



New South Wales

# Prevention of Cruelty to Animals Amendment Bill 1997

## 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*) to make further provision for the prevention of cruelty to animals and generally to facilitate the more effective operation of the Principal Act in the following ways:

- (a) by expanding certain existing offences, and by creating certain new offences, under the Principal Act,
  - (b) by increasing the penalties for offences under the Principal Act and by providing separate penalties in relation to certain offences when committed by corporations,
  - (c) by enacting provisions dealing with offences by corporations, permitting or failing to prevent the commission or continuance of offences, complicity and common purpose and attempts,
  - (d) by providing that the Principal Act binds the Crown (except in certain specified cases),
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- (e) by clarifying and expanding the powers of enforcement officers including, among other things, providing a power to seize things with respect to which offences have been committed or as evidence of the commission of offences,
- (f) by enabling a Local Court to make orders for the maintenance and care of animals in emergencies and the disposal of animals that have been seized under the Principal Act,
- (g) by enabling the managers of sale-yards and abattoirs to destroy injured or diseased stock,
- (h) by facilitating the disposal of stray or abandoned animals by charitable organisations that have possession of them,
- (i) by making provision for the prescribing, by regulation, of guidelines relating to the welfare of farm or companion animals with evidence of breaches of, or compliance with, such guidelines being admissible in evidence in proceedings under the Principal Act,
- (j) by making various amendments of a consequential or minor nature.

## 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 *Prevention of Cruelty to Animals Act 1979* set out in Schedule 1.

## Schedule 1 Amendments

### Offences

#### Pinioning of birds

**Schedule 1 [3]** provides that pinioning a bird is not an act of cruelty if carried out in the manner prescribed by the regulations (that is, the carrying out of a surgical operation on the wings of a bird so that it cannot fly).

#### Carriage of dogs

**Schedule 1 [6]** provides that it is an offence for a person to carry a dog (other than a dog being used to work livestock) on the open back of a moving vehicle on a public street unless the dog is restrained or enclosed in a way that prevents the dog from falling from the vehicle.

**Schedule 1 [41]** enables appropriately authorised and identified officers to stop vehicles on which dogs are being carried in contravention of the above prohibition, and inserts a provision making it an offence for a person to refuse or fail to comply with a direction to stop.

**Schedule 1 [42]** makes a consequential amendment.

**Provision of food, drink and shelter**

**Schedule 1 [7]** and **[8]** amend an evidentiary provision to make it clear that a failure to provide clean water for an animal to drink during a period in excess of 24 hours is evidence of a failure to provide proper and sufficient drink.

**Schedule 1 [9]** amends an evidentiary provision dealing with the provision of food and shelter to animals so that a period, other than the current 24 hours, may be prescribed by the regulations as the maximum period during which it is not unlawful for food or shelter to be withheld from specified classes of animals.

**Schedule 1 [40]** makes consequential amendments to provisions dealing with the powers of authorised officers in situations in which animals have not been provided with proper and sufficient food or drink.

**Tethering of sows**

**Schedule 1 [11]** provides that it is an offence to tether a sow in a piggery.

**Certain operations not to be performed on animals**

**Schedule 1 [12]** prohibits the tail docking of dogs.

**Schedule 1 [15]** provides a defence if the dog concerned was less than 5 days old when the tail was docked.

**Schedule 1 [16]** exempts tail docking operations on dogs performed by a veterinary surgeon in circumstances, and in accordance with conditions, prescribed by the regulations.

**Schedule 1 [14]** inserts a provision to make it an offence to grind, trim or clip one or more teeth of a sheep.

**Schedule 1 [18]** exempts such procedures, if performed by a veterinary surgeon in circumstances, and in accordance with conditions, prescribed by the regulations.

**Schedule 1 [19]** provides definitions of *clip*, *grind* and *trim*, in relation to the teeth of a sheep, for the purposes of the offence provision.

**Schedule 1 [13]** and **[17]** make consequential amendments.



### **Poisons**

**Schedule 1 [22]** redefines *poison*, for the purposes of a provision dealing with the administration of poisons to animals, to include glass or any other thing likely to kill or injure an animal.

**Schedule 1 [24]** makes it an offence to be in possession of a poison with the intention of using it to kill or injure a domestic animal.

**Schedule 1 [23]** makes a consequential amendment.

### **Animal baiting and fighting**

**Schedule 1 [26]** extends an existing provision dealing with animal baiting to make it an offence for a person, among other things:

- to incite a fight in which one or more animals are pitted against another animal or animals, whether of the same species or not, or
- to advertise the intention to conduct such a fight, or
- to promote, organise or attend such a fight.

A person is not guilty of an offence against that provision for using a dog or other animal to catch or kill vermin or noxious animals. Evidence that a person was present at a place at which an animal fight was conducted is prima facie evidence that the person attended the fight for the purposes of the offence provision.

### **Animal-catching activities**

**Schedule 1 [27]** amends a provision prohibiting the release of animals of species prescribed by the regulations from confinement so that they can be chased by removing the reference to prescribed species, thereby ensuring that the protection of the provision extends to all animals (as is currently provided for by the regulations in any event).

### **Coursing**

**Schedule 1 [28]** restructures a provision prohibiting coursing and certain related activities to make it an offence for a person, among other things:

- to permit or encourage an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog, or
- to advertise the intention to conduct such an activity, or
- to promote, organise or attend such an activity, or
- to use an animal as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog, or
- to keep or be in charge of an animal for use as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog.



Certain evidentiary provisions are also made. Evidence that a person was present at a place at which an animal is used for the purpose of its being chased, caught or confined is prima facie evidence that the person attended the activity for the purposes of the offence provision.

#### **Firing and tail nicking**

**Schedule 1 [29]** makes it an offence for a person to apply a thermal stimulus to the leg of an animal with the intention of causing tissue damage and the development of scar tissue around the tendons and ligaments of the leg.

**Schedule 1 [30]** inserts a provision making it an offence for a person to cut a horse's tail with the intention of causing the horse to carry the tail high.

#### **Steel-jawed traps**

**Schedule 1 [32]** makes it an offence for a person to set a steel-jawed trap in any part of New South Wales or to possess a steel-jawed trap with the intention of using it to trap an animal. A definition of a *steel-jawed trap* is provided for the purposes of the provision.

#### **Penalties**

**Schedule 1 [4], [5], [10], [20], [21], [25], [31], [35], [46]–[49], [52] and [60]** increase various penalties that are imposed by the sections of the Principal Act referred to in those items. Provision is also made in some cases for the imposition of monetary penalties on corporations that are higher than the monetary penalties applicable to individuals (as corporations are not liable to the custodial penalties applicable to the offences concerned).

**Schedule 1 [57]** amends a provision dealing with proceedings for offences under the Principal Act to provide that jurisdiction may be exercised by the Supreme Court in its summary jurisdiction (as well as by Local Courts and on indictment, as is currently the case), and to provide that Local Courts may not impose pecuniary penalties of more than \$10,000 for offences.

#### **Additional powers of officers**

##### **Officers may have the aid of assistants**

**Schedule 1 [34]** inserts a provision enabling an enforcement officer, when exercising powers under the Principal Act in places used as sale-yards or for animal trades, to be accompanied by any assistants (including veterinary surgeons, as at present) that the officer considers necessary.

**Schedule 1 [33]** makes a consequential amendment.

**Schedule 1 [43]** inserts a similar power in a provision that enables enforcement officers to exercise wider powers with respect to the removal of animals from, and the entry on, premises. However, if residential premises are involved, the provision requires that the assistants must be persons of a class prescribed by the regulations (for example, veterinary surgeons or their assistants or employees of approved charitable organisations).

#### **Power to take possession of animal carcasses**

**Schedule 1 [36]–[39]** enable an enforcement officer who suspects, on reasonable grounds, that an offence against the Principal Act has been committed to take possession of, remove and retain possession of an animal carcass. (At present, officers can take possession of, remove and retain possession of animals under the provision concerned.)

