

Serial 209
Animal Welfare Amendment Bill 2012
Ms McCarthy

A Bill for an Act to amend the *Animal Welfare Act*

NORTHERN TERRITORY OF AUSTRALIA
ANIMAL WELFARE AMENDMENT ACT 2012

Act No. [] of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2012

An Act to amend the *Animal Welfare Act*

[Assented to [] 2012]
[Second reading [] 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Animal Welfare Amendment Act 2012*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Animal Welfare Act*.

4 Section 4 amended

(1) Section 4, definition ***ethics committee***

omit

(2) Section 4

insert (in alphabetical order)

authorised person, for Part 6, see section 56(1).

causes, for Part 2, Division 1, see section 6.

connected with an offence, for Part 6, see section 56(3).

cruel, for Part 2, Division 1, see section 9.

ethics committee, for a licensee, means an animal ethics committee for the licensee under section 41.

minimum level of care, see section 7.

occupier, for Part 6, see section 56(1) and (2).

person entitled, for Part 6, Division 3, see section 68A.

return or disposal order, for an animal or thing, means one of the following orders:

- (a) that the Authority return the animal or thing to a person entitled to it;
- (b) that the Authority sell or dispose of the animal or thing under section 68F or otherwise as the court considers appropriate;
- (c) that the animal or thing is forfeited to the Crown and that the Authority sell or dispose of the animal or thing under section 68F or otherwise as the court considers appropriate.

seizure and care costs, see section 68H.

(3) Section 4, definition **inspector**

omit

and includes a member of the Police Force when exercising the powers of an inspector under this Act

5 Part 2, Division 1, heading amended

Part 2, Division 1, heading

omit

Obligations

insert

Duty of care

6 Sections 6 to 14 replaced

Sections 6 to 14

repeal, insert

6 Definitions

In this Division:

causes includes substantially contributes to.

cruel, see section 9.

7 Meaning of *minimum level of care*

- (1) The ***minimum level of care*** required for an animal is that the animal:
- (a) has appropriate and sufficient food and water; and
 - (b) has appropriate accommodation and living conditions; and
 - (c) is appropriately treated for disease, injury or suffering; and
 - (d) is allowed appropriate exercise; and
 - (e) is handled only in ways that are appropriate; and
 - (f) is confined or restrained only in ways that are appropriate; and
 - (g) is worked, ridden or otherwise used only in ways that are appropriate; and
 - (h) is not abandoned; and
 - (i) is not used in an organised animal fight.
- (2) For this section, ***appropriate***, for an animal, means appropriate to ensure the welfare, health and safety of the animal having regard to all relevant circumstances, including the animal's species and the environment in which it is kept or lives.
- (3) Further, something is not appropriate for an animal if:
- (a) it causes, or is likely to cause, the animal unnecessary suffering; or
 - (b) it is prescribed by the Regulations not to be appropriate.

8 Duty to care for animal

- (1) A person in charge of an animal owes a duty of care to it.
- (2) The person commits an offence if the person breaches the duty of care.

Maximum penalty: 100 penalty units or imprisonment for 1 year.

- (3) Without limiting subsection (2), a person breaches the duty of care if the person fails to take reasonable steps to ensure the animal receives the minimum level of care.
- (4) For subsection (3), in determining whether a person has taken reasonable steps, regard must be had to:
 - (a) all the relevant circumstances; and
 - (b) the steps an ordinary person might reasonably be expected to have taken in those circumstances.

9 Cruelty

- (1) A person commits an offence if the person is cruel to an animal.

Maximum penalty: 150 penalty units or imprisonment for 18 months.

- (2) Without limiting subsection (1), a person in charge of an animal is **cruel** to the animal if the person:
 - (a) fails to ensure the animal receives the minimum level of care; and
 - (b) intends to cause harm to the animal.
- (3) Without limiting subsection (1), a person is **cruel** to an animal (whether or not the person is in charge of the animal) if the person does any of the following:
 - (a) causes the animal unnecessary suffering;
 - (b) having caused the animal unnecessary suffering (including accidentally), fails to take reasonable action to mitigate the suffering;
 - (c) uses on the animal a device prescribed by the Regulations to be inhumane;

-
- (d) subjects the animal to treatment prescribed by the Regulations to be cruel.

