

# LEGISLATIVE ASSEMBLY

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Read 1° 6 September 1995

*(Brought in by Mr McGrath (Wimmera) and Mrs Tehan)*

## A BILL

to amend the **Prevention of Cruelty to Animals Act 1986** and for other purposes.

### **Prevention of Cruelty to Animals (Amendment) Act 1995**

**The Parliament of Victoria enacts as follows:**

#### ***1. Purpose***

The purpose of this Act is to amend the **Prevention of Cruelty to Animals Act 1986**—

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- (a) to extend its application; and
  - (b) to provide further for enforcement of the Act and the taking of remedial action in certain circumstances.

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

**2. Commencement**

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Section 5 (2) is deemed to have come into operation on 1 June 1993. 5
- (3) Subject to sub-section (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in sub-section (3) does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period. 10

**3. Principal Act**

In this Act, the **Prevention of Cruelty to Animals Act 1986** is called the Principal Act. 15

**4. Amendment of definitions**

- (1) In section 3 of the Principal Act—
  - (a) before “In this Act—” **insert** “(1)”;
  - (b) for the definition of “animal” **substitute—** 20
    - “**animal**” means—
    - (a) a live member of a vertebrate species including any—
      - (i) fish; and
      - (ii) amphibian; and 25
      - (iii) reptile; and
      - (iv) bird; and
      - (v) mammal (other than a human being); or
    - (b) a live crustacean;’; 30

No. 46/1986.  
 R printed to  
 No. 40/1993  
 and  
 subsequently  
 amended by  
 Nos 52/1994,  
 65/1994 and  
 115/1994.

(c) **omit** the definitions of “Chief General Manager” and “municipality”;

(d) in the definition of “premises”, after paragraph (c) **insert**—

“(ca) a vehicle, vessel or aircraft; and”;

(e) **insert** the following definitions—

“**Department**” means the Department of Agriculture, Energy and Minerals;

“**Secretary**” means the Chief Administrator (within the meaning of the **Public Sector Management Act 1992**) of the Department;’.

(2) After section 3 (1) of the Principal Act **insert**—

‘(2) If under the **Public Sector Management Act 1992** the name of the Department of Agriculture, Energy and Minerals is changed, a reference to that Department in the definition of “Department” in sub-section (1) must, from the date when the name is changed, be taken to be a reference to the Department by its new name.’.

### **5. Application of Act**

(1) In section 6 of the Principal Act, before “This Act” **insert** “(1)”.

(2) In section 6 (a) of the Principal Act, for “**Abattoir and Meat Inspection Act 1973**” substitute “**Meat Industry Act 1993**”.

(3) In section 6 (a) of the Principal Act, **omit** “or the slaughter of poultry for human consumption in accordance with the requirements of an established religion”.

(4) After section 6 (e) of the Principal Act **insert**—

“; or

(f) the slaughter of a farm animal on a farm if—

(i) it is slaughtered for consumption on that farm; and

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- (ii) it is slaughtered in a humane manner; and
- (iii) it is not slaughtered for sale; and
- (iv) it is not slaughtered for use in the preparation of food for sale; and
- (v) it is not removed from that farm.”.

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(5) After section 6 (f) of the Principal Act **insert**—

“; or

(g) recreational fishing or angling conducted in a usual and reasonable manner and in accordance with the **Fisheries Act 1968**; or

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(h) commercial fishing or fish processing conducted in a usual and reasonable manner and in accordance with the **Fisheries Act 1968**.”.

(6) On the coming into operation of section 36 of the **Fisheries Act 1995**, for paragraphs (g) and (h) of section 6 (1) of the Principal Act **substitute**—

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“; or

(g) a person who engages in—

(i) a controlled activity of a kind referred to in section 36 of the **Fisheries Act 1995** in accordance with a fishery licence under that Act authorising that activity or in accordance with an exemption under that Act; or

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(ii) any other recreational fishing or angling conducted in a usual and reasonable manner.”.