#### **Power of seizure**

**Schedule 1 [44]** inserts a provision to enable officers who are lawfully in a place investigating a suspected breach of the Principal Act, or the regulations made under it, to seize things with which an offence has been committed, or that are evidence of the commission of an offence or that were used, or are intended to be used, for the purpose of committing an offence. An officer who seizes a thing under the provision must:

- provide the occupier of the place, if present, with a receipt for the thing, if this is reasonably practical, and
- provide a person from whom documents are seized with a certified copy of them, if it is proposed that the documents be retained and tendered in evidence, and
- if requested, produce the officer's authority for inspection.

*Place* is defined for the purposes of the provision to include premises and a vehicle.

### **Other matters relating to offences and law enforcement**

#### **False information**

**Schedule 1 [50]** makes it an offence for a person knowingly to give false or misleading information when required by an officer to provide information in pursuance of a power conferred under Part 3 of the Principal Act to require provision of the information. A person does not commit an offence unless warned of the need to provide information that is not false or misleading and unless the officer identified himself or herself to the person.



**Offences by corporations, permitting or failing to prevent offences, complicity and common purpose and attempts**

**Schedule 1 [56]** inserts provisions dealing with the matters mentioned above.

A director of a corporation or person concerned in the management of the corporation is taken to be liable for a contravention of the Principal Act or regulations by the corporation if the person authorised or permitted the contravention concerned. This does not affect the liability of the corporation for the contravention.

A person who owns or has charge of an animal and who permits or fails to prevent, without reasonable excuse, the commission of an offence in respect of the animal under the Principal Act or the regulations is guilty of an offence. Similarly, a person who owns or occupies land on which an animal is located and who permits or fails to prevent, without reasonable excuse, the commission on the land of an offence in respect of the animal under the Principal Act or the regulations is guilty of an offence. The penalty for an offence committed under this provision is the same as the penalty for the offence that the person permitted or failed to prevent.

A person who aids, abets, counsels or procures the commission of an offence against the Principal Act or the regulations by another person is taken to have committed that offence and is liable for the penalty prescribed for that offence.

A person who attempts to commit an offence against the Principal Act or the regulations is liable for the penalty prescribed for the offence.

**Institution of proceedings**

**Schedule 1 [58]** provides that proceedings for an offence under the Principal Act may be instituted only by an officer (as defined by the Principal Act).

**Miscellaneous issues**

**Power of sale-yard or abattoir managers to destroy animals**

**Schedule 1 [45]** authorises the managers of sale-yards and abattoirs to destroy injured or diseased animals that are in sale-yards or abattoirs quickly and without unnecessary pain. When acting under this provision, sale-yard and abattoir managers have the same powers as authorised officers have to destroy animals under the Principal Act.

**Court orders regarding disposal or care of animals**

**Schedule 1 [51]** inserts a provision to enable an officer to apply to a Local Court for an order permitting the officer to enter and use the facilities of a place to provide urgent maintenance and care for animals in that place where their owner is dead or cannot be located and no other person can be found who is responsible for their maintenance and care. Before applying for the



order, the officer must obtain expert advice as to the requirements for the care of the animals concerned. An order may operate for no longer than 30 days. The court may grant a further order before the expiration of a previous order but the maximum duration of all orders made in relation to the same animals must not exceed 90 days. *Facilities* is defined for the purposes of the provision to include (among other things) stock-yards, watering equipment and stock feed growing or stored on the place.

**Schedule 1 [53]** enables an officer who has taken possession of an animal under the Principal Act to apply to the Local Court that is to hear any proceedings concerning the animal for an order permitting the sale or other disposal of the animal before the proceedings are finally determined. The court may make orders concerning the method of disposal, the holding of any proceeds of the disposal in trust and any other matters that the court considers appropriate.

**Schedule 1 [55]** makes a consequential amendment to prevent persons from recovering compensation as the result of the making of a court order for the disposal or care of animals under either of the provisions mentioned above.

#### **Sale of animals by charitable organisations**

**Schedule 1 [54]** extends an existing provision relating to the sale of animals that have been taken into the possession of officers of certain charitable organisations (such as the Royal Society for the Prevention of Cruelty to Animals, New South Wales) in the exercise of powers under the Principal Act to stray or abandoned animals delivered to or otherwise coming into the possession of the organisations and to animals that are surrendered to the organisations.

#### **Guidelines for the welfare of farm and companion animals**

**Schedule 1 [59]** provides that the regulations may prescribe guidelines relating to the welfare of species of farm or companion animals and that evidence of a breach of, or compliance with, such guidelines is admissible in evidence in proceedings under the Principal Act of a breach of, or compliance with, the Principal Act or the regulations.

#### **Approval of charitable organisations**

**Schedule 1 [59]** also inserts a provision that enables the Minister, by order published in the Gazette, to approve of charitable organisations for the purpose of enabling their employees to exercise law enforcement functions under the Principal Act. The provision requires charitable organisations that are so approved to provide the Minister with an annual report concerning their law enforcement functions and with separate reports on particular matters, if requested by the Minister.

**Schedule 1 [2]** amends the definition of *officer* with the effect that, so far as charitable organisations are concerned, only officers of charitable organisations that are approved by the Minister may exercise functions under the Principal Act.

**Schedule 1 [1]** provides a definition of *approved charitable organisation*, and **Schedule 1 [66]** inserts certain consequential savings and transitional provisions.

#### **Principal Act binds Crown**

**Schedule 1 [61]** provides that the Principal Act binds the Crown. However, the Principal Act does not apply to the following:

- the use and handling of police dogs and police horses by police officers, or drug detection dogs by officers of the Department of Corrective Services, in the course of their duties,
- other cases prescribed by the regulations.

#### **Savings and transitional provisions**

**Schedule 1 [62]** enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

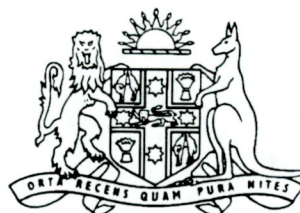
**Schedule 1 [63]** and **[64]** make consequential amendments.

**Schedule 1 [65]** repeals certain obsolete savings provisions by way of statute law revision.





First print



New South Wales

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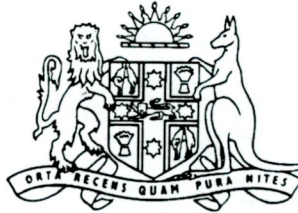
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New South Wales

# Prevention of Cruelty to Animals Amendment Bill 1997

No. , 1997

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## **A Bill for**

An Act to amend the *Prevention of Cruelty to Animals Act 1979* to make further provision for the prevention of cruelty to animals.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Prevention of Cruelty to Animals Amendment Act 1997*.

**2 Commencement**

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

**3 Amendment of Prevention of Cruelty to Animals Act 1979  
No 200**

The *Prevention of Cruelty to Animals Act 1979* is amended as set out in Schedule 1. 10

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## Schedule 1 Amendments

(Section 3)

### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*approved charitable organisation* means a charitable organisation for the time being approved by the Minister in accordance with section 34B. 5

### [2] Section 4 (1), definition of "officer"

Omit "a charitable organisation" from paragraph (b) of the definition. 10  
Insert instead "an approved charitable organisation".

### [3] Section 4 (2A)

Insert after section 4 (2):

(2A) For the purposes of subsection (2) (a), the pinioning of a bird is not an act of cruelty if it is carried out in the manner prescribed by the regulations. 15

### [4] Sections 5, 7-12, 13, 16-18, 18A, 19, 19A, 20, 22 and 23

Omit "Maximum penalty: 20 penalty units or imprisonment for 6 months, or both." wherever occurring from sections 5 (3), 7 (1) and (2), 8 (1), 9 (1), 10, 11, 12 (1), 13, 16 (2), 17, 18, 18A, 19, 19A (2) and (3), 20, 22 (1) and 23. 20

Insert instead:

Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual. 25

**[5] Section 6 Aggravated cruelty to animals**

Omit "Maximum penalty: On summary conviction, 40 penalty units or imprisonment for 1 year, or both; upon conviction on indictment, imprisonment for 2 years." from section 6 (1).

