

First print



New South Wales

Non-Indigenous Animals Amendment Bill 1996

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 *Non-Indigenous Animals Act 1987*:

- (a) so that non-indigenous animals may in future be classified, for the purposes of controlling their importation, movement and keeping under that Act, in accordance with the system of classification of species used by the National Vertebrate Pests Committee of the Standing Committee on Agriculture and Resource Management, and
 - (b) to make other amendments relating to the administration of that Act.
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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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Non-Indigenous Animals Act 1987* set out in Schedule 1.

Schedule 1 Amendments

Classification of animals

Schedule 1 [4] repeals and substitutes section 6 of the Act, and inserts a new section 6A, to provide for classification of animals by regulation according to specified criteria. The criteria are drawn from the animal classification scheme now in use by the National Vertebrate Pests Committee, and include factors such as the pest potential of an animal, any danger it may pose to humans and any necessary security precautions that need to be taken in respect of its keeping or transportation. Regulations made from time to time to implement or revise animal classification for the purposes of the Act must be drawn up with due regard to animal classification schemes used by the Committee or otherwise in use nationally. The new provisions replace existing machinery for classification of animals by the Minister by Gazette notice.

In keeping with the national classification scheme, animals in some categories (called "controlled categories") will be subject to the control provisions of Part 3 of the Act, while non-indigenous species in some residual categories (for example, farm animals), although classified, will not be subject to such controls. The control provisions of the Act generally prohibit importation or keeping of animals or enable their importation and keeping, under licence, for the purposes of zoos or other established collections.

Schedule 1 [7]–[9] amend sections 10, 11, 12, 13 and 25 of the Act as a consequence of the amendments made by Schedule 1 [4]. (These sections identify offences that depend on animal categories.)

Vesting of functions in the Director-General

Schedule 1 [11] amends sections 15, 18, 19 and 25 of the Act so as to provide that certain functions currently vested in the Minister will in future be vested in the Director-General of the Department of Agriculture. The functions involved relate to the grant and renewal of licences and to the seizure and disposal of animals under the Act.

Itineraries for travelling circuses and shows

Schedule 1 [12] repeals section 22 of the Act, which currently requires the promoters of circuses and travelling shows to submit details of their itineraries to the Minister.

Seizure of cages or other housing for animals

Schedule 1 [16] amends section 25 of the Act so as to provide that, when seizing any animal in accordance with the Act, an authorised officer may also seize any cage or other container used to keep the animal.

Self-incriminating admissions

Section 26 of the Act currently provides that, although a person cannot refuse to comply with a requirement under the Act to provide information to an authorised officer on the grounds that to do so might incriminate the person, the answer or document produced cannot be used in evidence in proceedings for whatever offence it tends to confirm. **Schedule 1 [17]** amends the section so as to provide that the answer or document will only be inadmissible if the person furnishing it has claimed the privilege of inadmissibility, before furnishing the answer or document, by stating that it might be incriminating.

Delegation of powers by Minister and Director-General

Schedule 1 [18] inserts a new section 29A to provide statutory authority for delegation by the Minister and the Director-General of their respective functions under the Act.

Minor amendments

Schedule 1 [1] makes a consequential amendment.

Schedule 1 [2] inserts definitions of the expressions *Director-General*, *controlled category*, *higher-risk category*, *lower-risk category*, *non-indigenous animal* and *vehicle* for the purposes of the Act.

Explanatory note

Schedule 1 [3], [5] and [6] make amendments purely to reflect administrative changes since the Act was enacted.

Schedule 1 [10] amends section 14 of the Act so as to make it clear that no application for renewal of a licence may be made or accepted after the date of expiry of the licence.

Schedule 1 [13]–[15] amend section 23 of the Act so as to provide authorised officers, when carrying out an inspection of any premises in accordance with the Act, with specific power to inspect cages and containers that might be used to house or hide an animal.

Schedule 1 [18] and [19] give effect to a Schedule of savings and transitional provisions.

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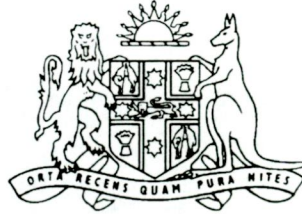


New South Wales

Non-Indigenous Animals Amendment Bill 1996

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New South Wales

Non-Indigenous Animals Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend the *Non-Indigenous Animals Act 1987* in relation to the classification of non-indigenous animals and other matters.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Non-Indigenous Animals Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Non-Indigenous Animals Act 1987 No 166

The *Non-Indigenous Animals Act 1987* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

- [1] **Section 3, definition of "authorised officer" and section 13 (3)**
Omit "of the Department of Agriculture" wherever occurring.

