

ANIMAL CARE AND PROTECTION BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Short title

The short title of the Bill is the *Animal Care and Protection Act 2001*.

Objectives of the Legislation

The primary objective of the Bill is to repeal the current and antiquated animal cruelty legislation, the *Animals Protection Act 1925* ('the current Act'), and to replace it with contemporary and proactive legislation that promotes the responsible care and use of animals and helps to protect animals from acts of cruelty.

The Bill will provide standards that benchmark what is acceptable in the care and use of animals in particular circumstances, for example, in livestock production. In providing such standards, the Bill aims to:

- achieve a reasonable balance between the welfare needs of animals and the interests of people who use animals for a livelihood;
- reflect contemporary community attitudes and expectations as to how animals should be treated;
- acknowledge advances in the scientific knowledge of animal biology and behaviour.

The Bill also seeks to specifically regulate the use of animals for scientific purposes to ensure the use of animals for scientific purposes is accountable, open, ethical and responsible.

Reasons for the Bill

In recent years there have been major advances in our knowledge and understanding of animal biology and behaviour. This has been

accompanied by increasing community demands that animals in all areas of use—agriculture, science, sport, recreation, entertainment and as companions, are treated humanely. Animal welfare is also a growing market acceptability and access issue for livestock products.

The current Act has not been significantly amended since its enactment in 1925 and does not reflect current attitudes, community expectations or knowledge about animal welfare issues. The current Act has a number of particular deficiencies-

- it adopts a mainly reactive approach to animal welfare issues by only dealing with punishing acts of cruelty to animals after they occur;
- it does little to promote improvements in animal welfare standards in Queensland and effectively exempts major areas of animal use, such as the use of animals in livestock production, from operation of the Act;
- it is not written in 'plain' English and therefore is not easily accessible to the wider community;
- it also pre-dates fundamental legislative principles and in particular, contains enforcement powers without necessary safeguards which the community now regards as inappropriate;
- there are insufficient accountability mechanisms for certain classes of officers exercising enforcement powers under the Act;
- penalty levels for offences under the Act have not kept pace with other offences of a similar character and therefore offer little deterrent value.

The community generally expects governments to take a far more proactive approach to animal welfare issues rather than the passive approach reflected in the current Act. To this end, most other States have already significantly revised or enacted new animal welfare legislation.

The Bill is necessary to meet community expectations and provide a modern legislative framework for dealing with animal welfare issues. It will address many of the current Act's deficiencies. Such legislation is one essential means of demonstrating to the community and trading partners that Queensland meets community and market expectations in relation to animal welfare.

A particular high-risk area of animal use, especially in terms of community perceptions and concerns, is the use of animals for scientific

purposes. Community concern for the use of animals in this area is increasing with the expansion of biotechnology research using animals. The use of animals for scientific purposes is often, by its nature, done in a 'commercial in confidence' environment. It is therefore necessary to provide a framework that allows the monitoring of animals used in this area to ensure that community concerns are addressed. There is national agreement about the key elements of this framework that includes all States legislating mandatory compliance with a national code of practice and requiring registration and/or licensing of users of animals for scientific purposes.

The way in which the policy objectives are to be achieved by the Bill

The policy objectives will be achieved through a range of core provisions in the Bill:

The 'adoption' by regulation of approved codes of practice for animal welfare in specific circumstances.

These codes will benchmark the acceptable welfare standards for particular animal species, practices and circumstances. The areas in which animals are used in society are diverse and desired animal welfare outcomes in the different areas can be met in different ways. Therefore it is not always appropriate for a generic set of standards to apply to all animal use situations. More specific standards and requirements are necessary depending on the animal species and/or situation. Codes are regarded as a flexible and efficient way to describe and outline the minimal acceptable standards required of animal users in any given industry or circumstance. Failure to comply with these 'adopted' codes is not an offence. If a person complies with the provisions of a code and certain other matters, they will be exempt from having committed an offence under the legislation.

The ability to make certain codes or parts of codes covering high-risk areas mandatory.

In some areas of animal use, the perceived animal welfare risk to the animals is significant enough to warrant requiring compliance with prescriptive and transparent standards. In those cases, the Bill allows codes or parts of codes to be made compulsory. Failure to comply with these 'compulsory code requirements' will amount to an offence under the Bill. Usually the relevant animal user body will request such compulsory compliance, for example, the circus industry.

The Bill imposes a duty of care on all persons having charge of animals to properly attend to the welfare needs of the animals.