Insert instead:

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Maximum penalty: 500 penalty units in the case of a corporation and 100 penalty units or imprisonment for 2 years, or both, in the case of an individual.

**[6] Section 7 Carriage and conveyance of animals**

Insert after section 7 (2):

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(2A) Without limiting subsection (1), a person must not carry or convey a dog (other than a dog being used to work livestock), on the open back of a moving vehicle on a public street unless the dog is restrained or enclosed in such a way as to prevent the dog falling from the vehicle.

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Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

**[7] Section 8 Animals to be provided with food, drink or shelter**

Omit "food, drink or shelter" where firstly occurring in section 8 (2).

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Insert instead "clean water".

**[8] Section 8 (2)**

Omit "food, drink or shelter" where secondly occurring.

Insert instead "drink".



**[9] Section 8 (3)**

Insert after section 8 (2):

- (3) In any proceedings for an offence against subsection (1), evidence that an animal was not provided with food or shelter during a period of 24 hours (or, in the case of an animal of a class prescribed by the regulations, during the period prescribed for that class of animal) is evidence that the person accused of the offence has failed to provide the animal with proper and sufficient food or shelter during that period. 5  
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**[10] Section 9 Confined animals to be exercised**

Omit "Maximum penalty: 10 penalty units or imprisonment for 6 months, or both." from section 9 (3).

Insert instead:

Maximum penalty: 250 penalty units in the case of a corporation or 50 penalty units or imprisonment for 6 months, or both, in the case of an individual. 15

**[11] Section 10 Tethering of animals**

Insert at the end of the section:

- (2) A person must not tether a sow in a piggery. 20

Maximum penalty: 250 penalty units in the case of a corporation or 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**[12] Section 12 Certain operations not to be performed on animals**

Omit "or calf" from section 12 (1) (a). Insert instead " , calf or dog". 25

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Schedule 1 Amendments

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**[13] Section 12 (1) (c)**

Omit "or".

**[14] Section 12 (1) (e)**

Insert at the end of section 12 (1) (d):

, or

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(e) grind, trim or clip one or more teeth of a sheep.

**[15] Section 12 (2) (a1)**

Insert after section 12 (2) (a):

(a1) was docking the tail of a dog less than 5 days old when the offence was alleged to have been committed, or

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**[16] Section 12 (2) (b) (i)**

Omit "or female calf". Insert instead " , female calf or dog".

**[17] Section 12 (2) (b) (ii)**

Omit "or".

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**[18] Section 12 (2) (b) (iv)**

Insert at the end of section 12 (2) (b) (iii):

or

(iv) grinding, trimming or clipping one or more teeth of a sheep,

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**[19] Section 12 (3)**

Insert after section 12 (2):

(3) In this section:

*clip* the tooth of a sheep means breaking off the crown of a tooth with pliers or another tool or implement. 5

*grind* the tooth of a sheep means grinding down a tooth with an electric angle grinder or another tool or implement.

*trim* the tooth of a sheep means cutting off a tooth with an abrasive disc or another tool or implement. 10

**[20] Section 12A Registers relating to certain procedures**

Omit "20 penalty units" wherever occurring.  
Insert instead "50 penalty units".

**[21] Section 14 Injuries to animals to be reported**

Omit "20 penalty units". Insert instead "50 penalty units". 15

**[22] Section 15 Poisons not to be administered to animals**

Omit section 15 (1). Insert instead:

(1) In this section, *poison* includes:

(a) a substance included in the list, as in force for the time being, proclaimed under section 8 of the *Poisons and Therapeutic Goods Act 1966* (or a substance that includes such a substance), or 20

(b) a substance containing glass or any other thing likely to kill or injure an animal.

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Schedule 1 Amendments

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**[23] Section 15 (2) (a)**

Omit "or" where secondly occurring.

**[24] Section 15 (2) (c)**

Insert at the end of section 15 (2) (b):

, or

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- (c) have in his or her possession a poison with the intention of using it to kill or injure a domestic animal.

**[25] Section 15 (2)**

Omit "Maximum penalty: 20 penalty units or imprisonment for 6 months, or both." 10

Insert instead:

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

**[26] Section 18 Animal baiting and fighting prohibited**

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Insert at the end of the section:

(2) A person must not:

- (a) cause, procure, permit, encourage or incite a fight in which one or more animals are pitted against another animal or animals, whether of the same species or not, or 20
- (b) advertise the intention to conduct such a fight, or
- (c) promote, organise or attend such a fight.

Maximum penalty: 250 penalty units in the case of a corporation or 50 penalty units or imprisonment for 6 months, or both, in the case of an individual. 25



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- (3) A person is not guilty of an offence against subsection (2) if the court before which the proceedings are being taken is satisfied the action involved related to the use of a dog or other animal to catch or kill vermin or noxious animals in accordance with a requirement imposed by or under an Act (such as the *Rural Lands Protection Act 1989*). 5
- (4) In any proceedings under subsection (2), evidence that the defendant was present at a place at which a fight of the kind referred to in that subsection was being conducted is prima facie evidence that the defendant attended the fight. 10

**[27] Section 20 Certain animal-catching activities prohibited**

Omit "belonging to a prescribed species".

**[28] Section 21 Coursing etc prohibited** 15

Omit section 21 (1) and (2). Insert instead:

- (1) A person who:
- (a) causes, procures, permits or encourages an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog, or 20
  - (b) advertises the intention to conduct such an activity, or
  - (c) promotes, organises or attends such an activity, or
  - (d) uses an animal as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog, or 25
  - (e) keeps or is in charge of an animal for use as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog, 30

is guilty of an offence.

Maximum penalty: 500 penalty units in the case of a corporation or 100 penalty units or imprisonment for 2 years, or both, in the case of an individual.

- (2) In any proceedings under subsection (1), evidence in writing by a veterinary surgeon that an animal was alive at the time of its attack by a dog is prima facie evidence that the animal was alive at the time of that attack. 5
- (2A) In any proceedings under subsection (1) (c), evidence that the defendant was present at a place at which an activity of the kind referred to in that subsection was being conducted is prima facie evidence that the defendant attended the activity. 10
- (2B) In any proceedings under subsection (1) (d), evidence that the defendant was in charge of an animal that appeared to have been used as a lure or kill in the manner referred to in that subsection is prima facie evidence that the defendant used the animal as a lure or kill in that manner. 15
- (2C) In any proceedings under subsection (1) (e), evidence that the defendant was in charge of an animal of a species prescribed by the regulations at a place used for the trialing, training or racing of any coursing dog is prima facie evidence that the defendant kept or was in charge of an animal for use as a lure or kill for the purpose referred to in that subsection. 20  
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**[29] Section 21A**

Insert after section 21:

**21A Firing prohibited**

A person who applies a thermal stimulus (such as hot wires) to the leg of an animal with the intention of causing tissue damage and the development of scar tissue around tendons and ligaments of the leg is guilty of an offence. 30

Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual. 35

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**[30] Section 21B**

Insert before section 22:

**21B Tail nicking prohibited**

A person who cuts the tail of a horse with the intention of causing the horse to carry the tail high is guilty of an offence. 5

Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**[31] Section 22 Severely injured animals not to be sold** 10

Omit "Maximum penalty (subsection (3)): 20 penalty units or imprisonment for 6 months, or both." from section 22 (3).

Insert instead:

Maximum penalty (subsection (3)): 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual. 15

**[32] Section 23 Certain traps not to be set**

Insert at the end of section 23:

(2) A person must not: 20

(a) in any part of New South Wales, set a steel-jawed trap, or

(b) possess a steel-jawed trap with the intention of using it to trap an animal.

Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual. 25

(3) In this section:

*steel-jawed trap* means a trap that has jaws that are made of steel, iron or other metal and that are designed to spring together and trap an animal when a leg or other part of the animal's body comes into contact with, or is placed between, the jaws, but does not include a soft-jawed trap (that is, a trap with steel jaws that are offset and padded). 30

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- [33] Section 25 Powers of officers in respect of certain places**  
Omit “, and any veterinary surgeon accompanying the officer,” from section 25 (1).
- [34] Section 25 (4)**  
Insert after section 25 (3): 5  
(4) An officer may exercise a power conferred by this section in the company and with the aid of such assistants as the officer considers necessary.
- [35] Section 25 (5)**  
Omit “10 penalty units.” Insert instead “25 penalty units”. 10
- [36] Section 26 Powers of officers, generally**  
Insert “(or, if the animal is dead, the animal’s carcase)” after “animal” in section 26 (1) (a).
- [37] Section 26 (1) (b)**  
Insert “(or carcase)” after “animal”. 15
- [38] Section 26 (1) (c)**  
Insert “(or carcase)” after “animal” where firstly occurring.
- [39] Section 26 (1) (c) (i)**  
Insert “(or carcase)” after “animal”.
- [40] Section 26 (2) (a) and (5) (b) (i)** 20  
Insert “(or, in the case of the provision of food to an animal of a class prescribed by the regulations, during the period prescribed for that class of animal)” after “24 hours” wherever occurring.

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**[41] Section 26 (5A) and (5B)**

Insert after section 26 (5):

(5A) An officer who is the holder of a prescribed authority may, for the purpose of enabling the officer to exercise a power under this Act, direct the driver of a vehicle on which a dog is being carried or conveyed in contravention of section 7 (2A) to stop the vehicle. The direction to stop the vehicle must be made in a manner prescribed by the regulations by an officer who is identified in a manner so prescribed. 5  
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(5B) A person who refuses or fails to comply with a direction given by an officer under subsection (5A) is guilty of an offence.

Maximum penalty: 25 penalty units.

**[42] Section 26 (6)** 15

Omit “subsection (1)–(5)”. Insert instead “subsection (1)–(5A)”.

**[43] Section 26 (7B)**

Insert after section 26 (7A):

(7B) An officer may exercise a power conferred by this section: 20

(a) in a place other than residential premises—in the company and with the aid of such assistants as the officer considers necessary, or

(b) in residential premises—in the company and with the aid of such assistants, being persons of a class prescribed by the regulations, as the officer considers necessary. 25

**[44] Section 26A**

Renumber section 26A as section 26AA and insert the following section after section 26:

**26A Power of seizure**

- (1) An officer who is the holder of a prescribed authority and who is lawfully in any place investigating a suspected breach of this Act or the regulations may seize: 5
  - (a) a thing with respect to which an offence has been committed, or 10
  - (b) a thing that will afford evidence of the commission of an offence, or
  - (c) a thing that was used, or is intended to be used, for the purpose of committing an offence.
- (2) A reference in subsection (1) to an offence includes a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed. 15
- (3) An officer who seizes a thing under this section must provide the occupier of the place with a receipt acknowledging the seizure of the thing if the occupier is then present and it is reasonably practical to do so. 20
- (4) If an officer seizes a thing under this section, it may be retained by the officer until the completion of any proceedings (including proceedings on appeal) in which it may be tendered in evidence, but only if, in the case of seized documents, the person from whom the documents were seized is provided, within a reasonable time after the seizure, with a copy of the documents certified by an officer to be a true copy. 25
- (5) Subsection (4) ceases to have effect in relation to any thing seized if, on the application of the person aggrieved by the seizure, the court in which the proceedings referred to in that subsection are instituted orders the officer to return the thing seized. 30



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- (6) An officer exercising a power under this section must produce the officer's authority, if requested to do so by an occupier of the place, for inspection by the occupier.
  - (7) In this section, *place* includes premises and a vehicle.

**[45] Section 26B**

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Insert before section 27:

**26B Power of sale-yard or abattoir managers to destroy animals**

- (1) This section applies in respect of an animal in a sale-yard or abattoir that, in the opinion of the manager of the sale-yard or abattoir: 10
  - (a) is so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive, and
  - (b) is not about to be destroyed, or is about to be destroyed in a manner that will inflict unnecessary pain on the animal. 15
- (2) The manager of the sale-yard or abattoir may destroy, or cause to be destroyed, an animal to which this section applies in a manner that causes it to die quickly and without unnecessary pain. 20
- (3) The manager of the sale-yard or abattoir, when destroying an animal in accordance with this section, is taken to have the same powers as an officer has to destroy an animal under this Act. 25

**[46] Section 27A Officers may demand name and address**

Omit "10 penalty units" from section 27A (2).  
Insert instead "25 penalty units".

**[47] Section 28 Obstruction of persons exercising powers etc**

Omit "20 penalty units". Insert instead "50 penalty units". 30

**[48] Section 29 Court may order production of animal**

Omit "2 penalty units" from section 29 (2).  
Insert instead "25 penalty units".

**[49] Section 29A False or misleading entries in registers**

Omit "20 penalty units". Insert instead "50 penalty units". 5

**[50] Section 29B**

Insert after section 29A:

**29B False information**

- (1) This section applies to the provision of information to an officer in the exercise of a power conferred on the officer by this Part to require the provision of the information. 10
- (2) A person who provides information to which this section applies that the person knows is false or misleading in a material particular is guilty of an offence.  
Maximum penalty: 50 penalty units. 15
- (3) A person is not guilty of an offence against this section unless the officer:
  - (a) warned the person of the requirement to provide information that is not false or misleading, and
  - (b) identified himself or herself to the person as an officer. 20

**[51] Section 29C**

Insert before section 30:

**29C Court may make order regarding care of animals**

- (1) This section applies if: 25
  - (a) an officer has located an animal or animals that require urgent maintenance and care, and
  - (b) the owner of the animal or animals has died or cannot, after reasonable inquiries by the officer, be located, and 30

- 
- (c) so far as the officer can ascertain, after the making of reasonable inquiries, no other person is responsible for the maintenance and care of the animal or animals.
- (2) An officer may apply to a court and the court may order, in circumstances to which this section applies, that the officer be permitted to enter and use the facilities of the place on which the animal or animals are located for their immediate maintenance and care, subject to such conditions (if any) that the court may specify. 5  
10
- (3) Before applying for an order under this section, the officer must obtain, or cause to be obtained, advice as to the appropriate care of the animal or animals:
- (a) in the case of livestock—from a rural lands protection board or the Department of Agriculture, or 15
- (b) in the case of other animals—from an appropriate body or person.
- (4) An order under this section has effect for such period (not exceeding 30 days) that the court orders. 20
- (5) An officer may, before the expiration of an order made under this section, apply to the court for a further order. However, the maximum duration of all orders made by a court in respect of the same animal or animals must not exceed 90 days. 25
- (6) In this section, *facilities* includes stock-yards and other fixed improvements used for the keeping of livestock or other animals, water and watering equipment and any stock or other feed growing or stored on the place on which the animal or animals are located that is necessary and appropriate for their maintenance and care. 30

**[52] Section 31 Court may make order regarding disposal of animal**

Omit “20 penalty units” from section 31 (3).  
Insert instead “25 penalty units”.



**[53] Section 31 (4) and (5)**

Insert after section 31 (3):

- (4) If an officer has taken possession of an animal under section 26 (1), the officer may apply to the court before which the proceedings for the offence against this Act in respect of the animal are commenced for an order for the disposal of the animal before the proceedings are finally determined. 5
- (5) The court to which an application under subsection (4) is made may: 10
  - (a) order that the animal in respect of which the application is made be sold or otherwise disposed of in such manner as the court considers appropriate in the circumstances, and
  - (b) direct that the proceeds of the sale or other disposal be held in trust pending the determination of the proceedings for the offence and the further order of the court, and 15
  - (c) make such other orders as the court considers appropriate. 20

**[54] Section 31A Sale of certain animals by charitable organisations**

Omit section 31A (1). Insert instead:

- (1) This section applies in respect of the following:
  - (a) an animal retained by an officer of a charitable organisation in accordance with this Act, 25
  - (b) a stray or abandoned animal delivered to or otherwise coming into the possession of a charitable organisation,
  - (c) an animal surrendered to a charitable organisation.
- (1A) If: 30
  - (a) an animal to which this section applies has been held by or on behalf of a charitable organisation or an officer of a charitable organisation:

