purposes of the Act, and
- (b) to prohibit the tethering of birds except in limited circumstances, and
- (c) to make changes to the offences relating to the use of live animals as lures in sporting-type activities involving other animals, and
- (d) to remove the general defence against offences under Part 2 of the Act of committing the act concerned in the course of providing veterinary treatment, and
- (e) to substitute the provisions relating to the powers of inspectors and police officers under the Act so as to expand those powers while including certain controls in the use of those powers, and
- (f) to expand the current powers of a court to ban persons convicted of certain offences against animals from owning any animal, and
- (g) to make various changes to the way in which charitable organisations may deal with stray animals in their care and to the reporting requirements under the Act of approved charitable organisations whose officers exercise law enforcement powers, and
- (h) to enable penalty notices to be issued for prescribed offences against the Act or the regulations, and
- (i) to make other minor amendments to improve the administration of the Act.

The Bill also makes consequential amendments to the *Fines Act 1996* and the *Law Enforcement (Powers and Responsibilities) Act 2002*.

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.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

Schedule 1 Amendment of Prevention of Cruelty to Animals Act 1979

Changes to offence provisions of Principal Act

Schedule 1 [5] amends section 10 of the Principal Act which currently contains an offence of tethering or authorising the tethering of an animal for an unreasonable length of time or by means of an unreasonably heavy or short rope, chain or cord. The amendment replaces the reference to “rope, chain or cord” so that the offence will apply to any sort of tether.

Schedule 1 [8] amends the offence contained in section 21 of the Principal Act of causing, procuring, permitting or encouraging an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog to limit the offence to circumstances in which the animal used has been confined and then released.

Schedule 1 [9] provides a new defence to the offences contained in section 21 of the Principal Act. The defence relates to the working of stock in yards or any other animal husbandry activity and to sheep dog trials. The amendment also makes it clear that those offences will not extend to hunting, shooting, snaring, trapping, catching

or capturing an animal by using a dog if it is done in a manner that inflicts no unnecessary pain on the animal.

Schedule 1 [10] omits section 21D of the Principal Act which contains an offence of confining a bird by means of a ring around its leg attached to a chain. **Schedule 1 [6]** creates an offence of confining a bird by means of any tether. An exception is made for the tethering of a raptor to its handler by means of a jess.

Schedule 1 [11] removes the defence for an offence against Part 2 of the Principal Act where the act constituting the offence was done in the course of providing veterinary treatment. The defence applied to veterinary surgeons and persons acting under their instructions. **Schedule 1 [13]** makes a consequential amendment.

Schedule 1 [12] provides a new defence for an offence against Part 2 of the Principal Act where the act constituting the offence was the feeding of live prey to a predatory animal and the person committing the act reasonably believed that the animal required feeding by that method to survive.

Powers of officers

Schedule 1 [15] omits provisions of the Principal Act which contain powers of officers under that Act. **Schedule 1 [14]** inserts proposed Part 2A into the Principal Act which deals with powers of officers and contains the following provisions:

(a) Proposed section 24A enables an officer to require the name and address of a person found committing an offence against the Principal Act or the regulations or whom the officer suspects on reasonable grounds of committing such an offence. This re-enacts existing section 27A of the Principal Act. However, the proposed section also enables an officer to require the name and address of a person who is in charge of a vehicle that the officer suspects on reasonable grounds has been instrumental in the commission of such an offence.

(b) Proposed section 24B enables an officer to require a person who is responsible for a motor vehicle or has custody of it to provide the name and address of a person who is alleged to have committed an offence against the Principal Act or the regulations while driving the motor vehicle. The proposed section is similar to provisions contained in section 21 of the *Road Transport (General) Act 1999* in relation to traffic offences.

(c) Proposed section 24C requires an officer to provide identification and other information, and to give certain warnings, when exercising powers under the proposed Part.

(d) Proposed section 24D defines certain terms used in the proposed Part. In particular, **inspector** is defined to mean an officer holding an authority issued by the Minister, or by an officer of the Department of Primary Industries authorised by the Minister, and includes a police officer and **land** is defined to include a vehicle, vessel or aircraft.

(e) Proposed section 24E enables an inspector to enter land for the purposes of exercising certain functions. This is similar to existing section 26 (7) of the Principal Act. An inspector may enter land that is used for residential purposes only with the consent of the occupier, under the authority of a search warrant or if the inspector reasonably believes that it is necessary to help a seriously injured or ill animal.

(f) Proposed section 24F enables an inspector to make an application for a search warrant in certain circumstances.