10 Aggravated cruelty

- (1) A person commits an offence if:

- (a) the person is cruel to an animal; and
- (b) the cruelty causes the death of, or serious harm to, the animal; and
- (c) the person intends to kill or seriously harm the animal.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) In this section:

serious harm, for an animal, means:

- (a) harm that endangers the animal's life; or
- (b) harm that results in the animal being so severely injured, so diseased, or in such physical condition, that it would be cruel not to destroy the animal; or
- (c) harm that consists of, or results in, serious and protracted impairment of a physical or mental function.

7 Section 15 amended

- (1) Section 15(1)

omit

- (2) Section 15(2)

omit

- (2)

8 Section 16 repealed

Section 16

repeal

9 Part 2, Division 2, heading

Part 2, Division 2, heading

omit

of veterinarians

10 Section 23A inserted

After section 23, in Part 2

insert

23A Provision of food and drink

- (1) A person who believes on reasonable grounds an animal has been confined for more than 24 hours without appropriate and sufficient food or water may, if it is reasonably necessary to do so to alleviate the animal's suffering, enter the premises where the animal is confined to supply it with food or water.
- (2) A person who does so:
 - (a) incurs no liability for entering the premises; and
 - (b) may recover the reasonable cost of the food and water from a person in charge of the animal in a court of competent jurisdiction as a debt owed to the person.
- (3) This section does not apply in relation to stock animals being transported in accordance with an adopted code of practice.

11 Sections 26A to 26C inserted

After section 26

insert

26A Authority's functions

- (1) The Authority has the following functions:
 - (a) to ensure compliance with this Act and prosecute offences against this Act;
 - (b) to appoint inspectors and officers and be responsible for the performance by them of their functions;
 - (c) to administer the licensing regime for premises used for teaching or research under Part 5;

-
- (d) to otherwise administer this Act;
 - (e) to perform any other functions imposed on the Authority under this or another Act.
- (2) The Authority has the powers necessary to perform the Authority's functions.

26B Staff and facilities for Authority

- (1) The Chief Executive Officer of the Agency administering this Act must provide the Authority with staff and facilities to enable the Authority to properly perform the Authority's functions.
- (2) To assist in the performance of the Authority's functions, the Authority may arrange with the Chief Executive Officer of any other Agency to use the staff or facilities of that Agency.

26C Authority's investigative powers

- (1) For carrying out its functions under this Act, the Authority may do one or more of the following:
- (a) obtain relevant information from persons as, and in the way, the Authority considers appropriate;
 - (b) consult with persons as the Authority considers appropriate;
 - (c) make inquiries as the Authority considers appropriate.
- (2) Without limiting subsection (1)(a), the Authority may require a person to do either or both of the following:
- (a) give information to the Authority;
 - (b) produce documents to the Authority.
- (3) A person must comply with a requirement under subsection (2) in the manner, and within the time, specified by the Authority in the requirement.

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

- (4) It is a defence to a prosecution for an offence against subsection (3) if the person establishes a reasonable excuse.
- (5) A person given a requirement under subsection (2) is not excused from complying with it on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

-
- (6) However, information or a document given or produced by an individual for compliance with the requirement is not admissible in evidence against the individual in a civil or criminal proceeding, except a proceeding for an offence in which the falsity or misleading nature of the information or document is relevant.

12 Section 34 amended

- (1) Section 34(1)

omit, insert

- (1) A licence is subject to the conditions that the licensee must:
- (a) ensure there is at least one ethics committee for the licensee in accordance with section 41; and
 - (b) comply with directions given to the licensee by the ethics committee; and
 - (c) give an annual report to the Authority as mentioned in section 34A; and
 - (d) report and give information to the Authority as mentioned in section 34B.

- (2) After section 34(2)

insert

- (3) A licensee must comply with the conditions of the licence.

Maximum penalty: 10 penalty units or imprisonment for 12 months.

13 Sections 34A and 34B inserted

After section 34

insert

34A Annual reports

- (1) At the end of each financial year, a licensee must prepare a report about activities carried on during the year under the authority of its licence.
- (2) The report must contain the information prescribed by the Regulations about the activities of the following:
- (a) the licensee;

-
- (b) the licensee's ethics committee;
 - (c) permit holders employed or engaged by the licensee.
- (3) The licensee must give the report to the Authority on or before 31 October following the end of the financial year.
- (4) Without limiting the information that may be prescribed, the Regulations may require the report to include information or a document that is required to be kept or made under a code of practice, standard or other document as in force or existing at a particular time or from time to time.