This is the key proactive aspect of the Bill. Positively providing for the welfare needs of animals is at the opposite end of the welfare continuum to the mere absence of being cruel, the focus of the current Act. The Bill makes it an offence for persons in charge of animals to fail to comply with their duty of care. The duty of care requirements are based on the internationally acknowledged 'Five Freedoms' of animal welfare originating from an inquiry into animal welfare by the 'Brambell Committee' in the United Kingdom in 1965 and subsequently modified in 1992 by the United Kingdom Farm Animal Welfare Council.

Creation of a basic "cruelty" offence.

The community generally expects that acts of cruelty to animals will be punished, with penalty levels to reflect the seriousness of the act and to deter others.

Total prohibition on some practices the Queensland and Australian community generally regard as abhorrent and unacceptable.

There are certain specific practices and procedures relating to animals that the community regards as unacceptable because they are considered cruel, for example, dog fighting, cock fighting and blooding greyhounds. The Bill creates specific offences for these practices and procedures.

Compulsory registration of users of animals for scientific purposes, and a requirement that the relevant national code of practice for the use of animals for scientific purposes is complied with.

These measures are essential elements of a nationally agreed approach to addressing the risks associated with the use of animals for scientific purposes. Registration is necessary in order to maintain awareness of where such research use is occurring or is intended, and to assess whether appropriate arrangements will be made to ensure all proposed use of animals is subjected to the animal ethics process required by the national code.

Special monitoring programs for those higher risk areas covered by compulsory codes of practice.

As part of a proactive approach to animal welfare issues, the Bill allows monitoring programs to be devised as a means of detecting and addressing animal welfare deficiencies before they escalate. Monitoring will be conducted where there is a compulsory code of practice ('compulsory code requirement') in place under the Bill and by specially appointed and

qualified ‘authorised officers’ who will have limited enforcement powers. Programs will be devised only after an appropriate consultation process as set out in the Bill and are more of an administrative nature in that they will set out how these authorised officers will exercise their powers provided under the Bill. The programs themselves do not impose additional requirements on persons covered by the programs. These requirements are provided for in the compulsory codes.

Broad powers for inspectors under the Bill to enforce the legislation.

The very broad nature and circumstances of animal welfare situations create inherent and unique enforcement difficulties, particularly where the subject matter of the situation (that is, an animal) is not able to provide ‘direct’ evidence of what has happened to them. The Bill provides specifically tailored enforcement measures for inspectors to be able to adequately address these situations and, in particular, to respond and alleviate animals in acute pain or distress. The community expects that, as well as inspectors investigating animal welfare situations and taking appropriate action for any offences, the animal welfare situation will also be resolved for the well being of the animal concerned.

The potential for an animal welfare advisory committee to generally advise the Minister on animal welfare issues.

There are many special interest groups associated with animals and also many complex, contentious and emotive issues that governments have to deal with. The Bill allows an advisory committee to be established which will assist government to achieve outcomes acceptable to the community on these issues.

Alternatives to the Bill

The main alternative way, to the Bill, of achieving the policy objectives is to amend the current Act. As previously indicated, the current Act has a number of deficiencies and does not provide a legislative framework capable of dealing with the scope and complexity of modern animal welfare issues. Most of the current Act’s provisions are outdated. Given the large number of new policies that need incorporating into legislation, amending the current Act is not regarded as a viable alternative.

Another way of achieving the policy objectives would be to retain the current Act without amendment and allow industry and the community to ‘self-regulate’ in relation to issues not dealt with in the current Act. ‘Self-regulation’ is not regarded as an effective means of improving the welfare of animals. The general community has an expectation that inappropriate

practices relating to animals should be outlawed and penalties with a sufficient deterrent value provided. Retaining the 'status quo' may be seen by many as Queensland failing to take animal welfare issues seriously given other States recent updating of their animal welfare legislation.

Further, animal welfare has now become an international trade issue in relation to the export of animals and animal products. Some markets have indicated that they expect countries exporting animals and animal products to have equivalent animal welfare standards to those in their countries. Queensland animal industries view legislation as a way to demonstrate to overseas markets their commitment to and compliance with agreed animal welfare standards.

Estimated costs for government implementation

Administering the Bill is essentially a new role for the lead agency for animal welfare, the Department of Primary Industries. On the basis of 2000-2001 budgeted administration costs, the cost of implementation of the Bill will be a recurring \$1.6m.