(g) Proposed section 24G enables an inspector to enter certain commercial premises to carry out inspections for the purposes of ensuring that the provisions of the Principal Act or the regulations are not being contravened. This re-enacts existing section 25 of the Principal Act.

(h) Proposed section 24H enables a police officer to stop and detain a vehicle or vessel and examine an animal on it if the police officer suspects that certain

offences against the Principal Act have been or are being committed in relation to the animal.

(i) Proposed section 24I sets out certain circumstances in which an inspector may examine an animal (for example, if the inspector suspects that an offence against the Principal Act or the regulations has been committed in relation to the animal or the animal is severely injured or diseased).

(j) Proposed section 24J sets out the powers of inspectors in relation to animals that they have examined. Those powers include taking possession of the animal and providing it with necessary food, drink or veterinary treatment. The proposed section re-enacts existing section 26 (1)–(5).

(k) Proposed section 24K enables an inspector who is lawfully on land investigating the commission of an offence to seize any thing that is evidence of the offence. The proposed section re-enacts existing section 26A.

(l) Proposed section 24L requires that a power to enter land or detain a vehicle under the proposed Part not be exercised for a longer period than is reasonably necessary.

(m) Proposed section 24M enables an inspector to obtain certain assistance when exercising certain powers under the proposed Part.

(n) Proposed section 24N enables an inspector, if satisfied on reasonable grounds that a person is contravening a provision of the Principal Act or the regulations in relation to the care of an animal, to give the person a notice in writing of the action required to be taken in order to avoid the contravention. The notice (and evidence of any action specified in the notice that was taken or not taken) is admissible in evidence in proceedings for the offence concerned or a similar offence.

Schedule 1 [7], [16], [19] and [21] make consequential amendments.

Provisions relating to charitable organisations

Schedule 1 [20] amends section 31A of the Principal Act to enable a charitable organisation to sell or dispose of an animal after 21 days if it has made reasonable inquiries to find the owner and the owner has not been found or has refused to take care of the animal. If the owner has surrendered the animal to the organisation, the 21-day period does not apply. Currently, the section requires a charitable organisation to advertise an animal for sale before disposing of it regardless of the likelihood of the animal being able to be sold.

Schedule 1 [25] changes the reporting requirements for charitable organisations approved under the Principal Act for the purposes of their officers exercising law enforcement powers under that Act. The amendment extends the time within which reports under the Principal Act have to be provided to the Minister from 1 month after 30 June in each year to 3 months after 30 June in each year. The amendment also enables the regulations to prescribe the matters that must be addressed in the report.

Miscellaneous amendments

Schedule 1 [1] amends the definition of **officer** in the Principal Act to enable the Minister to authorise an officer of the Department of Primary Industries to appoint public servants as officers for the purposes of that Act.

Schedule 1 [2] expands the definition of **stock animal** in the Principal Act to include deer.

Schedule 1 [3] changes an obsolete expression used in the definition of **stock animal** in the Principal Act.

Schedule 1 [4] expands the definition of **veterinary treatment** in the Principal Act to include a diagnostic procedure and consultation.

Schedule 1 [17] expands the operation of section 31 of the Principal Act to enable a court hearing proceedings for an offence against Part 2 of the Principal Act or an offence against the regulations involving the treatment of an animal to prohibit a person from having possession of an animal. Currently, the power of the court is

limited to making such orders in relation to persons who are the owners or otherwise in charge of the animals to which the offence relates. **Schedule 1 [18]** makes a consequential amendment.

Schedule 1 [22] inserts proposed sections 33E and 33F into the Principal Act.

Proposed section 33E enables penalty notices to be issued in relation to offences against the Principal Act or the regulations that are prescribed by the regulations.

Proposed section 33F facilitates the prosecution of offences involving acts or omissions in respect of more than one animal by enabling an allegation in relation to such an offence to refer to the number of animals. The provision also enables a court when sentencing a person for such an offence to take into account the number of animals in respect of which the offence was committed.

Schedule 1 [23] extends the time for the bringing of proceedings for offences against the Principal Act or the regulations from 6 months to 12 months.

Schedule 1 [24] substitutes section 34A of the Principal Act to enable the regulations to adopt a document as guidelines relating to the welfare of species of farm or companion animals. At present, section 34A only enables the regulations to prescribe guidelines relating to such matters.

Schedule 1 [26] and [27] contain provisions relating to savings or transitional matters.

Schedule 2 Amendment of Acts

Schedule 2.1 amends the *Fines Act 1996* as a consequence of the enactment of proposed section 33E of the Principal Act relating to penalty notices.

Schedule 2.2 makes a consequential amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Schedule 2.3 amends the Principal Act as a consequence of the *Veterinary Practice Act 2003*.