

Animal Welfare Amendment Bill

Government Bill

As reported from the Primary Production
Committee

Commentary

Recommendation

The Primary Production Committee has examined the Animal Welfare Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The purpose of the bill is to improve the way offences relating to the ill-treatment and neglect of animals are prescribed in the Animal Welfare Act 1999, and to increase the penalties for this type of offending.

Clarifying ownership

We recommend amending clause 7 to change the heading of section 169 of the Act, by replacing “having custody of” with “owning or exercising authority in respect of animals”. Section 169 refers to ownership of or authority over animals, and it was felt that the word “custody” in the heading could cause confusion.

Increase penalties for contravention of a disqualification order

We recommend amending clause 7 to increase the penalties set out in new section 169B for contravening a disqualification order to the same level as those for reckless ill-treatment of an animal. The proposed penalties for those owning or exercising authority over animals after being disqualified are a maximum of three years' imprisonment or a fine not exceeding \$75,000 or both, in the case of an individual, and a fine not exceeding \$350,000 in the case of a body corporate. The amendment would bring the section into line with the policy of the bill, which is to send a clear message that offending against animals will not be tolerated.

Forfeiture of animals

We recommend amending clause 9 to change section 172(1)(a) by adding the words "and of which the offender is the owner". This is in response to concern about the financial implications of the proposed amendment to the forfeiture provisions in section 172, and the potential imposition of an unfair penalty on absentee or joint owners as a result of the actions of the offender, who may or may not be the owner of the animals. Where the offending is committed by someone other than the animals' owner, the owner should not be required to forfeit the animals. The recommended amendment clarifies that if the owner is convicted of an offence under the bill, the animals to which the charge relates that are owned by the owner, as well as any other animals owned by the owner, could be forfeited to the Crown or an approved organisation.

Other matters relating to the bill

Some of us do not believe that increasing the length of sentences will, by itself, result in a decrease in cases of cruelty to animals, especially since only ten people have ever been jailed in New Zealand as a result of animal cruelty charges.

Some of us are concerned that there are only five full-time Ministry of Agriculture and Forestry inspectors in New Zealand to undertake prosecutions for animal cruelty and there are insufficient resources to pursue all cases of cruelty, with 92 percent of complaints made to the SPCA.

Appendix

Committee process

The Animal Welfare Amendment Bill was referred to the committee on 23 February 2010. The closing date for submissions was 15 March 2010. We received and considered 17 submissions from interested groups and individuals. We heard six submissions.

We received advice from the Ministry of Agriculture and Forestry.

Committee membership

Shane Ardern (Chair)

Hon Jim Anderton

Brendon Burns

Dr Ashraf Choudhary

Craig Foss

Sandra Goudie

Colin King

Hon Damien O'Connor

Sue Kedgley was a non-voting member for this item of business.

Animal Welfare Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon David Carter

Animal Welfare Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act amended	2
4	Penalties	2
5	New sections 28 and 28A substituted	2
	28 Wilful ill-treatment of animals	2
	28A Reckless ill-treatment of animals	3
6	Penalties	4
7	New sections 169, 169A, and 169B substituted	4
	169 Court may disqualify person from owning or exercising authority in respect of animals	4
	169A Disqualified person may apply to court for removal or variation of disqualification	4
	169B Offence of contravening disqualification order	5
8	Transitional provision in respect of section 169 of principal Act	6
9	Power of court to order that certain animals be forfeited to the Crown	6
10	Consequential amendments	6

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Animal Welfare Amendment Act **2010**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act amended

This Act amends the Animal Welfare Act 1999.

4 Penalties

- (1) Section 25(a) is amended by— 10
- (a) omitting “6” and substituting “12”; and
 - (b) omitting “\$25,000” and substituting “\$50,000”.
- (2) Section 25(b) is amended by omitting “\$125,000” and substituting “\$250,000”.

5 New sections 28 and 28A substituted 15

Section 28 is repealed and the following sections are substituted:

“28 Wilful ill-treatment of animals

- “(1) A person commits an offence if that person wilfully ill-treats an animal with the result that— 20
- “(a) the animal is permanently disabled; or
 - “(b) the animal dies; or
 - “(c) the pain or distress caused to the animal is so great that it is necessary to destroy the animal in order to end its suffering; or 25
 - “(d) the animal is seriously injured or impaired.
- “(2) For the purposes of **subsection (1)(d)**, an animal is **seriously injured or impaired** if the injury or impairment—
- “(a) involves— 30
 - “(i) prolonged pain and suffering; or
 - “(ii) a substantial risk of death; or
 - “(iii) loss of a body part; or