34B Reporting of breaches

- (1) If a licensee believes on reasonable grounds that a person employed or engaged by the licensee has engaged in, is engaging in, or intends to engage in, conduct that contravenes this Act, the licensee must report the matter to the Authority as soon as practicable after becoming aware of it.
- (2) A licensee is not excused from complying with subsection (1) on the ground that to do so might tend to incriminate the licensee or make the licensee liable to a penalty.
- (3) However, a report given by an individual for compliance with subsection (1) is not admissible in evidence against the individual in a civil or criminal proceeding, except a proceeding for an offence in which the falsity or misleading nature of the report is relevant.

14 Section 41 replaced

Section 41

repeal, insert

41 Animal ethics committee

- (1) A licensee must have an animal ethics committee.
- (2) The animal ethics committee for a licensee may be:
- (a) a committee established and maintained by the licensee; or
 - (b) a committee established and maintained by another person or body, if the other person or body has agreed to the committee being the licensee's animal ethics committee.
- (3) An animal ethics committee:
- (a) must be constituted as prescribed by the Regulations; and

(b) has the powers and functions prescribed by the Regulations.

15 Section 42 replaced

Section 42

repeal, insert

42 Definition

In this Division:

relevant ethics committee, for a permit holder or applicant for a permit, means the ethics committee for the licensee by whom the permit holder or applicant is employed or engaged.

16 Section 48 amended

Section 48(1)

omit, insert

- (1) A permit is subject to the conditions that the permit holder:
- (a) must comply with directions of the ethics committee; and
 - (b) must give to the licensee on request any information reasonably required by the licensee to enable the licensee to comply with its obligations under this Act.

17 Section 57 amended

After section 57(1)

insert

- (1A) The Authority must not appoint a person to be an inspector unless satisfied that the person has the skills, qualifications, training and experience to properly perform the functions of an inspector.

18 Section 58 amended

After section 58(1)

insert

- (1A) The Authority must not appoint a person to be an officer unless satisfied that the person has the skills, qualifications, training and experience to properly perform the functions of an officer.

19 Section 58A inserted

After section 58

insert

58A Appointment of public sector employees in other Agencies

- (1) The Authority may appoint a public sector employee in an Agency other than the Agency administering this Act to be an authorised person.
- (2) However, the Authority must not do so without the agreement of the Chief Executive Officer of the other Agency.

20 Section 60 replaced

Section 60

repeal, insert

60 Functions of authorised persons

- (1) An authorised person has the following functions:
 - (a) to assess whether or not the provisions of this Act are being complied with;
 - (b) to seek evidence of a suspected offence against this Act;
 - (c) to perform the functions conferred on the person by this Act;
 - (d) to assist the Authority in the performance of its functions.
- (2) An authorised person may exercise a power conferred by this Act for the purpose of performing those functions.
- (3) In exercising a power or performing a function under this Act, an authorised person is subject to the direction of the Authority.

60A Duty to report suspected offences

If an authorised person believes on reasonable grounds that an offence against this Act has been, is being or is likely to be, committed, the authorised person must report the matter to the Authority as soon as reasonably practicable after the person forms that belief.

21 Section 62 amended

Section 62(2)

omit

all words from "of:" to "section 67."

insert

of exercising the person's functions under section 60.

22 Section 67 amended

Section 67(7)

omit

23 Part 6, Divisions 3 and 4 inserted

After section 68, in Part 6

insert

Division 3 Dealing with seized animals or things

68A Definition

In this Division:

person entitled, to an animal or thing, means one of the following:

- (a) the owner of the animal or thing;
- (b) a person authorised by the owner to possess the animal or thing;
- (c) another person who is legally entitled to possession of the animal or thing.

68B Authority to keep and care for seized animal or thing

- (1) If an animal or thing is seized under this Act, the Authority:
 - (a) is taken to be in possession of it; and
 - (b) must take reasonable steps to ensure it is kept safely and provided with at least the minimum level of care.
- (2) The Authority may enter into an arrangement with another person to keep and care for the animal or thing.

68C Retention of animal or thing seized under section 66

- (1) If an animal is seized under section 66(e), the Authority must deal with it under this section.

Note for subsection (1)

Section 66(e) allows an authorised person to seize an animal or thing believed to be connected with an offence.

- (2) The Authority may retain the animal or thing until one of the following occurs:
- (a) 2 years elapse from when the animal or thing was seized without a prosecution having been commenced for an offence with which it is connected;
 - (b) the Authority decides not to prosecute any person for an offence with which the animal or thing is connected;
 - (c) if a prosecution has been commenced for an offence with which it is connected – all proceedings relating to the prosecution (including any appeals) have been completed;
 - (d) a court makes a return or disposal order for the animal or thing.
- (3) When the Authority's right to retain the animal or thing ceases, the Authority must deal with it:
- (a) if subsection (2)(a), (b) or (c) applies – under section 68E; or
 - (b) if subsection (2)(d) applies – in accordance with the order.