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(7) At the end of section 6 of the Principal Act **insert**—

‘(2) In sub-section 6 (1) (f) “**farm**” has the same meaning as in the **Meat Industry Act 1993**.’.

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**6. Part 2 definitions**

In section 8 of the Principal Act, after the definition of “rodeo school” **insert**—

““**specialist inspector**” means a person appointed as a specialist inspector under section 18A;’.

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## **7. Cruelty**

(1) In section 9 of the Principal Act—

(a) before “A person who—” **insert** “(1)”;

(b) in paragraph (b) **omit** “knowingly”;

(c) in paragraph (d), after “subject” **insert** “, or is likely to subject,”;

(d) in paragraph (f), before “has” **insert** “is the owner of or”;

(e) in paragraph (i), before “has” **insert** “is the owner of or”;

(f) for the words and expressions commencing “Penalty:” and ending at the end of the section **substitute**—

“Penalty: 60 penalty units or imprisonment for 6 months.”.

(2) At the end of section 9 of the Principal Act **insert**—

“(2) It is a defence to a charge under sub-section (1) against an owner of an animal to prove that, at the time of the alleged offence, the owner had entered into an agreement with another person by which the other person agreed to care for the animal.”.

## **8. Aggravated cruelty**

In section 10 (1) of the Principal Act, for “50 penalty units” **substitute** “120 penalty units”.

## **9. Serious offences**

(1) After section 12 (6) of the Principal Act **insert**—

“(6A) If a person is disqualified under sub-section (1) (a) and, during the period of disqualification, a court makes a further order under sub-section (1) (a) in respect of the person, the further order takes effect immediately after the end of the period of disqualification fixed by the initial order.”.

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- (2) In section 12 (7) of the Principal Act—
  - (a) for “10 penalty units” **substitute** “60 penalty units”; and
  - (b) for “three months” **substitute** “6 months”.

**10. *Baiting and luring***

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- (1) In section 13 (1) of the Principal Act, for the words and expressions commencing “Penalty:” and ending at the end of the sub-section **substitute**—
 

“Penalty: 120 penalty units or imprisonment for 12 months.”.
- (2) In section 13 (2) of the Principal Act, **omit** “of Agriculture and Rural Affairs”.

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**11. *Trap-shooting***

- In section 14 of the Principal Act, for the words and expressions commencing “Penalty:” and ending at the end of the section **substitute**—
 

“Penalty: 120 penalty units or imprisonment for 12 months.”.

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**12. *Leghold traps***

- (1) In section 15 (2) of the Principal Act, for the words and expressions commencing “Penalty:” and ending at the end of the sub-section **substitute**—
 

“Penalty: 120 penalty units or imprisonment for 12 months.”.
- (2) In section 15 (3) of the Principal Act, for the words and expressions commencing “Penalty:” and ending at the end of the sub-section **substitute**—
 

“Penalty: 120 penalty units or imprisonment for 12 months.”.

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**13. Insertion of new section 15A**

After section 15 of the Principal Act **insert—**

**‘15A. Dogs on moving vehicles**

(1) In this section—

5                   **“highway”** has the same meaning as in  
                          the **Road Safety Act 1986**;

**“trailer”** has the same meaning as in the  
                          **Road Safety Act 1986.**

10           (2) Subject to sub-section (3), a person must  
                  not drive on a highway—

                  (a) a truck with an open tray; or

                  (b) a motor vehicle to which a trailer is  
                  attached—

15                   if a dog is on the tray or trailer and the dog  
                  is not secured in such a way as to prevent  
                  it from—

                  (c) falling from or moving off the tray or  
                  trailer; or

20                   (d) being injured from the movement of  
                  the truck or trailer.

                  Penalty: 5 penalty units.

(3) Sub-section (2) does not apply to a dog  
which is being used to assist in the  
movement of livestock.’.

25           **14. Rodeo permits**

                  In section 16 of the Principal Act, for “Chief General  
                  Manager” (wherever occurring) **substitute**  
                  “Secretary”.