- [2] **Section 3 Definitions** 5

Insert in alphabetical order in section 3 (1):

Director-General means the Director-General of the Department of Agriculture.

controlled category means a category of animals identified under section 6 as a controlled category. 10

higher-risk category means a category of animals identified under section 6 as a higher-risk category.

lower-risk category means a category of animals identified under section 6 as a lower-risk category.

non-indigenous animal means an animal not native to Australia before European settlement. 15

vehicle means any road or rail vehicle or trailer or any aircraft or watercraft.

- [3] **Section 4 Application of Act**

Omit "*Pastures Protection Act 1934*" from section 4 (2). 20
Insert instead "*Rural Lands Protection Act 1989*".

- [4] **Sections 6, 6A**

Omit section 6. Insert instead:

6 Classification of animals

For the purposes of this Act, the regulations may from time to time: 25

- (a) prescribe categories of animals, and

- (b) identify any such prescribed categories as controlled categories, and
- (c) identify any such controlled categories as either higher-risk or lower-risk categories, and
- (d) classify animals, by species, as belonging to any prescribed category. 5

6A Basis of animal classification

- (1) Classification of animals under section 6 is to be based on:
 - (a) the animal's pest potential with respect to agricultural and pastoral interests and the environment, and 10
 - (b) any danger posed by the animal to humans, and
 - (c) security requirements for keeping or transporting the animal, and 15
 - (d) the degree to which the animal, if actually or potentially a pest, is already established, and
 - (e) any other factors identified by the regulations.
- (2) In recommending the making of a regulation for the purposes of section 6, the Minister is to have regard to any scheme of classification currently used by the National Vertebrate Pests Committee of the Standing Committee on Agriculture and Resource Management or by any other persons or bodies prescribed for the purposes of this subsection. 20
25
- (3) Before recommending the making of a regulation for the purposes of this section in relation to any birds, the Minister is to consult any persons or bodies prescribed for the purposes of this subsection.

[5] Section 7 The advisory committee 30

Omit "Council of Advice (being the Council elected by the Conference of the Pastures Protection Boards' Association of New South Wales)" from section 7 (4) (e).

Insert instead "Council of the Rural Lands Protection Boards Association of New South Wales". 35

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- [6] Section 9 Staff of the advisory committee**
Omit "Public Service Board" from section 9 (1) (b).
Insert instead "Public Employment Office".
- [7] Sections 10–13**
Omit "in category 1 or 2" wherever occurring. 5
Insert instead "belonging to a higher-risk category".
- [8] Sections 10–13**
Omit "in category 3" wherever occurring.
Insert instead "belonging to a lower-risk category".
- [9] Sections 13, 25** 10
Omit "in category 1, 2 or 3" wherever occurring.
Insert instead "belonging to a controlled category".
- [10] Section 14 Application for licence**
Insert "but no renewal application may be made or accepted after the
date of expiry of the licence" after "prescribed" in section 14 (3). 15
- [11] Sections 15, 18, 19 and 25**
Omit "Minister" wherever occurring.
Insert instead "Director-General".
- [12] Section 22 Travelling circuses and shows**
Omit the section. 20
- [13] Section 23 Powers of authorised officers**
Insert after section 23 (1) (a) (i):
(ii) open and inspect any cage, container or
enclosure, and

[14] Section 23 (1) (a)

Omit "(ii) generally". Insert instead "(iii) generally".

[15] Section 23 (1) (d)

Omit "animals" wherever occurring.
Insert instead "animals, cages or containers".

5

[16] Section 25 Seizure of animals

Insert after "at large." in section 25 (1):

When seizing an animal in any person's keeping or charge, the authorised officer may also seize and take charge of any cage or other transportable container that may reasonably be suspected of having been used to keep the animal, and may retain any such cage or container for as long as is reasonably necessary to deal further with the animal in accordance with this Act.

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[17] Section 26 Duty to co-operate with officer's investigation

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Omit section 26 (3). Insert instead:

- (3) A person referred to in subsection (1) is not excused from compliance with a requirement made by an authorised officer to answer a question or produce any record or document on the ground that the answer, or the record or document, might tend to incriminate the person. If, however, an individual claims, before complying with the requirement, that the answer given to the question, or the record or document produced, might incriminate him or her, the answer or, as the case may be, the record or document, is inadmissible in evidence against the individual in criminal proceedings other than proceedings under this section.

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Note. Section 187 of the *Evidence Act 1995* provides that a body corporate has no privilege of refusal to answer any question, produce any document or thing on the grounds that to do so might tend to incriminate the body corporate.

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[18] Sections 29A, 29B

Insert after section 29:

29A Delegation

The Minister and the Director-General may each delegate any of their respective functions (other than this power of delegation) to any officer of the Department of Agriculture.

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29B Savings and transitional provisions

Schedule 3 has effect.

