

ANIMAL WELFARE AMENDMENT BILL 2017

EXPLANATORY MEMORANDUM

OVERVIEW OF THE BILL

The purpose of this Bill is to increase the capacity of the Animal Welfare Act 2002 (the Act) to regulate matters relating to the health, safety and welfare of animals, as distinct from the prohibition of cruelty to animals.

The shortcomings of the Act in this regard were identified when attempts were made to implement, through regulation, the National Standards and Guidelines (NSG) for land transport of livestock. Amendments were also needed in order to properly monitor compliance with the Act.

The Bill makes changes to the Act in five areas.

- (i.) Additional provision for prescribed acts of cruelty to an animal by a person in charge of the animal.
This, together with the existing general provisions for prescribed acts of cruelty by a person, whether or not the person in charge of the animal, will be used to implement, by regulation, the mandatory part of the NSG. It should be noted that the 'guidelines' in the NSG refer to practices that are desirable but not mandatory.
- (ii.) Power to limit the application of current defences and prescribe new defences to a charge of cruelty.
- (iii.) The introduction of a new Division and Regulation making powers.
The Act does not currently authorise regulations providing for the health, safety and welfare of animals and related matters. To remedy this, Part 3 (offences against animals) has been restructured to include a new Division and clearly provide for regulations to be made dealing with matters that are, or are likely to be, encompassed by current and future NSG Standards.
- (iv.) Changes to provisions relating to codes of practice.
To simplify the operation of the Act, the Bill will provide for codes of practice to be prescribed for the purposes for which they are intended to operate i.e. either as a defence or as a guide to the courts. Previously these two distinct purposes of codes of practice adopted under the Act were linked and this caused confusion. The 'guidelines' in the NSG Guidelines will be prescribed for the purpose of guiding the courts when considering cruelty offences.
- (v.) New class of inspectors (designated general inspectors) with powers to enable monitoring of compliance with the Act.

Under the Act at present, the powers of entry to non-residential places and vehicles without the owner/occupier's consent are limited to where there is a

reasonable suspicion of a cruelty offence or in limited circumstances under a warrant. There is no capacity to enter without the owner/occupier's consent to investigate possible breaches of the regulations or to verify compliance with the Act in the absence of grounds to suspect a cruelty offence. The Bill will provide for a new class of general inspector, designated by the Minister and having power to enter non-residential places and vehicles for the purpose of verifying compliance with the Act and regulations, as well as official directions and court orders.

CLAUSE NOTES

Outlined below is a brief description of each clause of the *Animal Welfare Amendment Bill 2017*

Clause 1 *Short title*

Clause 1 cites the short title of the Act.

Clause 2 *Commencement*

This Clause is a standard commencement provision. Sections 1 and 2 will commence on the day on which the Amendment Act receives the Royal Assent. The rest of the Act will commence on a day fixed by proclamation, allowing any necessary co-ordination with the commencement of relevant subsidiary legislation.

Clause 3 *Act amended*

This states that the amendments in the Bill are to the *Animal Welfare Act 2002*.

Clause 4 *Section 3 amended*

Section 3 of the Act is a statement of its content and intent. Clause 4 amends this provision by including (as section 3(1)(a)) a clear statement that the 'content' of the amended Act will provide for the protection of animals by "regulating the conduct of people in relation to animals, including the manner in which animals are treated, cared for and managed".

The 'intent' of the Act, as stated in section 3(2), already indicates that the Act "intends" to provide this kind of protection for animals, but its capacity to fulfil this intent has been found lacking, giving rise to the need for amendment.

Clause 5 *Section 5 amended*

Section 5 provides for the definition of key terms used in the Act.

Clause 5(1) amends this section by inserting two new definitions:

“**designated general inspector** means a general inspector designated under section 35A(1) as a designated general inspector”. This is a straight forward reference to the new provision relating to this new class of inspector which will be dealt with later in this explanatory memorandum.

“**prescribed code of practice** means a code of practice prescribed for the purposes of the section in which the term is used”. This is also a straight forward self-explanatory definition.

The term “**code of practice**” is defined as “a code of practice adopted under section 94(2)(d)” (adoption by regulations). By clause 5(2), this definition is amended to clarify that an adopted ‘code of practice’ doesn’t necessarily have to be described as ‘a code of practice’ to come within the meaning of the term once it is adopted under that section.

Clause 6 *Part 3 heading replaced*

The heading to Part 3 is deleted and replaced with:

Part 3 — Welfare, safety and health of animals

This is to reflect the expansion of Part 3 to the new objects and regulation making powers to achieve those objects.

Clause 7 *Part 3 Divisions 1 and 2 inserted*

At the beginning of Part 3 two new Divisions are inserted.

Division 1 – Objects of this Part

Division 1 sets out the objects of Part 3 under section 18A, these are to:

- (a) to promote and protect the welfare, safety and health of animals;
and
- (b) to ensure animals are properly and humanely treated, cared for and managed.

Division 2- Regulations about animal welfare, safety and health.

Division 2 provides for regulations to be made about animal welfare, safety and health for the purpose of achieving the objects of Part 3.

Without limiting 18B(1) subsection 18B(2) provides a list of things that the regulations can may authorise, prescribe, prohibit, restrict or otherwise regulate.

Clause 8 *Part 3 Division 3 heading inserted*

Before section 19 a new division heading is inserted to deal with matters that previously were the only matters dealt with by Part 3:

“Division 3 – Cruelty and other inhumane and improper treatment of animals”

Clause 9 *Section 19 amended*

Section 19(3) specifies certain acts, or manners of treatment of animals, that will constitute cruelty by a person in charge of an animal. A new paragraph (fa) is inserted that will allow acts to be prescribed that, if carried out on or in relation to an animal by a person in charge of the animal, will constitute cruelty. A similar provision already exists in relation to an act done by a person, whether or not that person is in charge of the animal.