68D Retention of animal seized under section 67

- (1) If an animal is seized under section 67(2)(b), the Authority must deal with it under this section.

Note for subsection (1)

Section 67(2)(b) allows an authorised person to seize an animal for the purpose of alleviating its suffering.

- (2) However, if the Authority believes on reasonable grounds that the animal is connected with an offence, the Authority may instead deal with the animal as if it had been seized under section 66(e).
- (3) The Authority may retain the animal for as long as the Authority considers reasonably necessary for the purpose of alleviating its suffering.

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- (4) When it is no longer necessary to retain the animal for that purpose, the Authority must deal with it under section 68E.

68E Animal or thing to be returned to person entitled

- (1) If the Authority is required to deal with an animal or thing under this section, the Authority must return it to a person who the Authority believes on reasonable grounds is a person entitled to it.
- (2) However, the Authority may instead deal with the animal or thing under section 68F if:
- (a) the Authority has taken all reasonable steps to find a person entitled to it but has been unable to do so; or
 - (b) no person entitled to it is willing to take possession of it; or
 - (c) the owner, or another person with a legal right to sell it, in writing, authorises the Authority to deal with it under section 68F.
- (3) Further, if a court makes a return or disposal order for the animal or thing, the Authority must deal with it in accordance with the order.

68F Sale or disposal of animal or thing

- (1) If required or permitted by this Act to deal with an animal or thing under this section, the Authority may do any of the following as the Authority thinks fit:
- (a) sell the animal or thing;
 - (b) give the animal or thing to a charitable organisation;
 - (c) if the animal or thing is of use to the Authority – retain it;
 - (d) if the animal or thing is of use to another Agency – give it to that Agency;
 - (e) if it is not reasonable or practicable to do one of the things mentioned in paragraphs (a) to (d) – destroy the animal or thing.
- (2) If an animal or thing is sold under subsection (1)(a) and any seizure and care costs incurred by a person for the animal or thing have not been reimbursed in accordance with a reimbursement order under Division 4, the person is to be reimbursed for those costs out of the proceeds of the sale.

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- (3) Any balance of the proceeds must be paid:
- (a) if the animal or thing has been forfeited to the Crown – to the Central Holding Authority; or
 - (b) otherwise:
 - (i) to the owner or another person who is legally entitled to those proceeds; or
 - (ii) if the Authority has taken all reasonable steps to find a person mentioned in subparagraph (i) but has been unable to do so – to the Central Holding Authority.
- (4) However, if a court makes an order for the sale or disposal of the animal or thing or distribution of proceeds in a different way, the Authority must deal with the animal, thing or proceeds in accordance with the order.

68G Return or disposal orders

- (1) This section applies if an animal or thing:
- (a) has been seized under this Act; and
 - (b) has not been forfeited to the Crown; and
 - (c) has not been sold or disposed of under section 68F.
- (2) On application by the Authority or any person entitled to the animal or thing, a return or disposal order may be made:
- (a) by the appropriate civil court; or
 - (b) if a person has been charged with an offence against this Act with which the animal or thing is connected – by the court hearing the charge.
- (3) An order may be made under subsection (2)(a) whether or not a person has been charged with an offence with which the animal or thing is connected.
- (4) An order may be made under subsection (2)(b):
- (a) as an interim order or on conclusion of the proceedings; and
 - (b) whether or not a person is convicted of an offence.

(5) If a person has been charged with an offence against this Act with which the animal or thing is connected, an application to the appropriate civil court for an order under subsection (2)(a) may be transferred to the court hearing the charge.

(6) In this section:

appropriate civil court means:

- (a) if the value of the animal or thing is within the jurisdictional limit of the Local Court (as defined in section 3 of the *Local Court Act*) – the Local Court; or
- (b) otherwise – the Supreme Court.

Division 4 Recovery of seizure and care costs

68H Meaning of *seizure and care costs*

- (1) If an animal or thing is seized under this Act, the ***seizure and care costs*** for the animal or thing are the reasonable costs incurred in relation to any of the following:
 - (a) taking possession of the animal or thing;
 - (b) transporting the animal or thing;
 - (c) for an animal – ensuring the animal is provided with the minimum level of care;
 - (d) for a thing – storing or looking after the thing;
 - (e) returning, or selling or disposing, of the animal or thing in accordance with this Act.
- (2) If an authorised person takes action under section 67 in relation to an animal, other than by seizing it under section 67(2)(b), the ***seizure and care costs*** for the animal are the reasonable costs incurred in taking the action.