**15. Rodeo offences**

In section 17 of the Principal Act, for the words and expressions commencing “Penalty:” and ending at the end of the section **substitute**—

“Penalty: 60 penalty units.”.

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**16. Inspectors**

In section 18 (1) (c) of the Principal Act, for “municipality” **substitute** “municipal district”.

**17. Insertion of new section 18A**

After section 18 of the Principal Act **insert**—

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**“18A. Specialist inspectors**

(1) The Minister may, by instrument in writing, appoint any person whom the Minister considers to have appropriate qualifications to be a specialist inspector for the purposes of this Part.

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(2) The appointment of a specialist inspector remains in force for a period not exceeding 3 years specified in the instrument of appointment and expiring on 30 June.

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(3) The Minister may cancel the appointment of a specialist inspector.”.

**18. Identification certificates**

In section 19 of the Principal Act, after “inspector (other than a member of the police force)” (wherever occurring) **insert** “and specialist inspector”.

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**19. Impersonating inspector**

In section 20 of the Principal Act—

- (a) after “inspector” (wherever occurring) **insert** “or specialist inspector”; and
- (b) for “10 penalty units” **substitute** “20 penalty units”.

**20. Inspectors’ powers**

(1) In section 21 (1) (a) (ii) of the Principal Act, **omit** “(or in any vehicle in or on the premises)”.

(2) In section 21 (1) (a) (iii) of the Principal Act, **omit** “or vehicle”.

(3) In section 21 (1) of the Principal Act, after paragraph (b) **insert**—

“(ba) Power to enter any premises other than a person’s dwelling with such assistance as is necessary—

(i) to free an animal from an entanglement, tether or bog (without removing it from its housing or the premises on which it is located) if the animal is showing signs of pain or suffering from the entanglement, tether or bog; or

(ii) to inspect an animal showing signs of pain or suffering as a result of injury or disease in order to determine whether the animal requires treatment by a veterinary surgeon;

(bb) Subject to sub-section (2A), power to arrange for treatment by a veterinary surgeon of an animal if—

(i) the inspector believes that such treatment is necessary for the welfare of the animal; and

(ii) the owner or the person who has possession or custody of the animal has not engaged a veterinary surgeon to

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undertake the treatment or cannot be contacted after reasonable enquiry;”.

(4) For section 21 (1) (c) of the Principal Act **substitute—**

“(c) Power to—

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(i) enter any premises other than a person’s dwelling with such assistance as is necessary if the inspector suspects on reasonable grounds that in or on those premises there is an animal that—

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(A) is behaving in such a manner and in such circumstances that it is likely to cause death or serious injury to any person or animal; or

(B) is abandoned, distressed or disabled; and

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(ii) destroy any animal in or on those premises that—

(A) is behaving in such a manner and in such circumstances that it is likely to cause death or serious injury to any person or animal; or

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(B) is abandoned, distressed or disabled if its condition is such that it would continue to suffer if it remained alive;”.

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(5) After section 21 (2) of the Principal Act **insert—**

“(2A) If the owner or the person who has possession or custody of the animal can be contacted after reasonable enquiry, an inspector must, before arranging veterinary treatment under sub-section (1) (bb), give the owner or person an opportunity to arrange for a veterinary surgeon of his or her choice to undertake the required treatment.

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(2B) An inspector may recover the costs of veterinary treatment arranged under sub-section (1) (bb) from the owner or the

person who has possession or custody of the animal treated in a court of competent jurisdiction as a civil debt recoverable summarily.

5 (2c) In exercising a power under sub-section (1) (a), (b), (ba) or (c), an inspector may—

10 (a) inspect and take photographs (including video recordings), or make sketches of the premises or any animal or thing in or on the premises;

(b) in accordance with sub-section (2D), take and keep samples of or from any animal or thing in or on the premises;

15 (c) open any container at the premises for the purpose of inspecting, or taking a sample of, its contents but must reseal the container after the inspection is made or the sample is taken.

