

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Transport and Municipal Services)

Animal Welfare Amendment Bill 2016

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Animal Welfare Amendment Bill 2016

A Bill for

An Act to amend the *Animal Welfare Act 1992*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Animal Welfare Amendment Act 2016*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written
5 notice.

6 *Note 1* The naming and commencement provisions automatically commence on
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 *Note 2* A single day or time may be fixed, or different days or times may be
9 fixed, for the commencement of different provisions (see [Legislation
10 Act](#), s 77 (1)).

11 *Note 3* If a provision has not commenced within 6 months beginning on the
12 notification day, it automatically commences on the first day after that
13 period (see [Legislation Act](#), s 79).

14 **3 Legislation amended**

15 This Act amends the *Animal Welfare Act 1992*.

16 *Note* This Act also amends the following legislation (see sch 1):

- 17 • [Domestic Animals Act 2000](#)
18 • [Domestic Violence and Protection Orders Act 2008](#)
19 • [Magistrates Court \(Animal Welfare Infringement Notices\)
20 Regulation 2014](#).

21 **4 New sections 6A and 6B**

22 *in part 2, insert*

23 **6A Meaning of *cruelty*—pt 2**

24 In this part:

25 *cruelty*, in relation to an animal, includes the following:

- 26 (a) causing pain that is unjustifiable, unnecessary or unreasonable
27 in the circumstances;

- 1 (b) beating that causes pain;
2 (c) abusing, terrifying or tormenting;
3 (d) injuring or wounding that is unjustifiable, unnecessary or
4 unreasonable in the circumstances.

5 **6B Duty to care for animal**

- 6 (1) A person in charge of an animal has a duty to care for the animal.
7 (2) A person in charge of an animal commits an offence if the person—
8 (a) fails to take reasonable steps to provide the animal with
9 appropriate—
10 (i) food and water; or
11 (ii) shelter or accommodation; or
12 (iii) opportunity to display behaviour that is normal for the
13 animal; or
14 (iv) treatment for illness, disease, and injury; or
15 (b) abandons the animal.

16 Maximum penalty: 100 penalty units, imprisonment for 1 year or
17 both.

- 18 (3) In this section:

19 *appropriate* means suitable for the needs of the animal having
20 regard to the species, environment and circumstances of the animal.

21 *reasonable steps* means the steps a reasonable person would be
22 expected to take having regard to all the circumstances.

23 *treatment* includes veterinary treatment if a reasonable person
24 would expect veterinary treatment to be sought in the circumstances.

1 **5 Pain**
2 **Section 8**

3 *omit*

4 **6 Section 14**

5 *substitute*

6 **14 Use or possession of prohibited item**

7 (1) A person commits an offence if the person uses a prohibited item
8 on, or in relation to, an animal.

9 Maximum penalty: 100 penalty units, imprisonment for 1 year or
10 both.

11 (2) A person commits an offence if the person possesses a prohibited
12 item.

13 Maximum penalty: 20 penalty units.

14 (3) Subsection (2) does not apply to a person if the person possesses a
15 prohibited item—

16 (a) only for display; or

17 (b) as part of a collection that is not intended for use on, or in
18 relation to, an animal.

19 (4) In this Act:

20 *prohibited item* means—

21 (a) a spur with a sharpened or fixed rowel; or

22 (b) a cockfighting spur; or

23 (c) a device that is made or adapted to be attached to an animal
24 that lets the animal cause injury to another animal.

1 **7 Exception—conduct in accordance with approved code**
2 **of practice or mandatory code of practice**
3 **Section 20 (d)**

4 *substitute*

5 (d) section 14 (Use or possession of prohibited item);

6 **8 Powers of inspectors**
7 **New section 82 (1) (fa) and (fb)**

8 *insert*

9 (fa) seize any dependant offspring of an animal seized under
10 paragraph (f); or

11 (fb) seize any animal that the inspector believes on reasonable
12 grounds is kept by, or in the care or control of, a person in
13 contravention of—

14 (i) an interim order under section 100A (2) (Animal
15 offences—court orders (interim)); or

16 (ii) an order under section 101 (3) (Animal offences—court
17 orders (general)); or

18 **9 New section 82 (4)**

19 *insert*

20 (4) A person must take reasonable steps to comply with a requirement
21 made of the person under subsection (1) (g).

22 Maximum penalty: 20 penalty units.

1 **10 New sections 82A and 82B**

2 *in division 7.3, insert*

3 **82A Direction to give name and address—inspector**

4 (1) This section applies if an inspector believes on reasonable grounds
5 that a person—

6 (a) has committed, is committing or is about to commit an offence
7 against this Act; or

8 (b) may be able to assist in the investigation of an offence against
9 this Act.