- “(iv) permanent or prolonged loss of a bodily function;
and
- “(b) requires treatment by or under the supervision of a veterinarian.
- “(3) A person who commits an offence against this section is liable 5
on conviction on indictment,—
- “(a) in the case of an individual, to imprisonment for a
term not exceeding 5 years or to a fine not exceeding
\$100,000 or to both:
- “(b) in the case of a body corporate, to a fine not exceeding 10
\$500,000.
- “Compare: 1960 No 30 ss 2, 4; 1993 No 19 s 3(1).”
- “28A Reckless ill-treatment of animals**
- “(1) A person commits an offence if that person recklessly ill-treats 15
an animal with the result that—
- “(a) the animal is permanently disabled; or
- “(b) the animal dies; or
- “(c) the pain or distress caused to the animal is so great that
it is necessary to destroy the animal in order to end its
suffering; or 20
- “(d) the animal is seriously injured or impaired.
- “(2) For the purposes of **subsection (1)(d)**, an animal is **seriously
injured or impaired** if the injury or impairment—
- “(a) involves— 25
- “(i) prolonged pain and suffering; or
- “(ii) a substantial risk of death; or
- “(iii) loss of a body part; or
- “(iv) permanent or prolonged loss of a bodily function;
and
- “(b) requires treatment by or under the supervision of a veter- 30
inarian.
- “(3) A person who commits an offence against this section is liable
on conviction on indictment,—
- “(a) in the case of an individual, to imprisonment for a term 35
not exceeding 3 years or to a fine not exceeding \$75,000
or to both:
- “(b) in the case of a body corporate, to a fine not exceeding
\$350,000.”

6 Penalties

- (1) Section 37(a) is amended by—
- (a) omitting “6” and substituting “12”; and
 - (b) omitting “\$25,000” and substituting “\$50,000”.
- (2) Section 37(b) is amended by omitting “\$125,000” and substituting “\$250,000”. 5

7 New sections 169, 169A, and 169B substituted

Section 169 is repealed and the following sections are substituted:

“169 Court may disqualify person from ~~having custody of animals~~ owning or exercising authority in respect of animals” 10

- “(1) A court may (in addition to or in substitution for any other penalty) disqualify a person for any period that it thinks fit, from being the owner of, or exercising authority in respect of, an animal or animals of a particular kind or description where the court convicts that person of an offence against— 15
- “(a) **section 28 or 28A**; or
 - “(b) any section in Part 1 or 2 and the person has previously been convicted of an offence against— 20
 - “(i) any section in Part 1 or 2; or
 - “(ii) any of sections 3, 4, and 16(3) of the Animals Protection Act 1960; or
 - “(c) any section in Part 1 or 2 and the court considers that by reason of the serious nature of the offence the person should be disqualified under this section; or 25
 - “(d) section 152(1); or
 - “(e) **section 169B(1)**.
- “(2) In making an order under **subsection (1)**, the court may also specify a minimum disqualification period. 30
- “Compare: 1960 No 30 s 16; 1993 No 19 ss 2, 3(1).

“169A Disqualified person may apply to court for removal or variation of disqualification”

- “(1) A person who is disqualified under **section 169(1)** may apply to the court for the removal or variation of the disqualification. 35
- “(2) A person may not apply under **subsection (1)** before—

- “(a) the expiry of the minimum disqualification period, if there is one; or
- “(b) if there is no minimum disqualification period, the expiry of 2 years from the date of the disqualification order. 5
- “(3) The court may order that, as from a date specified in the order, the disqualification be removed or varied, or that the application be refused.
- “(4) In deciding an application under this section, the court may have regard to— 10
- “(a) the character of the applicant; and
- “(b) the applicant’s conduct since the disqualification order was made; and
- “(c) the nature of the offence of which the applicant was convicted; and 15
- “(d) any other circumstance of the case.
- “(5) If the court varies the disqualification or refuses the application, the person who is disqualified may not re-apply under **subsection (1)** before the expiry of 12 months after the date of the order of variation or the refusal. 20
- “169B Offence of contravening disqualification order**
- “(1) A person commits an offence who, in contravention of an order made under **section 169(1)**, becomes the owner of, or exercises authority in respect of, an animal or animals of a particular kind or description to which the order relates. 25
- “(2) A person who commits an offence against **subsection (1)** is liable on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding ~~6 months~~ 3 years or to a fine not exceeding ~~\$50,000~~ \$75,000 or to both: 30
- “(b) in the case of a body corporate, to a fine not exceeding ~~\$250,000~~ \$350,000.
- “(3) In **subsection (1)**, **order** includes an order varied under **section 169A**.”

8 Transitional provision in respect of section 169 of principal Act

Section 169 before amendment by this Act (**old section 169**) continues in force as if it had not been amended in respect of any person who, on the commencement of this Act, is subject to a disqualification order made under old section 169(1) or under section 16(1) of the Animals Protection Act 1960. 5

9 Power of court to order that certain animals be forfeited to the Crown

(1) The heading to section 172 is amended by adding “or approved organisation”. 10

(2) Section 172 is amended by repealing subsection (1) and substituting the following subsections:

“(1) The court convicting a person (the **offender**) of an offence against this Act in respect of an animal or animals may (in addition to or in substitution for any other penalty) order that any or all of the following animals be forfeited to the Crown or to an approved organisation: 15

“(a) the animal or animals to which the charge relates and of which the offender is the owner: 20

“(b) any other animals at the date of conviction owned by the offender.

“(1A) The court may make an order of forfeiture only if it thinks that it is desirable for the protection of the animal or animals in question.” 25

10 Consequential amendments

(1) Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is amended by inserting the following item after the item relating to section 28 of the Animal Welfare Act 1999:

28A	Reckless ill-treatment of animals
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(2) Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995 is amended by inserting, after the item relating to section 28 of the Animal Welfare Act 1999, the following item: 30

Animal Welfare Amendment Bill

Reckless ill-treatment of animals **section 28A**

Legislative history

15 February 2010
23 February 2010

Introduction (Bill 118-1)
First reading and referral to Primary Production
Committee