- 
- (i) for a period of not less than 7 days after the animal was taken or otherwise came into the possession of the charitable organisation or officer, and
  - (ii) for a further 7 days after a proposed sale of the animal is advertised in the manner set out in the regulations, and 5
  - (b) the owner or person in charge of the animal immediately before the animal was taken or otherwise came into the possession of the charitable organisation or officer has failed to claim the animal, 10
  - the charitable organisation or officer, or a person acting on behalf of the organisation, may sell or arrange for the sale of the animal or, if the animal is not sold within 14 days after its proposed sale is advertised, may otherwise dispose of or arrange for the disposal of the animal. 15

**[55] Section 32A Compensation not recoverable**

Insert at the end of section 32A:

- (2) Compensation is not recoverable against any person in respect of: 20
  - (a) the disposal of an animal in accordance with a court order made under section 31 (5), or
  - (b) the use of the facilities of a place in accordance with a court order made under section 29C. 25

**[56] Sections 33A–33D**

Insert after section 33:

**33A Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 30

- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations. 5

**33B Permitting or failing to prevent commission or continuance of offence**

- (1) A person who owns or has the charge of an animal and who:
  - (a) knowingly permits an offence against this Act or the regulations to be committed in respect of the animal, or
  - (b) fails, without reasonable excuse, to prevent the commission or continuance of such an offence, 15is guilty of an offence against this Act.
- (2) A person who owns or occupies land on which an animal is located and who:
  - (a) knowingly permits an offence against this Act or the regulations to be committed on the land in respect of the animal, or 20
  - (b) fails, without reasonable excuse, to prevent the commission or continuance of such an offence, 25is guilty of an offence against this Act.
- (3) The maximum penalty for an offence against this section is the maximum penalty under this Act for the offence permitted under subsection (1) (a) or (2) (a) or not prevented under subsection (1) (b) or (2) (b).

**33C Complicity and common purpose** 30

- (1) A person who aids, abets, counsels or procures the commission of an offence against this Act or the regulations by another person is taken to have committed that offence and is punishable accordingly.



- 
- (2) For the person to be found guilty:
- (a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person, and
  - (b) the offence must have been committed by the other person. 5
- (3) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:
- (a) terminated his or her involvement, and 10
  - (b) took all reasonable steps to prevent the commission of the offence.
- (4) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been proceeded against or convicted for the offence. 15

### 33D Attempts

A person who attempts to commit an offence for which a penalty is provided under this Act or the regulations is guilty of an offence and liable to that penalty. 20

### [57] Section 34 Proceedings for offences

Omit section 34 (1) and (2). Insert instead:

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court constituted by a Magistrate sitting alone, or 25
  - (b) by the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before a Local Court, the maximum pecuniary penalty that a magistrate may impose for the offence is, despite any other provision of this Act, 100 penalty units. 30

**[58] Section 34 (4)**

Insert after section 34 (3):

- (4) Proceedings for an offence under this Act or the regulations may be instituted only by an officer.

**[59] Sections 34A and 34B**

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Insert after section 34:

**34A Guidelines relating to welfare of farm or companion animals**

- (1) The regulations may prescribe guidelines relating to the welfare of species of farm or companion animals. 10
- (2) Compliance, or failure to comply, with guidelines prescribed by the regulations under this section is admissible in evidence in proceedings under this Act of compliance, or failure to comply, with this Act or the regulations. 15

**34B Approved charitable organisations**

- (1) The Minister may, by order published in the Gazette, approve of a charitable organisation for the purposes of the exercise by its officers of law enforcement powers under this Act. 20
- (2) The Minister may, by order published in the Gazette, withdraw an approval given under this section if the Minister considers that it is in the public interest to do so.
- (3) A charitable organisation that has been approved in accordance with this section must, within one month after 30 June in each year, provide the Minister with a report of the exercise by its officers of law enforcement powers under this Act for the 12 months ending on 30 June in that year. 25
- (4) In addition, a charitable organisation that has been approved in accordance with this section must, if requested by the Minister to do so, provide the Minister with a report on any matter specified by the Minister that relates to the enforcement of this Act by the organisation. 30  
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**[60] Section 35 Regulations**

Omit "10 penalty units" from section 35 (3).  
Insert instead "25 penalty units".

**[61] Section 35A**

Insert after section 35:

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**35A Act binds Crown**

(1) This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities, except as provided in subsection (2).

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(2) This Act does not apply:

(a) to the use and handling of police dogs and police horses by police officers, or drug detection dogs by officers of the Department of Corrective Services, in the course of their duties, or

15

(b) to other cases prescribed by the regulations.

**[62] Schedule 2 Savings and transitional provisions**

Insert before clause 1:

**Part 1 General**

**1 Regulations**

20

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

*Prevention of Cruelty to Animals Amendment Act 1997*

(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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Prevention of Cruelty to Animals Amendment Bill 1997

Schedule 1 Amendments

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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
- (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. 5

**Part 2 Provisions consequent on enactment of this Act** 10

**[63] Schedule 2, clause 1A**

Re-number clause 1 as 1A.

**[64] Schedule 2, clause 1A**

Omit "Schedule". Insert instead "Part".

**[65] Schedule 2, clauses 2 and 5** 15

Omit the clauses.

**[66] Schedule 2, Part 3**

Insert after clause 3:

**Part 3 Provisions consequent on enactment of Prevention of Cruelty to Animals Amendment Act 1997** 20

**4 Certain charitable organisations taken to be approved for interim period**

- (1) A charitable organisation (including the Royal Society for the Prevention of Cruelty to Animals, New South Wales and the Animal Welfare League) whose officers were authorised under this Act immediately before the commencement of section 34B is taken to be an approved charitable organisation for a period of 3 months after that commencement. 25 30

(2) Nothing in this clause prevents:

- (a) a charitable organisation from applying to the Minister for approval under section 34B at any time after its commencement, or
- (b) the Minister from making an order under section 34B (2) in relation to a charitable organisation referred to in subclause (1) at any time.

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**5 Transitional arrangement—reports of approved charitable organisations**

A charitable organisation that is approved, or taken to be approved, under section 34B is not required, despite that section, to provide the Minister with a report of the exercise by its officers of law enforcement powers under this Act for the period ended 30 June 1997.

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New South Wales

# Prevention of Cruelty to Animals Amendment Act 1997 No 83

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New South Wales

# Prevention of Cruelty to Animals Amendment Act 1997 No 83

Act No 83, 1997

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An Act to amend the *Prevention of Cruelty to Animals Act 1979* to make further provision for the prevention of cruelty to animals. [Assented to 10 July 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Prevention of Cruelty to Animals Amendment Act 1997*.

**2 Commencement**

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

**3 Amendment of Prevention of Cruelty to Animals Act 1979  
No 200**

The *Prevention of Cruelty to Animals Act 1979* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 3

Insert after section 2:

#### 3 Objects of Act

The objects of this Act are:

- (a) to prevent cruelty to animals, and
- (b) to promote the welfare of animals by requiring a person in charge of an animal:
  - (i) to provide care for the animal, and
  - (ii) to treat the animal in a humane manner, and
  - (iii) to ensure the welfare of the animal.

### [2] Section 4 Definitions

Omit the definition of *animal* from section 4 (1). Insert instead:

*animal* means:

- (a) a member of a vertebrate species including any:
  - (i) amphibian, or
  - (ii) bird, or
  - (iii) fish, or
  - (iv) mammal (other than a human being), or
  - (v) reptile, or
- (b) a crustacean but only when at a building or place (such as a restaurant) where food is prepared or offered for consumption by retail sale in the building or place.

### [3] Section 4 (1), definition of "approved charitable organisation"

Insert in alphabetical order:

*approved charitable organisation* means a charitable organisation for the time being approved by the Minister in accordance with section 34B.

**[4] Section 4 (1), definition of "officer"**

Omit "a charitable organisation" from paragraph (b) of the definition.

Insert instead "an approved charitable organisation".

**[5] Section 4 (2A)**

Insert after section 4 (2):

(2A) For the purposes of subsection (2) (a), the pinioning of a bird is not an act of cruelty if it is carried out in the manner prescribed by the regulations.