10 *Note* A reference to an Act includes a reference to the statutory instruments
11 made or in force under the Act, including any regulation (see
12 [Legislation Act](#), s 104).

13 (2) The inspector may direct the person to give the inspector,
14 immediately, any of the following personal details:

15 (a) the person's full name;

16 (b) the person's home address.

17 *Note* Power to make the direction includes power to amend or repeal the
18 direction (see [Legislation Act](#), s 46).

19 (3) The person may ask the inspector to produce the inspector's identity
20 card for inspection by the person.

21 (4) If the inspector believes on reasonable grounds that a personal detail
22 given by a person in response to a direction under subsection (2) is
23 false or misleading, the inspector may direct the person to produce
24 evidence immediately of the correctness of the detail.

25 (5) If an inspector gives a direction under this section to a person, the
26 inspector must tell the person that it is an offence if the person fails
27 to comply with the direction.

1 **82B Offence—fail to comply with inspector’s direction to give**
 2 **name and address**

- 3 (1) A person commits an offence if the person—
 4 (a) is subject to a direction under section 82A (2); and
 5 (b) fails to comply with the direction.

6 Maximum penalty: 5 penalty units.

7 *Note* It is an offence to make a false or misleading statement or give false or
 8 misleading information (see [Criminal Code](#), pt 3.4).

- 9 (2) An offence against this section is a strict liability offence.
 10 (3) This section does not apply to a person if the inspector did not
 11 produce the inspector’s identity card for inspection by the person if
 12 asked.
 13 (4) This section does not apply to a person if the inspector did not,
 14 before giving the direction, warn the person that failure to comply
 15 with the direction is an offence.

16 *Note* The defendant has an evidential burden in relation to the matters
 17 mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

18 **11 Powers of authorised officers**
 19 **New section 84 (1) (ga) and (gb)**

20 *insert*

- 21 (ga) seize any dependant offspring of an animal seized under
 22 paragraph (g); or
 23 (gb) seize any animal that the officer believes on reasonable
 24 grounds is kept by, or in the care or control of, a person in
 25 contravention of—
 26 (i) an interim order under section 100A (2) (Animal
 27 offences—court orders (interim)); or

- 1 (ii) an order under section 101 (3) (Animal offences—court
2 orders (general)); or

3 **12 New section 84 (4)**

4 *insert*

- 5 (4) A person must take reasonable steps to comply with a requirement
6 made of the person under subsection (1) (h).

7 Maximum penalty: 20 penalty units.

8 **13 New sections 84AA and 84AB**

9 *in division 7.4, insert*

10 **84AA Direction to give name and address—authorised officer**

- 11 (1) This section applies if an authorised officer believes on reasonable
12 grounds that a person—

13 (a) has committed, is committing or is about to commit an offence
14 against this Act; or

15 (b) may be able to assist in the investigation of an offence against
16 this Act.

17 *Note* A reference to an Act includes a reference to the statutory instruments
18 made or in force under the Act, including any regulation (see
19 [Legislation Act](#), s 104).

- 20 (2) The authorised officer may direct the person to give the authorised
21 officer, immediately, any of the following personal details:

22 (a) the person's full name;

23 (b) the person's home address.

24 *Note* Power to make the direction includes power to amend or repeal the
25 direction (see [Legislation Act](#), s 46).

- 26 (3) The person may ask the authorised officer to produce the authorised
27 officer's identity card for inspection by the person.

- 1 (4) If the authorised officer believes on reasonable grounds that a
2 personal detail given by a person in response to a direction under
3 subsection (2) is false or misleading, the authorised officer may
4 direct the person to produce evidence immediately of the correctness
5 of the detail.
- 6 (5) If an authorised officer gives a direction under this section to a
7 person, the authorised officer must tell the person that it is an
8 offence if the person fails to comply with the direction.

9 **84AB Offence—fail to comply with authorised officer’s direction**
10 **to give name and address**

- 11 (1) A person commits an offence if the person—
12 (a) is subject to a direction under section 84AA (2); and
13 (b) fails to comply with the direction.
- 14 Maximum penalty: 5 penalty units.
- 15 *Note* It is an offence to make a false or misleading statement or give false or
16 misleading information (see [Criminal Code](#), pt 3.4).
- 17 (2) An offence against this section is a strict liability offence.
- 18 (3) This section does not apply to a person if the authorised officer did
19 not produce the authorised officer’s identity card for inspection by
20 the person if asked.
- 21 (4) This section does not apply to a person if the authorised officer did
22 not, before giving the direction, warn the person that failure to
23 comply with the direction is an offence.

