

# Explanatory Memorandum

## CRIMINAL INVESTIGATION AMENDMENT

### (PROTECTION OF LAW ENFORCEMENT ANIMALS) BILL 2023

The Criminal Investigation Amendment (Protection of Law Enforcement Animals) Bill 2023 (the Bill) amends the *Criminal Investigation Act 2006* (the CIA) to introduce new offence, penalty and court-ordered restitution provisions for assaulting, injuring or killing a law enforcement animal.

It will be an offence to, without reasonable excuse, assault, injure or kill a law enforcement animal that is being used by an officer. It will also be an offence to, without reasonable excuse, assault, injure or kill an animal on account of it being a law enforcement animal.

The new provisions will apply to any animal that is used, or is being trained or maintained for use, by police officers in the execution of their powers, duties and responsibilities, whether they arise from the CIA, other statutes or the common law. For example, under the *Misuse of Drugs Act 1981*, police dogs are used to conduct preliminary drug detection tests and to assist police officers to locate drugs pursuant to a search warrant. The new provisions in the CIA will apply to these law enforcement animals.

The new provisions will also apply to any animal that is used, or is being trained or maintained for use, by other public officers in the execution of their powers, duties and responsibilities under the CIA. Under section 9 of the CIA, certain public officers (who are not police officers) may exercise powers under the CIA. Law enforcement animals used to assist such public officers will be covered by the new provisions.

The penalties for the new offences are commensurate with the penalties for assaulting a public officer under section 318 of the *Criminal Code*. A court that convicts a person under the new offences will have the power to make an order that the offender pay compensation in relation to the treatment, care, rehabilitation, re-training or replacement of the animal.

The Bill provides as follows:

#### **Clause 1**    **Short title**

Clause 1 provides that, when the Bill receives the Royal Assent, it will be known as the *Criminal Investigation Amendment (Protection of Law Enforcement Animals) Act 2023* (the Act).

## **Clause 2 Commencement**

Clause 2 provides that the short title and commencement provisions come into effect on Royal Assent, and the rest of the Act will come into operation on a day fixed by proclamation.

## **Clause 3 Act amended**

Clause 3 provides that the Act amends the CIA.

## **Clause 4 Part 14 Division 1 inserted**

Clause 4 adds a new heading of “Division 1 – Offences” at the beginning of Part 14 of the CIA, and inserts section 152A as the first section in that Division.

### **Section 152A Terms used**

Section 152A defines relevant terms used in the new provisions.

***apply force*** and ***assault*** are based upon the definitions of those terms in the *Criminal Code* with modifications appropriate to animals. References to consent and threats to apply force have been excluded on the basis that animals cannot give consent or understand threats in the way that a person can.

***circumstances of aggravation*** are defined as circumstances in which the offender is armed with a dangerous or offensive weapon or instrument, or is in company with another person or persons.

***power, duty or responsibility***, in relation to an officer who is not a police officer, is limited to a power, duty or responsibility under the CIA.

***reasonable excuse*** has a meaning affected by sections 153C(2) and 153D.

## **Clause 5 Sections 153A to 153E inserted**

Clause 5 inserts sections 153A to 153E into Part 14 Division 1 of the CIA.

### **Section 153A Harm to animals being used in execution of law enforcement duties**

Section 153A creates the offence of assaulting, injuring or killing an animal being used for law enforcement duties.

Section 153A(1) provides that it is an offence for a person to, without reasonable excuse, kill an animal being used by an officer in the execution of

the officer's powers, duties or responsibilities. The penalty for this offence is imprisonment for 10 years.

Section 153A(2) provides that it is an offence for a person to, without reasonable excuse, in circumstances of aggravation, assault or injure an animal being used by an officer in the execution of the officer's powers, duties or responsibilities. The penalty for this offence is imprisonment for 10 years.

Section 153A(3) provides that it is an offence for a person to, without reasonable excuse, assault or injure an animal being used by an officer in the execution of the officer's powers, duties or responsibilities. The penalty for this offence is imprisonment for 7 years, with a summary conviction penalty of imprisonment for 3 years and a fine of \$36,000.