**[6] Sections 5, 7–12, 13, 16–18, 18A, 19, 19A, 20, 22 and 23**

Omit "Maximum penalty: 20 penalty units or imprisonment for 6 months, or both." wherever occurring from sections 5 (3), 7 (1) and (2), 8 (1), 9 (1), 10, 11, 12 (1), 13, 16 (2), 17, 18, 18A, 19, 19A (2) and (3), 20, 22 (1) and 23.

Insert instead:

Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**[7] Section 6 Aggravated cruelty to animals**

Omit "Maximum penalty: On summary conviction, 40 penalty units or imprisonment for 1 year, or both; upon conviction on indictment, imprisonment for 2 years." from section 6 (1).

Insert instead:

Maximum penalty: 500 penalty units in the case of a corporation and 100 penalty units or imprisonment for 2 years, or both, in the case of an individual.

**[8] Section 7 Carriage and conveyance of animals**

Insert after section 7 (2):

- (2A) Without limiting subsection (1), a person must not carry or convey a dog (other than a dog being used to work livestock), on the open back of a moving vehicle on a public street unless the dog is restrained or enclosed in such a way as to prevent the dog falling from the vehicle.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

**[9] Section 8 Animals to be provided with food, drink or shelter**

Insert "and which it is reasonably practicable in the circumstances for the person to provide" after "sufficient" in section 8 (1).

**[10] Section 8 (2)**

Omit "food, drink or shelter" where firstly occurring.  
Insert instead "clean water".

**[11] Section 8 (2)**

Omit "food, drink or shelter" where secondly occurring.  
Insert instead "drink".

**[12] Section 8 (3)–(5)**

Insert after section 8 (2):

- (3) In any proceedings for an offence against subsection (1), evidence that an animal was not provided with food or shelter during a period of 24 hours (or, in the case of an animal of a class prescribed by the regulations, during the period prescribed for that class of animal) is evidence that the person accused of the offence has failed to provide the animal with proper and sufficient food or shelter during that period.



- (4) Before commencing proceedings for an offence against subsection (1) in respect of a stock animal depastured on rateable land (within the meaning of the *Rural Lands Protection Act 1989*), the prosecution must obtain advice from a rural lands protection board and the Department of Agriculture about the state of the animal (if practicable) and the appropriate care for it.
- (5) The prosecution may, with leave of the court granted in such circumstances as the court considers just, commence or continue proceedings for an offence against subsection (1), despite having failed to comply with subsection (4).

**[13] Section 9 Confined animals to be exercised**

Omit "Maximum penalty: 10 penalty units or imprisonment for 6 months, or both." from section 9 (3).

Insert instead:

Maximum penalty: 250 penalty units in the case of a corporation or 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**[14] Section 10 Tethering of animals**

Insert at the end of the section:

- (2) A person must not tether a sow in a piggery.

Maximum penalty: 250 penalty units in the case of a corporation or 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**[15] Section 12 Certain operations not to be performed on animals**

Omit "or calf" from section 12 (1) (a). Insert instead ", calf or dog".

**[16] Section 12 (1) (c)**

Omit "or".

**[17] Section 12 (1) (e)–(g)**

Insert at the end of section 12 (1) (d):

- (e) grind, trim or clip one or more teeth of a sheep,
- (f) perform a clitoridectomy on a greyhound, or
- (g) fire or hot iron brand the face of an animal.

**[18] Section 12 (2) (a1)**

Insert after section 12 (2) (a):

- (a1) was docking the tail of a dog less than 5 days old when the offence was alleged to have been committed, or

**[19] Section 12 (2) (b) (i)**

Omit “or female calf”. Insert instead “, female calf or dog”.

**[20] Section 12 (2) (b) (ii)**

Omit “or”.

**[21] Section 12 (2) (b) (iv)–(vi)**

Insert at the end of section 12 (2) (b) (iii):

- (iv) grinding, trimming or clipping one or more teeth of a sheep,
- (v) performing a clitoridectomy on a greyhound, or
- (vi) firing or hot iron branding the face of an animal,

**[22] Section 12 (3)**

Insert after section 12 (2):

(3) In this section:

*clip* the tooth of a sheep means breaking off the crown of a tooth with pliers or another tool or implement.

*grind* the tooth of a sheep means grinding down a tooth with an electric angle grinder or another tool or implement.

*trim* the tooth of a sheep means cutting off a tooth with an abrasive disc or another tool or implement.

**[23] Section 12A Registers relating to certain procedures**

Omit "20 penalty units" wherever occurring.

Insert instead "50 penalty units".

**[24] Section 14 Injuries to animals to be reported**

Omit "20 penalty units". Insert instead "50 penalty units".

**[25] Section 15 Poisons not to be administered to animals**

Omit section 15 (1). Insert instead:

(1) In this section, *poison* includes:

(a) a substance included in the list, as in force for the time being, proclaimed under section 8 of the *Poisons and Therapeutic Goods Act 1966* (or a substance that includes such a substance), or

(b) a substance containing glass or any other thing likely to kill or injure an animal.

**[26] Section 15 (2) (a)**

Omit “or” where secondly occurring.

**[27] Section 15 (2) (c)**

Insert at the end of section 15 (2) (b):

, or

- (c) have in his or her possession a poison with the intention of using it to kill or injure a domestic animal.

**[28] Section 15 (2)**

Omit “Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.”

Insert instead:

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

**[29] Section 16 Certain electrical devices not to be used upon animals**

Omit the definition of *electrical device* from section 16 (1).

Insert instead:

*electrical device* means a device of a type prescribed by the regulations.

**[30] Section 16 (3)**

Omit section 16 (3). Insert instead:

- (3) Nothing in subsection (2) prevents a person from:
- (a) using an electrical device upon an animal belonging to a prescribed species, or
  - (b) selling or having in his or her possession or custody an electrical device for use upon an animal belonging to a prescribed species.



**[31] Section 18 Animal baiting and fighting prohibited**

Insert at the end of the section:

- (2) A person must not:
  - (a) cause, procure, permit, encourage or incite a fight in which one or more animals are pitted against another animal or animals, whether of the same species or not, or
  - (b) advertise the intention to conduct such a fight, or
  - (c) promote, organise or attend such a fight.

Maximum penalty: 250 penalty units in the case of a corporation or 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

- (3) In any proceedings under subsection (2), evidence that the defendant was present at a place at which a fight of the kind referred to in that subsection was being conducted is prima facie evidence that the defendant attended the fight.

**[32] Section 20 Certain animal-catching activities prohibited**

Omit "belonging to a prescribed species".

**[33] Section 21 Coursing etc prohibited**

Omit section 21 (1) and (2). Insert instead:

- (1) A person who:
  - (a) causes, procures, permits or encourages an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog, or
  - (b) advertises the intention to conduct such an activity, or
  - (c) promotes, organises or attends such an activity, or

- (d) uses an animal as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog, or
- (e) keeps or is in charge of an animal for use as a lure or kill for the purpose of blooding greyhounds or in connection with the trialing, training or racing of any coursing dog,

is guilty of an offence.

Maximum penalty: 500 penalty units in the case of a corporation or 100 penalty units or imprisonment for 2 years, or both, in the case of an individual.

- (2) In any proceedings under subsection (1), evidence in writing by a veterinary surgeon that an animal was alive at the time of its attack by a dog is prima facie evidence that the animal was alive at the time of that attack.
- (2A) In any proceedings under subsection (1) (c), evidence that the defendant was present at a place at which an activity of the kind referred to in that subsection was being conducted is prima facie evidence that the defendant attended the activity.
- (2B) In any proceedings under subsection (1) (d), evidence that the defendant was in charge of an animal that appeared to have been used as a lure or kill in the manner referred to in that subsection is prima facie evidence that the defendant used the animal as a lure or kill in that manner.
- (2C) In any proceedings under subsection (1) (e), evidence that the defendant was in charge of an animal of a species prescribed by the regulations at a place used for the trialing, training or racing of any coursing dog is prima facie evidence that the defendant kept or was in charge of an animal for use as a lure or kill for the purpose referred to in that subsection.