[19] Schedule 3

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Insert after Schedule 2:

Schedule 3 Savings and transitional provisions

(Section 29B)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

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Non-Indigenous Animals Amendment Act 1996

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

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- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

Non-Indigenous Animals Amendment Bill 1996

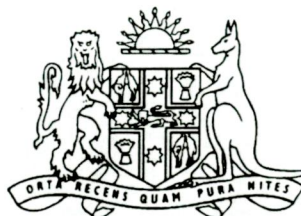
Schedule 1 Amendments

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

2 Saving of certain licences

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The amendments made to this Act by the *Non-Indigenous Animals Amendment Act 1996* do not affect the validity of any licence or permit issued by the Minister.

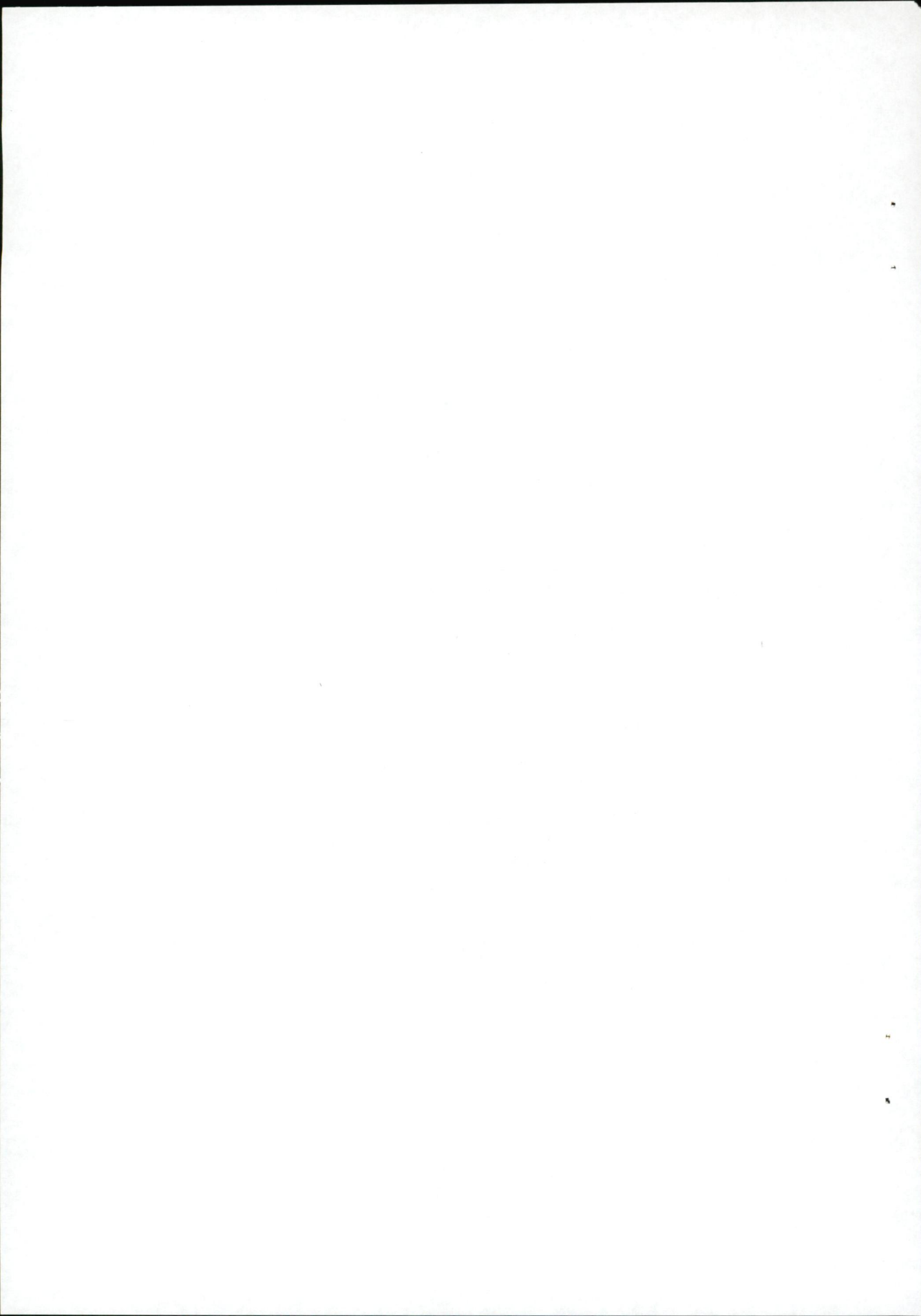


New South Wales

Non-Indigenous Animals Amendment Act 1996 No 23

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New South Wales

Non-Indigenous Animals Amendment Act 1996 No 23

Act No 23, 1996

An Act to amend the *Non-Indigenous Animals Act 1987* in relation to the classification of non-indigenous animals and other matters. [Assented to 19 June 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Non-Indigenous Animals Amendment Act 1996*.