### **Section 153B Harm to law enforcement animals generally**

Section 153B creates the offence of assaulting, injuring or killing an animal on account of it being a law enforcement animal. The offence covers targeted attacks on animals used, or trained or maintained for use, by officers, including animals that have not yet been deployed because they have not yet completed their training.

Section 153B(1) provides that it is an offence for a person to, without reasonable excuse, kill an animal on account of the animal being one that is used, or trained or maintained for use, by an officer in the execution their powers, duties or responsibilities. The penalty for this offence is imprisonment for 10 years.

Section 153B(2) provides that it is an offence for a person to, without reasonable excuse, in circumstances of aggravation, assault or injure an animal on account of the animal being one that is used, or trained or maintained for use, by an officer in the execution their powers, duties or responsibilities. The penalty for this offence is imprisonment for 10 years.

Section 153B(3) provides that it is an offence for a person to, without reasonable excuse, assault or injure an animal on account of the animal being one that is used, or trained or maintained for use, by an officer in the execution their powers, duties or responsibilities. The penalty for this offence is imprisonment for 7 years, with a summary conviction penalty of imprisonment for 3 years and a fine of \$36,000.

### **Section 153C General provisions about reasonable excuse for offences under s. 153A and 153B**

Section 153C comprises general provisions about the term 'reasonable excuse' used in sections 153A and 153B.

Section 153C(1) provides that in a prosecution for an offence under section 153A or section 153B, the accused has the onus of proving that they had a reasonable excuse.

Section 153C(2) provides a non-exhaustive list of circumstances that will constitute a reasonable excuse, including being an officer acting in the course of executing a power, duty or responsibility, acting with the consent of the owner or handler of the animal, providing veterinary care or treatment to the animal, or acting in the course of training the animal.

### **Section 153D Reasonable excuse includes self-defence for offences under s. 153A and 153B**

Section 153D provides a further example of a circumstance that will constitute a reasonable excuse for the purposes of sections 153A and 153B, namely that the accused acted in self-defence. Section 153D is modelled on the defence of self-defence in section 20 of the *Animal Welfare Act 2002*.

Section 153D(1) provides that the accused will have a reasonable excuse where the law enforcement animal was attacking, or threatening to attack, the accused, another person or another animal; the accused was defending against the attack; and the accused did not use more force than was reasonably necessary.

Section 153D(2) provides that an accused cannot rely on self-defence as a reasonable excuse if the animal was being used by an officer in the execution of the officer's powers, duties or responsibilities, and the use of the animal was not unreasonable in the circumstances.

Section 153D(3) provides that an accused cannot rely on self-defence as a reasonable excuse if the accused entered or attempted to enter a place or vehicle in the course of, or for the purpose of, committing an unlawful act and the law enforcement animal, or the person with custody or control of the law enforcement animal, was the occupier of that place or vehicle.

Section 153D(4) provides that an accused cannot rely on self-defence as a reasonable excuse if the accused provoked the attack or permitted or encouraged another animal to attack the law enforcement animal.

### **Section 153E Compensation order relating to offences under s. 153A or 153B**

Section 153E provides for compensation orders to be made against persons convicted of an offence of assaulting, injuring or killing a law enforcement animal.

Section 153E(1) provides that a court that convicts a person of an offence under section 153A or 153B may, on an application by the Commissioner of Police or the prosecutor, order the person convicted of the offence to pay all or some of the reasonable expenses in relation to the treatment, care, rehabilitation or re-training of the animal, or the replacement of the animal.

Section 153E(2) provides that a compensation order must direct the amount to be paid to the Commissioner of Police, in the case of an animal used by police officers, or to a person nominated by the prosecutor, in the case of an animal used by other public officers.

Section 153E(3) provides that the court may adjourn an application for a compensation order for the purpose of obtaining additional information or for any other purpose it thinks fit.

Section 153E(4) provides that, except as provided by section 153E(3), Part 16 of the *Sentencing Act 1995* applies, with any necessary modifications, to compensation orders made under section 153E.

**Clause 6    Part 14 Division 2 heading inserted**

Clause 6 adds a new heading of “Division 2 – General” after the offence provisions in Part 14 of the CIA.