68J Order for reimbursement of seizure and care costs

- (1) This section applies if:
 - (a) an animal or thing is seized under this Act or an authorised person takes action under section 67 in relation to an animal; and
 - (b) a person incurs seizure and care costs for the animal or thing.

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- (2) On application by the person who incurs the seizure and care costs, a reimbursement order may be made against a person in charge of the animal or thing:
- (a) by the appropriate civil court; or
 - (b) if a person has been charged with an offence against this Act with which the animal or thing is connected – by the court hearing the charge.
- (3) An order may be made under subsection (2)(a) whether or not a person has been charged with an offence with which the animal or thing is connected.
- (4) An order may be made under subsection (2)(b):
- (a) as an interim order or on conclusion of the proceedings; and
 - (b) whether or not a person is convicted of an offence.
- (5) The court must not make a reimbursement order unless satisfied that:
- (a) the seizure of the animal or thing, or the taking of the action under section 67, was reasonable in the circumstances; and
 - (b) it is reasonable in the circumstances to require the person against whom the order is sought to pay the seizure and care costs.
- (6) If a person has been charged with an offence against this Act with which the animal or thing is connected, an application to the appropriate civil court for an order under subsection (2)(a) may be transferred to the court hearing the charge.
- (7) In this section:

appropriate civil court means:

- (a) if the amount of costs sought is within the jurisdictional limit of the Local Court (as defined in section 3 of the *Local Court Act*) – the Local Court; or
- (b) otherwise – the Supreme Court.

person in charge, of an animal, includes a person who was in charge of the animal when it was seized or action was taken under section 67 in relation to it.

person in charge, of a thing, includes:

- (a) an owner of the thing; and
- (b) a person who has possession of the thing or had possession of it when it was seized.

reimbursement order means an order that a person reimburse the applicant for seizure and care costs incurred by the applicant that have not been paid under section 68F(2).

68K Enforcement of orders to pay

An order under section 68J or 76(3)(b) for the payment of money is an ancillary money order for Part 7 of the *Fines and Penalties (Recovery) Act* and is recoverable under that Part.

24 Section 71 amended

Section 71

omit

12 months

insert

2 years

25 Section 74A inserted

After section 74

insert

74A Alternative verdicts

- (1) This section applies if, in a proceeding against a person charged with an offence against a provision listed in the following Table (the **prosecuted offence**), the court:
 - (a) is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the person committed an offence, or the offence of attempting to commit an offence, listed in the Table as an **alternative offence** for the prosecuted offence.
- (2) The court may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

Table Alternative offences

Prosecuted offence	Alternative offence
section 10	section 8 or 9
section 9	section 8

26 Section 75 amended

Section 75(3)

omit

after the first day on which the offence continues

insert

on which the offence continues after the first day on which it was committed

27 Section 76 replaced

Section 76

repeal, insert

76 Additional orders on finding of guilt – seizure of animals

- (1) This section applies if:
 - (a) a court finds a person guilty of an offence against this Act; and
 - (b) the offender is in charge of an animal (whether or not the animal is connected with the offence); and
 - (c) the court is satisfied that the offender is likely to commit an offence against this Act in relation to the animal unless an order is made under this section.
- (2) The court may order that the animal be seized from the offender.
- (3) If it does so the court:
 - (a) must make a return or disposal order for the animal; and
 - (b) may make orders as it considers appropriate for the payment by the offender of seizure and care costs for the animal.

76A Additional orders on finding of guilt – future possession of animals

- (1) This section applies if:
- (a) a court finds a person guilty of an offence against this Act; and
 - (b) the court is satisfied that the offender is likely to commit another offence against this Act in relation to an animal unless an order is made under this section.
- (2) The court may, as it considers appropriate, order that the offender must not, for the period specified in the order:
- (a) be a person in charge of an animal; or
 - (b) allow an animal into or onto premises occupied by the offender.
- (3) The offender must comply with the order.

Maximum penalty 50 penalty units or imprisonment for 6 months.

28 Section 82 amended

- (1) Section 82

omit

The

insert

- (1) The

- (2) After section 82(1)

insert

- (2) A regulation may apply, adopt or incorporate (with or without changes) the whole or part of a code of practice, standard or other document as in force or existing at a particular time or from time to time.