

Animal Welfare Amendment Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to improve the way offences relating to the ill-treatment and neglect of animals are prescribed in the Animal Welfare Act 1999 (the **Act**), and to increase the penalties for this type of offending. Changes are also made to the provisions enabling the court to disqualify a person from having custody of animals, and order forfeiture of animals to the Crown or to an approved organisation.

Taken together, the amendments will strengthen the Act's provisions and enable serious offending against animals to be dealt with more effectively.

Provisions relating to wilful offending

Section 28 of the Act deals with the wilful ill-treatment of animals. It covers the most serious animal welfare offences and requires the prosecution to prove intent to cause harm. In addition, the ill-treatment has to be extremely serious.

Section 29 of the Act deals with ill treatment of an animal where it is not necessary to prove intent, and a range of lesser offences. As it stands, the high burden of proof required to successfully prosecute under section 28 means that most prosecutions are taken under sec-

tion 29(a) of the Act, which does not require intent to be established and consequently carries far lower penalties.

The Bill adds the new offence of reckless ill-treatment of an animal. This new offence will sit between the existing section 28 wilful ill-treatment and section 29 strict liability offences, creating a graduated series of offences according to seriousness and intent.

Wilful ill-treatment offences will remain the most serious offence, and will require the prosecution to prove intent to cause harm. In addition, the ill-treatment must result in permanent disability, death, destruction of the animal concerned in order to prevent further suffering, or serious injury or impairment.

An animal will be considered to be seriously injured or impaired if prolonged pain and suffering are inflicted, or there is a substantial risk of death, or permanent or prolonged loss of a bodily function occurs, or loss of a bodily part occurs. In all cases situations treatment by or under the supervision of a veterinarian is required.

The existing penalty on conviction for wilful ill-treatment is up to 3 years' imprisonment or a fine not exceeding \$50,000 or both for an individual, and a fine not exceeding \$250,000 for a body corporate. The Bill provides that these penalties will increase to a maximum of 5 years' imprisonment or a fine not exceeding \$100,000 or both for an individual and a fine not exceeding \$500,000 for a body corporate. The new offence of reckless ill-treatment will apply where it can be proved that a person knew or appreciated that serious harm to an animal could occur, and unreasonably ran the risk. Reckless ill-treatment is less difficult to prove than wilful ill-treatment, since it does not require the prosecution to prove that the ill-treatment was inflicted deliberately with a conscious appreciation that it was likely to cause unnecessary suffering.

The creation of a reckless ill-treatment offence will enable prosecution of cases that might otherwise fail to meet the threshold for wilful ill-treatment, but are too serious to be prosecuted as simple ill-treatment cases. The ill-treatment must also result in the same outcomes for the animal that result from wilful ill-treatment offences, ie, permanent disability, death, destruction of the animal concerned, or severe injury or impairment. The penalties for reckless ill-treatment will be a maximum of 3 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.

These amendments correspondingly respond to an increase in the number of serious animal welfare incidents being investigated and will send a strong signal to the judiciary that the Government and general public wish to see heavier penalties for this type of offending. The increased penalties will also act as a deterrent to potential offenders.

Provisions relating to neglect and other ill-treatment offences

Sections 25 and 37 of the Act detail the penalties for a range of offences including failure to meet the physical, health, and behavioural needs of an animal (section 12), ill-treatment (section 29(a)), and aiding or assisting in animal fighting ventures (section 31(1)). The existing penalties on conviction under these sections is up to 6 months' imprisonment or a fine not exceeding \$25,000 or both, in the case of an individual, and a fine not exceeding \$125,000 for a body corporate.

The Bill increases the penalties for offences covered by sections 25 and 37 in line with the revised penalties for the more serious offences of wilful and reckless ill-treatment. For an individual this would mean a maximum of 12 months in prison or a fine not exceeding \$50,000 or both. For a body corporate, the maximum penalty would be a \$250,000 fine.

Other amendments intended to improve animal welfare outcomes

The Bill amends sections 169 and 172 of the Act to improve animal welfare outcomes. Section 169 of the Act deals with the disqualification of people from owning or exercising authority over animals, while section 172 covers forfeiture of animals to the Crown or an approved organisation. Both sections are intended to reduce the risk of future offending by convicted persons and are used only where serious welfare offences have been committed.

Section 169 contains provisions that allow disqualified people to apply to the court for removal of the disqualification order 12 months after the date of the order and at 12-month intervals thereafter, if their initial appeal is unsuccessful. This is a particular problem in the companion (pet) animal area, where disqualified persons regu-

larly re-apply to own animals. While the Ministry of Agriculture and Forestry (**MAF**) and the Royal New Zealand Society for the Prevention of Cruelty to Animals (the **RNZSPCA**) can oppose an application, this creates a significant compliance burden.

The Bill amends section 169 by providing for the court to set a minimum review period within which no application for removal of the disqualification order can be made. Further, the Bill increases the default minimum review period, where no period is set by the court, to 2 years. An increase in the minimum review period to 2 years is a significant increase from the current 12 months. It sends a very clear signal to the court that a longer minimum review period should be imposed if such a sentence is being considered, and reduces compliance and administration costs on MAF and the RNZSPCA.