20 (2D) If an inspector proposes to take a sample, the inspector must—

(a) advise the owner or person in possession or custody, if possible prior to taking the sample, that it is obtained for the purpose of examination or analysis; and

25 (b) if it is obtained for the purpose of analysis, divide the sample into 3 parts and give 1 part to the owner, 1 part to the analyst and keep 1 part untouched for future comparison.”.

30 **21. Superintendent of saleyard**

In section 22 (2) of the Principal Act, for “municipality” **substitute** “municipal district”.

**22. Insertion of new section 22A**

After section 22 of the Principal Act **insert**—

**“22A. Powers of specialist inspectors**

- (1) A specialist inspector has the following powers for the purposes of this Part— 5
  - (a) all the powers of an inspector under section 21;
  - (b) with the prior written authority of the Minister, power—
    - (i) to enter premises, other than a person’s dwelling, in or on which animals are housed or grouped for the purpose of primary production, exhibition, competition or amusement; and 10
    - (ii) to inspect any animal, plant, equipment or structure on the premises; and 15
    - (iii) to observe any practice being conducted in connection with the management of animals on the premises. 20
- (2) Section 21 applies to a specialist inspector as if a reference to an inspector were a reference to a specialist inspector.”. 25

**23. Obstructing inspectors, etc.**

In section 23 of the Principal Act—

- (a) in paragraph (a)—
  - (i) after “inspector” **insert** “or specialist inspector”; 30
  - (ii) for “section 21” **substitute** “this Division”;
- (b) in paragraph (b)—
  - (i) after “inspector” **insert** “or specialist inspector”;

(ii) after “section 21 (1) (a) (iii)” **insert** “or 22A”;

(c) in paragraph (c)—

(i) after “inspector” (wherever occurring) **insert** “or specialist inspector”;

(ii) for “or (b)” **substitute** “, (b) or (ba) or 22A”;

(d) in paragraph (d)—

(i) after “inspector” **insert** “or specialist inspector”;

(ii) for “section 21” **substitute** “this Division”;

(e) for the words and expressions commencing “Penalty:” and ending at the end of the section **substitute**—

“Penalty: 60 penalty units.”.

#### **24. Power to file charges**

In section 24 (1) of the Principal Act—

(a) for “An information” **substitute** “A charge”;

(b) for “laid” **substitute** “filed”;

(c) in paragraph (b) (i), **omit** “of Agriculture and Rural Affairs”;

(d) in paragraph (b) (ii), for “municipality for” **substitute** “municipal district of”.

#### **25. Insertion of new sections 24A to 24D**

After section 24 of the Principal Act **insert**—

##### **“24A. Minister may authorise seizure of animal**

(1) If—

(a) the Minister is satisfied that, on more than one occasion within the immediately preceding period of 12 months, animals in the ownership, possession or custody of a person have been destroyed in the exercise

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of the power under section 21 (1) (c) or 22A; and

- (b) the Minister believes on reasonable grounds that any other animal in the ownership, possession or custody of the same person is in such a condition or circumstances that it is likely to become distressed or disabled —

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the Minister may give notice in writing to—

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- (c) the owner of the animal; or
- (d) if the identity of the owner cannot be readily established or the owner cannot be readily contacted, the person who has possession or custody of the animal—

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that, unless the Minister is satisfied that action has been or is being taken to remove the likelihood of the animal becoming distressed or disabled, the Minister intends, not less than 7 days after the giving of the notice, to authorise a specialist inspector to seize and dispose of the animal in accordance with this Division.

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- (2) If, at the expiration of 7 days from the giving of the notice referred to in sub-section (1), the Minister is not satisfied that action has been, or is being, taken to remove the likelihood of the animal becoming distressed or disabled, the Minister may authorise a specialist inspector named in the authority to seize the animal and—

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- (a) to sell the animal or cause it to be sold; or

- (b) to destroy the animal or cause it to be destroyed at a place specified in the authority.