**[34] Section 21A**

Insert after section 21:

**21A Firing prohibited**

A person who applies a thermal stimulus (such as hot wires) to the leg of an animal with the intention of causing tissue damage and the development of scar tissue around tendons and ligaments of the leg is guilty of an offence.

Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**[35] Sections 21B–21D**

Insert before section 22:

**21B Tail nicking prohibited**

A person who cuts the tail of a horse with the intention of causing the horse to carry the tail high is guilty of an offence.

Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**21C Steeplechasing and hurdle racing prohibited**

A person who organises or participates in a steeplechase or hurdle race is guilty of an offence.

Maximum penalty: 250 penalty units in the case of a corporation or 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**21D Confining of bird by ring and chain prohibited**

A person who confines a bird by means of a ring around its leg and a chain attached to the ring is guilty of an offence.

Maximum penalty: 250 penalty units in the case of a corporation or 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.



**[36] Section 22 Severely injured animals not to be sold**

Omit "Maximum penalty (subsection (3)): 20 penalty units or imprisonment for 6 months, or both." from section 22 (3).

Insert instead:

Maximum penalty (subsection (3)): 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

**[37] Section 23 Certain traps not to be set**

Insert at the end of section 23:

(2) A person must not:

- (a) in any part of New South Wales, set a steel-jawed trap, or
- (b) possess a steel-jawed trap with the intention of using it to trap an animal.

Maximum penalty: 250 penalty units in the case of a corporation and 50 penalty units or imprisonment for 6 months, or both, in the case of an individual.

(3) In this section:

*steel-jawed trap* means a trap that has jaws that are made of steel, iron or other metal and that are designed to spring together and trap an animal when a leg or other part of the animal's body comes into contact with, or is placed between, the jaws, but does not include a soft-jawed trap (that is, a trap with steel jaws that are offset and padded).

**[38] Section 24 Certain defences**

Omit ", ear-tagging or branding" from section 24 (1) (a) (i).

Insert instead "or ear-tagging the animal or branding, other than firing or hot iron branding of the face of,".

**[39] Section 25 Powers of officers in respect of certain places**

Omit ", and any veterinary surgeon accompanying the officer," from section 25 (1).



**[40] Section 25 (4)**

Insert after section 25 (3):

- (4) An officer may exercise a power conferred by this section in the company and with the aid of such assistants as the officer considers necessary.

**[41] Section 25 (5)**

Omit "10 penalty units." Insert instead "25 penalty units".

**[42] Section 26 Powers of officers, generally**

Insert "(or, if the animal is dead, the animal's carcase)" after "animal" in section 26 (1) (a).

**[43] Section 26 (1) (b)**

Insert "(or carcase)" after "animal".

**[44] Section 26 (1) (c)**

Insert "(or carcase)" after "animal" where firstly occurring.

**[45] Section 26 (1) (c) (i)**

Insert "(or carcase)" after "animal".

**[46] Section 26 (2) (a) and (5) (b) (i)**

Insert "(or, in the case of the provision of food to an animal of a class prescribed by the regulations, during the period prescribed for that class of animal)" after "24 hours" wherever occurring.

**[47] Section 26 (5A) and (5B)**

Insert after section 26 (5):

- (5A) An officer who is the holder of a prescribed authority may, for the purpose of enabling the officer to exercise a power under this Act, direct the driver of a vehicle on which a dog is being carried or conveyed in contravention of section 7 (2A) to stop the vehicle. The direction to stop the vehicle must be made in a manner prescribed by the regulations by an officer who is identified in a manner so prescribed.
- (5B) A person who refuses or fails to comply with a direction given by an officer under subsection (5A) is guilty of an offence.

Maximum penalty: 25 penalty units.

**[48] Section 26 (6)**

Omit “subsection (1)–(5)”. Insert instead “subsection (1)–(5A)”.

**[49] Section 26 (7B)**

Insert after section 26 (7A):

- (7B) An officer may exercise a power conferred by this section:
- (a) in a place other than residential premises—in the company and with the aid of such assistants as the officer considers necessary, or
  - (b) in residential premises—in the company and with the aid of such assistants, being persons of a class prescribed by the regulations, as the officer considers necessary.

**[50] Section 26A**

Re-number section 26A as section 26AA and insert the following section after section 26:

**26A Power of seizure**

- (1) An officer who is the holder of a prescribed authority and who is lawfully in any place investigating a suspected breach of this Act or the regulations may seize:
  - (a) a thing with respect to which an offence has been committed, or
  - (b) a thing that will afford evidence of the commission of an offence, or
  - (c) a thing that was used, or is intended to be used, for the purpose of committing an offence.
- (2) A reference in subsection (1) to an offence includes a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.
- (3) An officer who seizes a thing under this section must provide the occupier of the place with a receipt acknowledging the seizure of the thing if the occupier is then present and it is reasonably practical to do so.
- (4) If an officer seizes a thing under this section, it may be retained by the officer until the completion of any proceedings (including proceedings on appeal) in which it may be tendered in evidence, but only if, in the case of seized documents, the person from whom the documents were seized is provided, within a reasonable time after the seizure, with a copy of the documents certified by an officer to be a true copy.
- (5) Subsection (4) ceases to have effect in relation to any thing seized if, on the application of the person aggrieved by the seizure, the court in which the proceedings referred to in that subsection are instituted orders the officer to return the thing seized.

- (6) An officer exercising a power under this section must produce the officer's authority, if requested to do so by an occupier of the place, for inspection by the occupier.
- (7) In this section, *place* includes premises and a vehicle.

**[51] Section 26B**

Insert before section 27:

**26B Power of sale-yard or abattoir managers to destroy animals**

- (1) This section applies in respect of an animal in a sale-yard or abattoir that, in the opinion of the manager of the sale-yard or abattoir:
  - (a) is so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive, and
  - (b) is not about to be destroyed, or is about to be destroyed in a manner that will inflict unnecessary pain on the animal.
- (2) The manager of the sale-yard or abattoir may destroy, or cause to be destroyed, an animal to which this section applies in a manner that causes it to die quickly and without unnecessary pain.
- (3) The manager of the sale-yard or abattoir, when destroying an animal in accordance with this section, is taken to have the same powers as an officer has to destroy an animal under this Act.

**[52] Section 27A Officers may demand name and address**

Omit "10 penalty units" from section 27A (2).  
Insert instead "25 penalty units".



**[53] Section 28 Obstruction of persons exercising powers etc**

Omit "20 penalty units". Insert instead "50 penalty units".

**[54] Section 29 Court may order production of animal**

Omit "2 penalty units" from section 29 (2).  
Insert instead "25 penalty units".

**[55] Section 29A False or misleading entries in registers**

Omit "20 penalty units". Insert instead "50 penalty units".

**[56] Section 29B**

Insert after section 29A:

**29B False information**

- (1) This section applies to the provision of information to an officer in the exercise of a power conferred on the officer by this Part to require the provision of the information.
- (2) A person who provides information to which this section applies that the person knows is false or misleading in a material particular is guilty of an offence.  
  
Maximum penalty: 50 penalty units.
- (3) A person is not guilty of an offence against this section unless the officer:
  - (a) warned the person of the requirement to provide information that is not false or misleading, and
  - (b) identified himself or herself to the person as an officer.

**[57] Section 29C**

Insert before section 30:

**29C Court may make order regarding care of animals**

- (1) This section applies if:
  - (a) an officer has located an animal or animals that require urgent maintenance and care, and
  - (b) the owner of the animal or animals has died or cannot, after reasonable inquiries by the officer, be located, and
  - (c) so far as the officer can ascertain, after the making of reasonable inquiries, no other person is responsible for the maintenance and care of the animal or animals.
- (2) An officer may apply to a court and the court may order, in circumstances to which this section applies, that the officer be permitted to enter and use the facilities of the place on which the animal or animals are located for their immediate maintenance and care, subject to such conditions (if any) that the court may specify.
- (3) Before applying for an order under this section, the officer must obtain, or cause to be obtained, advice as to the appropriate care of the animal or animals:
  - (a) in the case of livestock—from a rural lands protection board or the Department of Agriculture, or
  - (b) in the case of other animals—from an appropriate body or person.
- (4) An order under this section has effect for such period (not exceeding 30 days) that the court orders.
- (5) An officer may, before the expiration of an order made under this section, apply to the court for a further order. However, the maximum duration of all orders made by a court in respect of the same animal or animals must not exceed 90 days.

