

House of Assembly—No 176

As laid on the table and read a first time, 11 September 2013

South Australia

**Criminal Law Consolidation (Protection for
Working Animals) Amendment Bill 2013**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law Consolidation (Protection for Working Animals) Amendment Act 2013*.

5 **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 **Part 2—Amendment of *Criminal Law Consolidation Act 1935***

4—Insertion of Part 3C

After section 83G insert:

Part 3C—Protection for working animals

83H—Interpretation

- 15 (1) In this Part—
 - accredited guide dog* means—
 - (a) a dog accredited as a guide dog under section 21 of the *Dog and Cat Management Act 1995*; or

- (b) a dog accredited as a guide dog (however described) under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability;

5 **correctional services dog** has the same meaning as in the *Correctional Services Act 1982*;

guide dog has the same meaning as in the *Dog and Cat Management Act 1995*;

10 **harm** means physical harm (whether temporary or permanent) but does not include mental harm;

police dog means a dog (including a drug detection dog within the meaning of the *Controlled Substances Act 1984*) that—

- 15 (a) has completed training of a kind approved by the Commissioner of Police; and
- (b) is used by, or to assist, police officers in the performance of their official duties and functions;

police horse means a horse that—

- 20 (a) has completed training of a kind approved by the Commissioner of Police; and
- (b) is used by, or to assist, police officers in the performance of their official duties and functions;

serious harm, in relation to a working animal, means—

- 25 (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 of the animal; or
- 30 (d) harm that results in the animal being unable to satisfactorily perform its working function;

working animal means—

- 35 (a) a police dog; or
- (b) a police horse; or
- (c) a correctional services dog; or
- (d) an accredited guide dog; or
- (e) any other animal, or animal of a class, declared by the regulations to be included in the ambit of this definition;

working function, of a working animal, means the function or functions for which the animal has been trained and is ordinarily used (whether or not the working animal also performs other functions).

- 5 (2) Without limiting section 370, regulations made for the purposes of this Part may—
- (a) make provision for or relating to facilitation of proof of the commission of offences against the Part;
 - 10 (b) be of general application or vary in their application according to prescribed factors;
 - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified person or body.

83I—Causing death or serious harm etc to working animals

- 15 (1) A person who, by an intentional act, causes the death of, or serious harm to, a working animal is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (2) Subsection (1) does not apply to the death of a working animal, or the causing of serious harm to a working animal, that occurs in the following circumstances:
- 20 (a) where the death or serious harm is caused in the course of the provision of veterinary treatment to the working animal;
 - (b) where the death or serious harm is caused by, or with the consent of, the owner of the working animal or a person assisting the owner;
 - 25 (c) where the death or serious harm occurs in the course of training the animal to perform its working function;
 - (d) where the death occurs under section 34B of the *Animal Welfare Act 1985*;
 - 30 (e) where the death or serious harm occurs pursuant to an order under section 50 of the *Dog and Cat Management Act 1995*;
 - (f) where the death occurs under section 63 of the *Dog and Cat Management Act 1995*;
 - (g) any other circumstances prescribed by the regulations.
- 35 (3) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that he or she did not know, and could not reasonably have been expected to have known, that an animal the subject of the charge was a working animal.

(4) In proceedings for an offence against subsection (1), a defence that would, but for this subsection, be available to the defendant under Part 3 Division 2 will be taken not to be available to a defendant if—

- (a) the working animal the subject of the charge is a police dog, police horse or a correctional services dog; and
- (b) the death or serious harm occurs in the course of, or is related to—
 - (i) the commission of an offence by the defendant or a person in the company of the defendant; or
 - (ii) the defendant taking steps to avoid being taken into, or escape from, lawful custody; or
 - (iii) the defendant resisting another who is exercising a power in the course of his or her official duties or functions.

(5) In proceedings for an offence against subsection (1), the prosecution need not prove that the defendant knew that his or her act would cause death or serious harm to the working animal, or to a particular working animal.

(6) This section is in addition to, and does not derogate from, the *Animal Welfare Act 1985*.

83J—Court may order compensation and other costs

(1) A court may, on application by the prosecutor or on the court's own initiative, make an order requiring a person found guilty of an offence against section 83I to pay 1 or more of the following amounts:

- (a) an amount by way of compensation for veterinary and other expenses reasonably incurred in treating the working animal to which the offence relates;
- (b) an amount for reasonable rehabilitation or retraining of the working animal to which the offence relates, having regard to the primary function of the working animal;
- (c) if the working animal to which the offence relates is permanently unable to perform its primary function as a result of the offence—an amount equal to the actual or expected costs of replacing the working animal with one of similar abilities and training;
- (d) if the working animal to which the offence relates is permanently unable to perform its primary function as a result of the offence—an amount equal to the actual or expected costs of retiring the working animal (including, but not limited to, the costs of relocating and rehousing the animal, and retraining the animal to ensure it is adapted to life other than as a working animal);

(e) any other amount the court thinks appropriate in the circumstances.

(2) A court must, if it does not make an order under this section, give its reasons for not doing so.

(3) Compensation under this section will be of such amount as the court considers appropriate having regard to any evidence before the court and to any representations made by or on behalf of the prosecutor or the person against whom the order is made.

(4) Compensation may be ordered under this section in relation to an offence despite the fact that compensation may be ordered under some other statutory provision that relates more specifically to the offence or proceedings in respect of the offence.

(5) The amount paid to a person pursuant to an order under this section must be taken into consideration by a court or any other body in awarding compensation for the relevant loss or damage under any other Act or law.

83K—Enforcement of order for compensation etc

An order under section 83J—

(a) will, for the purposes of the *Criminal Law (Sentencing) Act 1988*, be taken to be a pecuniary sum (within the meaning of that Act); and

(b) may be enforced as if it were a compensation order made under section 53 of that Act.

83L—Evidentiary

(1) In any proceedings for an offence against this Part, an apparently genuine document purporting to be signed by the Commissioner of Police and to certify that an animal specified in the certificate had completed the training specified in the certificate will, in the absence of proof to the contrary, be proof of the matters so certified.

(2) In any proceedings for an offence against this Part, an apparently genuine document purporting to be signed by the Dog and Cat Management Board and to certify that a dog specified in the certificate was accredited as a guide dog under the *Dog and Cat Management Act 1995* will, in the absence of proof to the contrary, be proof of the matters so certified.

(3) In any proceedings for an offence against this Part, an apparently genuine document purporting to be signed by a person or body that accredits animals as contemplated by section 9(2) of the *Disability Discrimination Act 1992* of the Commonwealth and to certify that an animal specified in the certificate was the subject of a specified accreditation will, in the absence of proof to the contrary, be proof of the matters so certified.