- 24 *Note* The defendant has an evidential burden in relation to the matters
25 mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

1 **14 New section 100A**

2 *insert*

3 **100A Animal offences—court orders (interim)**

- 4 (1) This section applies if—
- 5 (a) an animal has been seized under section 82 (1) (f) or
6 section 84 (1) (g); and
- 7 (b) a proceeding for an offence has been started in a court against a
8 person who was, before the seizure, in charge of the seized
9 animal; and
- 10 (c) the court is satisfied that, unless an appropriate interim order
11 under this section is made, the person is likely to engage in
12 conduct in relation to an animal that requires—
- 13 (i) the seizure of an animal under this Act; or
14 (ii) a further proceeding to be started for an offence.
- 15 (2) The court may make an order (an *interim order*) as it considers
16 appropriate that the person must not—
- 17 (a) purchase or acquire any animal within the period stated in the
18 order; or
- 19 (b) keep, care for or control any animal within the period stated in
20 the order.
- 21 (3) The duration of an interim order under subsection (2)—
- 22 (a) must be stated in the order; and
23 (b) must not be longer than 6 months.
- 24 (4) If an interim order has ended or is about to end the court may make
25 a further interim order if the court is satisfied that the matters
26 mentioned in subsection (1) continue to apply.

1 (5) A person must not engage in conduct that contravenes an interim
2 order.

3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.

5 **15 Animal offences—court orders (general)**
6 **Section 101 (2) and (3)**

7 *substitute*

8 (2) The court may, in addition to any penalty which it may otherwise
9 impose, make any order it considers appropriate in relation to—

10 (a) the disposal of—

11 (i) the animal in relation to which the offence was
12 committed; and

13 (ii) any other animal of which the person is in charge; and

14 (b) the payment to the Territory of expenses incurred in the care
15 of—

16 (i) the animal in relation to which the offence was
17 committed; and

18 (ii) any other animal of which the person is in charge.

19 (3) The court may, in addition to any penalty which it may otherwise
20 impose, make an order as it considers appropriate that the person
21 must not—

22 (a) purchase or acquire any animal within the period stated in the
23 order; or

24 (b) keep, care for or control any animal within the period stated in
25 the order.

1 **16 New section 101 (5)**

2 *insert*

3 (5) In this section:

4 *expenses incurred*, in the care of an animal, includes any expense
5 incurred by, or on behalf of, the Territory for any of the following:

6 (a) taking possession of the animal;

7 (b) transporting the animal;

8 (c) providing food, drink and water for the animal;

9 (d) providing shelter or accommodation for the animal;

10 (e) providing veterinary care for the animal.

11 **17 Section 103 heading**

12 *substitute*

13 **103 Prohibited item and trap offences—court orders (general)**

14 **18 Section 103 (1) (a) (i)**

15 *substitute*

16 (i) under section 14; or

17 **19 Section 103 (1) (b)**

18 *omit*

19 a spur, cockfighting spur cap or

20 *substitute*

21 a prohibited item or

1 **20 Section 103 (2)**

2 *omit*
3 spur, cockfighting spur cap or
4 *substitute*
5 prohibited item or

6 **21 Section 103 (3) (b)**

7 *substitute*
8 (b) a prohibited item.

9 **22 Section 104 heading**

10 *substitute*

11 **104 Prohibited item and trap offences—court orders (costs**
12 **and proceeds of disposal)**

13 **23 Section 104**

14 *omit*
15 spur, cockfighting spur cap or
16 *substitute*
17 prohibited item or

18 **24 Dictionary, new definitions**

19 *insert*
20 ***cruelty***, in relation to an animal, for pt 2 (Animal welfare
21 offences)—see section 6A.
22 ***prohibited item***—see section 14.

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 Domestic Animals Act 2000**

4 **[1.1] Dictionary, definition of *animal welfare offence*,**
5 **paragraph (aa)**

6 *before paragraph (a), insert*

7 (aa) section 6B (Duty to care for animal);

8 **[1.2] Dictionary, definition of *animal welfare offence*,**
9 **paragraph (c)**

10 *omit*

11 **[1.3] Dictionary, definition of *animal welfare offence*,**
12 **paragraph (m)**

13 *substitute*

14 (m) section 14 (Use or possession of a prohibited item);

15 **Part 1.2 Domestic Violence and**
16 **Protection Orders Act 2008**

17 **[1.4] Section 13 (3), definition of *animal violence offence*,**
18 **paragraph (c)**

19 *omit*

1 **Part 1.3** **Magistrates Court (Animal**
2 **Welfare Infringement Notices)**
3 **Regulation 2014**

4 **[1.5] Schedule 1, item 7**

5 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 March 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