After section 19(3) a new subsection is inserted that provides the power to modify, the application of the defences to a charge of cruelty that are provided by sections 21, 22, 23, 24 and 25. This has been identified as a ‘Henry VIII clause’.

This clause is necessary as the Act has a number of provisions that provide defences to acts of cruelty and these may need to be modified to ensure that the Act, as originally drafted, cannot operate to prevent or undermine the operation of the NSG Standards that will be implemented under the amended Act. To do this by means of the regulations contemplated by proposed clause 19(4) is preferable to attempting the more extensive modification of both offences and defences as currently applying under the Act. It will allow any modifications revealed as necessary when regulations are drafted to be carefully tailored to go no further than is necessary, and to avoid unintended consequences that may result from attempting to change the current application of the defences more broadly.

Clause 9(3) inserts ‘or’ after each of the paragraphs (a) to (h) in section 19(3). This is a technical drafting amendment.

Clause 10 *Section 25 amended*

Section 25 provides that compliance with a code of practice is a defence to a charge of cruelty. This section will be amended to reflect the fact that the pertinent code of practice will now be a code of practice “prescribed” for the purposes of this particular provision, rather than any adopted code of practice that relates to the class of animals relevant to the charge.

Clause 11 *Section 25A inserted*

This provision is included to allow for additional defences to a charge of cruelty to be prescribed. This is necessary as a number of standards in the NSG will be simpler to apply as a defence rather than as a complex prescribed act of cruelty, especially where there may be some overlap with existing provisions. As well, offence provisions already exist in relation to matters for which the NSG Standards provide exceptions. These include mulesing of sheep less than 12 months old and time off water when transporting livestock. These will need to be included as a defence to a charge of cruelty under s.19(3)(d) - failure to provide proper and sufficient water and food to an animal. Under the existing provisions these defences are provided through section 25 and the codes of practice. The currently applicable codes of practice will no longer be adopted by the regulations once the appropriate NSG Standards are regulated.

Clause 12 *Section 29 amended*

Amendment to make this provision more complete in covering the use of a “prescribed device” in such a way that constitutes a defence to a cruelty charge.

Clause 13 *Section 30 amended*

A similar amendment to that in Clause 12, but in relation to a defence to a charge of cruelty by subjecting an animal to a prescribed surgical or similar operation, practice or activity.

Clause 14 *Section 35A inserted*

Clause 14 introduces a new section (35A) that allows the Minister, by written notice, to designate a general inspector, other than a police officer, as a “designated general inspector” (subsection (1)). A designated general inspector will have the function set out in the proposed section 37(1)(aa) and the powers of entry conferred by proposed sections 38(1A) and 39(1A).

The designation remains in force for the period set out in the notice of designation unless before then the designation is cancelled by the Minister or the general inspector ceases to be a general inspector subsection (2)).

Under subsection (3), the Minister may by way of a written notice restrict the authority of the inspector to exercise a power under section 38(1A) (power to enter a non-residential place) or 39(1A) (power to enter a vehicle that is not a residence) by limiting all or any of the following:

- (a) the places where a power may be exercised;

- (b) the times when a power may be exercised;
- (c) the circumstances in which a power may be exercised.

The powers of the inspector under sections 38(1A) and 39(1A) are then limited to the extent set out in the notice (subsection (4)). The restriction on the inspector's power by written notice may occur at the time the inspector is designated or at any other time and may be varied or cancelled by the Minister by written notice to the inspector (subsection (5)).

This new class of inspector is necessary because the existing powers of general inspectors to enter non-residential places and vehicles without the owner/occupier's consent are limited to where there is a reasonable suspicion of a cruelty offence or in limited circumstances under a warrant. There is no capacity to enter without the owner/occupier's consent to investigate possible breaches of the regulations or to verify compliance with the Act, including directions notices and court orders. The powers are not extraordinary in nature: similar inspection powers exist under other legislation, for example the *Biosecurity and Agriculture Management Act 2007*.

Clause 15 *Section 37 amended*

Clause 15(1) adds to the statement of functions of general inspectors, set out in section 37(1), the new function (if the inspector is a designated general inspector) of monitoring compliance with Part 3, court orders made under section 55(1) and directions given by a general inspector under section 40(1) or 47(1).

Clause 15(2) is a technical drafting amendment.

Clause 16 *Section 38 amended*

Clause 16(1) confers on a designated general inspector the power of entry to a non-residential place for the purposes of carrying out the new function of monitoring compliance as set out in section 37(1)(aa).

Clause 16(2) is a consequential drafting amendment.

Clause 17 *Section 39 amended*

Clause 17(1) confers on a designated general inspector the power of entry to a vehicle that is not a residence for the purposes of carrying out the new function of monitoring compliance as set out in section 37(1)(aa).

Clause 17(2) is a consequential drafting amendment.

Clause 18 *Section 84 amended*

Section 84 provides that in relation to a charge of cruelty, failure to comply with a code of practice must be taken into account by the court but is not on its own sufficient to prove commission of the offence. Similarly to section 25, this section will be amended to reflect the fact that the pertinent code of practice will now be a code of practice “prescribed” for the purposes of this particular provision, rather than any adopted code of practice that relates to the class of animals relevant to the charge.

Clause 19 *Section 94 amended*

This clause makes two minor amendments to the regulations provision.

Clause 19(a) makes the language consistent with the existence of the new regulation-making powers specified in the proposed new section 18B.

Clause 19(b) makes it clear that a document does not need to be described as a “code of practice” to enable it to be adopted as such under the regulations.