**24B. Sale of animal**

- (1) A specialist inspector may offer for sale by public auction or public tender an animal seized in accordance with an authority given under section 24A.
- (2) A specialist inspector must give public notice that he or she intends to sell a seized animal by public auction or public tender.
- (3) A public notice of a specialist inspector's intention to sell an animal by public auction must include—
  - (a) details of the location where the animal was seized;
  - (b) the number and kind of animal;
  - (c) if the animal is branded, where and how it is branded;
  - (d) the sex and colour of the animal and any other descriptive marks;
  - (e) the time and place of the auction.
- (4) A public notice of a specialist inspector's intention to sell an animal by public tender must include—
  - (a) details of the location where the animal was seized;
  - (b) the number and kind of animal;
  - (c) if the animal is branded, where and how it is branded;
  - (d) the sex and colour of the animal and any other descriptive marks;
  - (e) the date and time by which written tenders should be submitted to the inspector.

**24C. Application of proceeds of sale**

A specialist inspector must apply the proceeds of sale of a seized animal in the following order—

- (a) the costs incurred in the removal, transport and sale of the animal must be deducted;
- (b) any balance then remaining must be paid to the owner of the animal.

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**24D. Destruction of animal**

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(1) A specialist inspector may destroy an animal seized under section 24A, or cause it to be destroyed, if so authorised in the authority given under that section.

(2) Subject to sub-section (3), a specialist inspector may recover the costs of removal, transport and destruction of an animal destroyed in accordance with an authority given under section 24A from the owner of the animal in a court of competent jurisdiction as a civil debt recoverable summarily.

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(3) A specialist inspector must apply any proceeds derived from the destruction of a seized animal in the following order—

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- (a) the costs incurred in the removal, transport and destruction of the animal must be deducted;
- (b) any balance then remaining must be paid to the owner of the animal.”.

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**26. Scientific establishment**

In section 26 of the Principal Act, for “Chief General Manager” (wherever occurring) substitute “Secretary”.



**27. Offence**

In section 27 of the Principal Act, for all words and expressions commencing “Penalty:” and ending at the end of the section **substitute**—

5 “Penalty: For a person who is a corporation—  
120 penalty units.

For a person other than a corporation—  
60 penalty units or imprisonment for 6  
months.”.

10 **28. Animal Experimentation Ethics Committee**

In section 28 (2) of the Principal Act, for “Chief General Manager” **substitute** “Secretary”.

**29. Breeding establishment**

15 In section 29 of the Principal Act, for “Chief General Manager” (wherever occurring) **substitute** “Secretary”.

**30. Offences**

(1) In section 30 of the Principal Act—

20 (a) for “25 penalty units” **substitute** “60 penalty units”; and

(b) for “5 penalty units” **substitute** “10 penalty units”.

(2) In section 32 of the Principal Act, for all words and expressions commencing “Penalty:” and ending at the end of the section **substitute**—

25 “Penalty: 60 penalty units or imprisonment for 6 months.”.

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(3) In section 36 (1), (2) and (3) of the Principal Act, for the words and expressions commencing “Penalty:” and ending at the end of the sub-section **substitute**—

“Penalty: For a person who is a corporation—  
120 penalty units.

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For a person other than a corporation—  
60 penalty units or imprisonment for 6 months.”.

**31. Appeal to AAT**

In section 33 of the Principal Act, for “Chief General Manager” **substitute** “Secretary”.

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**32. Delegation**

In section 38 of the Principal Act, for “Chief General Manager” (wherever occurring) **substitute** “Secretary”.

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**33. Evidentiary**

In section 39 (b) (ii) of the Principal Act, **omit** “of Agriculture and Rural Affairs”.

**34. Regulations**

In section 42 (1) of the Principal Act—

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(a) in paragraph (a), after “inspector” **insert** “or specialist inspector”;

(b) in paragraph (f), for “Chief General Manager” **substitute** “Secretary”.

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