- (6) In this section, *facilities* includes stock-yards and other fixed improvements used for the keeping of livestock or other animals, water and watering equipment and any stock or other feed growing or stored on the place on which the animal or animals are located that is necessary and appropriate for their maintenance and care.

**[58] Section 31 Court may make order regarding disposal of animal**

Omit "20 penalty units" from section 31 (3).

Insert instead "25 penalty units".

**[59] Section 31 (4) and (5)**

Insert after section 31 (3):

- (4) If an officer has taken possession of an animal under section 26 (1), the officer may apply to the court before which the proceedings for the offence against this Act in respect of the animal are commenced for an order for the disposal of the animal before the proceedings are finally determined.
- (5) The court to which an application under subsection (4) is made may:
- (a) order that the animal in respect of which the application is made be sold or otherwise disposed of in such manner as the court considers appropriate in the circumstances, and
  - (b) direct that the proceeds of the sale or other disposal be held in trust pending the determination of the proceedings for the offence and the further order of the court, and
  - (c) make such other orders as the court considers appropriate.

**[60] Section 31A Sale of certain animals by charitable organisations**

Omit section 31A (1). Insert instead:

- (1) This section applies in respect of the following:
- (a) an animal retained by an officer of a charitable organisation in accordance with this Act,
  - (b) a stray or abandoned animal delivered to or otherwise coming into the possession of a charitable organisation,
  - (c) an animal surrendered to a charitable organisation.

(1A) If:

- (a) an animal to which this section applies has been held by or on behalf of a charitable organisation or an officer of a charitable organisation:
  - (i) for a period of not less than 7 days after the animal was taken or otherwise came into the possession of the charitable organisation or officer, and
  - (ii) for a further 7 days after a proposed sale of the animal is advertised in the manner set out in the regulations, and
- (b) the owner or person in charge of the animal immediately before the animal was taken or otherwise came into the possession of the charitable organisation or officer has failed to claim the animal,

the charitable organisation or officer, or a person acting on behalf of the organisation, may sell or arrange for the sale of the animal or, if the animal is not sold within 14 days after its proposed sale is advertised, may otherwise dispose of or arrange for the disposal of the animal.



**[61] Section 32A Compensation not recoverable**

Insert at the end of section 32A:

- (2) Compensation is not recoverable against any person in respect of:
  - (a) the disposal of an animal in accordance with a court order made under section 31 (5), or
  - (b) the use of the facilities of a place in accordance with a court order made under section 29C.

**[62] Sections 33A–33D**

Insert after section 33:

**33A Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

**33B Permitting or failing to prevent commission or continuance of offence**

- (1) A person who owns or has the charge of an animal and who:
  - (a) knowingly permits an offence against this Act or the regulations to be committed in respect of the animal, or

- (b) fails, without reasonable excuse, to prevent the commission or continuance of such an offence, is guilty of an offence against this Act.
- (2) A person who owns or occupies land on which an animal is located and who:
  - (a) knowingly permits an offence against this Act or the regulations to be committed on the land in respect of the animal, or
  - (b) fails, without reasonable excuse, to prevent the commission or continuance of such an offence, is guilty of an offence against this Act.
- (3) The maximum penalty for an offence against this section is the maximum penalty under this Act for the offence permitted under subsection (1) (a) or (2) (a) or not prevented under subsection (1) (b) or (2) (b).

**33C Complicity and common purpose**

- (1) A person who aids, abets, counsels or procures the commission of an offence against this Act or the regulations by another person is taken to have committed that offence and is punishable accordingly.
- (2) For the person to be found guilty:
  - (a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person, and
  - (b) the offence must have been committed by the other person.
- (3) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person:
  - (a) terminated his or her involvement, and
  - (b) took all reasonable steps to prevent the commission of the offence.

- (4) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been proceeded against or convicted for the offence.

### **33D Attempts**

A person who attempts to commit an offence for which a penalty is provided under this Act or the regulations is guilty of an offence and liable to that penalty.

### **[63] Section 34 Proceedings for offences**

Omit section 34 (1) and (2). Insert instead:

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
- (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
  - (b) by the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before a Local Court, the maximum pecuniary penalty that a magistrate may impose for the offence is, despite any other provision of this Act, 100 penalty units.

### **[64] Sections 34A and 34B**

Insert after section 34:

#### **34A Guidelines relating to welfare of farm or companion animals**

- (1) The regulations may prescribe guidelines relating to the welfare of species of farm or companion animals.
- (2) Before any guidelines are prescribed, the Minister is required to give the Animal Welfare Advisory Council, and representatives of any relevant livestock industry, an opportunity to review and comment on the guidelines.



- (3) Compliance, or failure to comply, with guidelines prescribed by the regulations under this section is admissible in evidence in proceedings under this Act of compliance, or failure to comply, with this Act or the regulations.

### **34B Approved charitable organisations**

- (1) The Minister may, by order published in the Gazette, approve of a charitable organisation for the purposes of the exercise by its officers of law enforcement powers under this Act.
- (2) The Minister may, by order published in the Gazette, withdraw an approval given under this section if the Minister considers that it is in the public interest to do so.
- (3) A charitable organisation that has been approved in accordance with this section must, within one month after 30 June in each year, provide the Minister with a report of the exercise by its officers of law enforcement powers under this Act for the 12 months ending on 30 June in that year.
- (4) In addition, a charitable organisation that has been approved in accordance with this section must, if requested by the Minister to do so, provide the Minister with a report on any matter specified by the Minister that relates to the enforcement of this Act by the organisation.

### **[65] Section 35 Regulations**

Omit "10 penalty units" from section 35 (3).  
Insert instead "25 penalty units".



**[66] Section 35A**

Insert after section 35:

**35A Act binds Crown**

- (1) This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities, except as provided in subsection (2).
- (2) This Act does not apply:
  - (a) to the use and handling of police dogs and police horses by police officers, or drug detection dogs by officers of the Department of Corrective Services, in the course of their duties, or
  - (b) to other cases prescribed by the regulations.

**[67] Schedule 2 Savings and transitional provisions**

Insert before clause 1:

**Part 1 General**

**1 Regulations**

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

*Prevention of Cruelty to Animals Amendment Act 1997*
- (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.

**Part 2 Provisions consequent on enactment of this Act**

**[68] Schedule 2, clause 1A**

Re-number clause 1 as 1A.

**[69] Schedule 2, clause 1A**

Omit "Schedule". Insert instead "Part".

**[70] Schedule 2, clauses 2 and 5**

Omit the clauses.

**[71] Schedule 2, Part 3**

Insert after clause 3:

**Part 3 Provisions consequent on enactment of Prevention of Cruelty to Animals Amendment Act 1997**

**4 Certain charitable organisations taken to be approved for interim period**

- (1) A charitable organisation (including the Royal Society for the Prevention of Cruelty to Animals, New South Wales and the Animal Welfare League) whose officers were authorised under this Act immediately before the commencement of section 34B is taken to be an approved charitable organisation for a period of 3 months after that commencement.

- (2) Nothing in this clause prevents:
- (a) a charitable organisation from applying to the Minister for approval under section 34B at any time after its commencement, or
  - (b) the Minister from making an order under section 34B (2) in relation to a charitable organisation referred to in subclause (1) at any time.

**5 Transitional arrangement—reports of approved charitable organisations**

A charitable organisation that is approved, or taken to be approved, under section 34B is not required, despite that section, to provide the Minister with a report of the exercise by its officers of law enforcement powers under this Act for the period ended 30 June 1997.

[Minister's second reading speech made in—  
Legislative Assembly on 16 April 1997  
Legislative Council on 19 June 1997]

BY AUTHORITY