In the case of section 172, the court may require a person convicted of an offence against an animal to forfeit that animal to the Crown or an approved organisation. Only the animal to which a charge applies can be forfeited, meaning that serious offenders may still have access to animals after conviction. This is a particular problem in animal hoarding situations, or on farms, where many animals may be at risk but for the purpose of the prosecution charges are laid only in respect of the worst affected.

The Bill broadens the scope of this section to enable the forfeiture of any or all animals owned by the offender, where the court considers this necessary to protect the welfare of the animals. This would have the dual effect of reducing the risk of future offending and enabling the welfare of all affected animals to be considered by the court, not just those included in a representative charge.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Animal Welfare Act 1999 (the **Act**).

Clause 4 amends the penalties contained in section 25 of the Act.

Clause 5 repeals section 28 of the Act and substitutes *new sections 28 and 28A*, which respectively provide for the existing offence of wilful

ill-treatment of animals and the new offence of reckless ill-treatment of animals. The existing offence of wilful ill-treatment is expanded to capture ill-treatment that results in an animal being seriously injured or impaired (*new section 28(1)(d)*), and this is mirrored in the new reckless ill-treatment provision (*new section 28A(1)(d)*). Serious injury or impairment is defined in identical terms in each provision. *New section 28(3)* sets new penalties for the offence of wilful ill-treatment, and the lower penalties in *new section 28A(3)* for reckless ill-treatment reflect the gradation in seriousness of offence.

Clause 6 amends the penalties contained in section 37 of the Act.

Clause 7 repeals section 169 of the Act (which provides for disqualification from having animals in one's care) and substitutes 3 new sections. These are largely existing section 169 in more digestible form, but in a departure from the existing law *new section 169(2)* empowers a court to set a minimum period of disqualification. An application for the removal or variation of the disqualification cannot be made before the expiry of the minimum disqualification period, if there is one. If not, the default position is that the application cannot be made before 2 years from the date of the disqualification order. Some examples show how this works:

- X is disqualified for a period of 5 years, with a minimum disqualification period of 3 years. X cannot apply for removal or variation of the disqualification until 3 years after the date of the order:
- Y is disqualified for 3 years, and no minimum disqualification period is set. Y cannot apply for removal or variation of the disqualification until 2 years after the date of the order:
- Z is disqualified for 18 months, no minimum disqualification period is set. Z cannot apply for removal or variation of the disqualification.

Clause 8 is a transitional provision that preserves the existing disqualification provisions in the case of persons disqualified as at the date of the new rules coming into force.

Clause 9 amends section 172 of the Act, which relates to the forfeiture of animals by an offender under the Act to the Crown or an approved organisation. The amendment expands the scope of this section beyond the animals owned by the offender and to which the charge relates to include any other animals owned by the offender.

As before, the power of forfeiture is subject to the important qualification that it cannot be exercised unless the court considers that it is desirable for the protection of the animals concerned.

Clause 10 makes consequential amendments to the Summary Proceedings Act 1957 and the Criminal Investigations (Bodily Samples) Act 1995 as a result of the creation in *new section 28A* of the new offence of reckless ill-treatment of animals.

Regulatory impact statement

In accordance with Cabinet Office Circular CO (09) 08 this explanatory note does not contain a regulatory impact statement for the Bill. A copy of the regulatory impact statement for this Bill is available at the following websites:

- <http://www.treasury.govt.nz/publications/informationreleases/ris>
 - <http://www.maf.govt.nz/mafnet/publications/regulatory-impact-statements>
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Hon David Carter

Animal Welfare Amendment Bill

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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 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—
- “(a) the animal is permanently disabled; or 20
 - “(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
 - “(d) the animal is seriously injured or impaired. 25
- “(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 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: 5
- “(b) in the case of a body corporate, to a fine not exceeding \$500,000.
- “Compare: 1960 No 30 ss 2, 4; 1993 No 19 s 3(1). 10
- “28A Reckless ill-treatment of animals**
- “(1) A person commits an offence if that person recklessly ill-treats an animal with the result that—
- “(a) the animal is permanently disabled; or
- “(b) the animal dies; or 15
- “(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
- “(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— 20
- “(a) involves—
- “(i) prolonged pain and suffering; or
- “(ii) a substantial risk of death; or
- “(iii) loss of a body part; or 25
- “(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 on conviction on indictment,— 30
- “(a) in the case of an individual, to imprisonment for a term 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.” 35

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” 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—

“(i) any section in Part 1 or 2; or 20

“(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.

“Compare: 1960 No 30 s 16; 1993 No 19 ss 2, 3(1). 30

“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.

“(2) A person may not apply under **subsection (1)** before— 35

“(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.
- “(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. 5
- “(4) In deciding an application under this section, the court may have regard to—
- “(a) the character of the applicant; and
- “(b) the applicant’s conduct since the disqualification order was made; and 10
- “(c) the nature of the offence of which the applicant was convicted; and
- “(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. 15

“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. 20
- “(2) A person who commits an offence against **subsection (1)** is liable on summary conviction,— 25
- “(a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$50,000 or to both:
- “(b) in the case of a body corporate, to a fine not exceeding \$250,000. 30
- “(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**) 35 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.

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

Section 172 is amended by repealing subsection (1) and substituting the following subsections: 5

“(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: 10

“(a) the animal or animals to which the charge relates:

“(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.” 15

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: 20

28A Reckless ill-treatment of animals

(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: 25

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