2 Commencement

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

3 Amendment of Non-Indigenous Animals Act 1987 No 166

The *Non-Indigenous Animals Act 1987* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3, definition of “authorised officer” and section 13 (3)

Omit “of the Department of Agriculture” wherever occurring.

[2] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Director-General means the Director-General of the Department of Agriculture.

controlled category means a category of animals identified under section 6 as a controlled category.

higher-risk category means a category of animals identified under section 6 as a higher-risk category.

lower-risk category means a category of animals identified under section 6 as a lower-risk category.

non-indigenous animal means an animal not native to Australia before European settlement.

vehicle means any road or rail vehicle or trailer or any aircraft or watercraft.

[3] Section 4 Application of Act

Omit “*Pastures Protection Act 1934*” from section 4 (2).
Insert instead “*Rural Lands Protection Act 1989*”.

[4] Sections 6, 6A

Omit section 6. Insert instead:

6 Classification of animals

For the purposes of this Act, the regulations may from time to time:

- (a) prescribe categories of animals, and

- (b) identify any such prescribed categories as controlled categories, and
- (c) identify any such controlled categories as either higher-risk or lower-risk categories, and
- (d) classify animals, by species, as belonging to any prescribed category.

6A Basis of animal classification

- (1) Classification of animals under section 6 is to be based on:
 - (a) the animal's pest potential with respect to agricultural and pastoral interests and the environment, and
 - (b) any danger posed by the animal to humans, and
 - (c) security requirements for keeping or transporting the animal, and
 - (d) the degree to which the animal, if actually or potentially a pest, is already established, and
 - (e) any other factors identified by the regulations.
- (2) In recommending the making of a regulation for the purposes of section 6, the Minister is to have regard to any scheme of classification currently used by the National Vertebrate Pests Committee of the Standing Committee on Agriculture and Resource Management or by any other persons or bodies prescribed for the purposes of this subsection.
- (3) Before recommending the making of a regulation for the purposes of this section in relation to any birds, the Minister is to consult any persons or bodies prescribed for the purposes of this subsection.

[5] Section 7 The advisory committee

Omit "Council of Advice (being the Council elected by the Conference of the Pastures Protection Boards' Association of New South Wales)" from section 7 (4) (e).

Insert instead "Council of the Rural Lands Protection Boards Association of New South Wales".

[6] Section 9 Staff of the advisory committee

Omit "Public Service Board" from section 9 (1) (b).
Insert instead "Public Employment Office".

[7] Sections 10–13

Omit "in category 1 or 2" wherever occurring.
Insert instead "belonging to a higher-risk category".

[8] Sections 10–13

Omit "in category 3" wherever occurring.
Insert instead "belonging to a lower-risk category".

[9] Sections 13, 25

Omit "in category 1, 2 or 3" wherever occurring.
Insert instead "belonging to a controlled category".

[10] Section 14 Application for licence

Insert "but no renewal application may be made or accepted after the date of expiry of the licence" after "prescribed" in section 14 (3).

[11] Sections 15, 18, 19 and 25

Omit "Minister" wherever occurring.
Insert instead "Director-General".

[12] Section 22 Travelling circuses and shows

Omit the section.

[13] Section 23 Powers of authorised officers

Insert after section 23 (1) (a) (i):

- (ii) open and inspect any cage, container or enclosure, and

[14] Section 23 (1) (a)

Omit "(ii) generally". Insert instead "(iii) generally".

[15] Section 23 (1) (d)

Omit "animals" wherever occurring.
Insert instead "animals, cages or containers".

[16] Section 25 Seizure of animals

Insert after "at large." in section 25 (1):

When seizing an animal in any person's keeping or charge, the authorised officer may also seize and take charge of any cage or other transportable container that may reasonably be suspected of having been used to keep the animal, and may retain any such cage or container for as long as is reasonably necessary to deal further with the animal in accordance with this Act.

[17] Sections 29A, 29B

Insert after section 29:

29A Delegation

The Minister and the Director-General may each delegate any of their respective functions (other than this power of delegation) to any officer of the Department of Agriculture.

29B Savings and transitional provisions

Schedule 3 has effect.

[18] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings and transitional provisions

(Section 29B)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Non-Indigenous Animals Amendment Act 1996

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication.

2 Saving of certain licences

The amendments made to this Act by the *Non-Indigenous Animals Amendment Act 1996* do not affect the validity of any licence or permit issued by the Minister.

[Minister's second reading speech made in—
Legislative Assembly on 17 April 1996
Legislative Council on 2 May 1996]