Consistency with fundamental legislative principles

It is arguable that there are some departures in the Bill from fundamental legislative principles. Any such departure has occurred in the context of a tension between the fundamental legislative principles outlined in the *Legislative Standards Act 1992* and the competing community desire to protect animals from cruelty, unnecessary suffering, injury and death and to bring those responsible for animal welfare offences to justice.

Legislative Standards Act 1992, s.4(2)(a)—regard to the rights and liberties of individuals

Clause 8 (Aboriginal tradition and Island Custom)—sufficient regard to Aboriginal tradition and Island custom

In general, the Bill does not apply to or affect an act done by an Aborigine under Aboriginal tradition or a Torres Strait Islander under Island Custom. However, Clause 8 of the Bill does enable a regulation to be made prescribing conditions for the doing of an act. Where such a regulation is made, the Bill will apply to Aboriginal tradition or a Torres Strait Islander custom unless the conditions have been complied with.

Arguably, clause 8 may restrict the practice of Aboriginal tradition and Island Custom where a regulation is made that imposes conditions on that practice or tradition. Under the clause it will be determined which current traditional practices may involve significant pain to an animal and are cause for community concern. The clause requires that a Regulatory Impact Statement must be done before a regulation is made, ensuring that those particular practices are targeted through a consultative approach with relevant indigenous groups.

The clause is consistent with the general approach of the Bill which seeks to afford standards of animal welfare which have community acceptance, meet market requirements and incorporate sound scientific principles. Clause 8, consistent with the remainder of the Bill, attempts to achieve a balance between conflicting interests and maintain the welfare of animals at levels the community finds acceptable.

Clauses 108 and 111 (Power of entry for authorised officers)—*entry without warrant*

Serious animal welfare problems can develop when animals are used for commercial purposes because many such uses take place on private property and away from scrutiny. To protect the welfare of animals used for commercial purposes, the Bill provides for “monitoring programs” to be developed in consultation with industry to ensure that basic standards of animal welfare are met. Clause 107 provides that the powers given to authorised officers in clauses 108 and 111 are restricted in that they may only be exercised for the purpose of a monitoring program.

To ensure compliance with a monitoring program, clause 108 provides authorised officers with the power to enter only the non-residential areas of a place without warrant. This power is consistent with the Bill’s proactive approach that will help stop animal welfare problems from arising in the first place, instead of reacting to problems after they have developed. The power to enter is limited by requiring that 48 hours written notice of the proposed entry is given to the occupier.

Where a breach of a monitoring program has been discovered after entry and an “animal welfare direction” is given to rectify a problem, authorised officers are also provided with power to enter at a specified time to ensure compliance with that direction.

For the same reasons that power to enter is given to authorised officers in clause 108 to enter non-residential premises, entry by an authorised officer to a vehicle used to transport animals is permitted by clause 111 for the

purpose of ensuring compliance with a monitoring program. Also, if the person in control of the vehicle has received an “animal welfare direction”, entry may be made at the stated time to check compliance with that direction.

Clauses 122 and 123 (Power of entry for inspectors)—*entry without warrant*

Clause 122 gives inspectors powers of entry that are essential if the Bill is to meet its stated purpose of protecting animals from unjust, unnecessary or unreasonable pain and to gather evidence of animal welfare offences that would otherwise be hidden or destroyed. Inspectors are permitted to enter without warrant in the following limited circumstances:

- to ensure compliance with an “animal welfare direction”;
- where an animal has sustained a severe injury that would otherwise remain untreated for an unreasonable period of time;
- where there is imminent risk of death or injury to an animal because of an accident or an animal welfare offence; and
- where any delay in entering will result in the concealment or destruction of evidence or the death of an animal that is being used in an offence.

Clause 123 also provides power to enter the non-residential parts of a place where an animal is suffering because of a lack of food or water or because the animal is entangled and the person in charge of the animal does not appear to be at the place. Entry is only permitted in these circumstances for as long as is required to provide relief to the animal and a notice must be provided to the occupier advising of the entry and providing contact details for the inspector.

It is considered that the need to assist animals that have been severely injured, to protect animals from death or injury and to seize evidence where it would be otherwise destroyed or concealed is sufficient and appropriate justification to override the fundamental legislative principle that power to enter premises should be conferred only with a warrant issued by a judicial officer.

Clause 139(3) (Failure to comply with help requirement) and clause 169(3)(b) (Failure to comply with document production requirement)—*protection against self incrimination*

It may be thought that the general rule against self-incrimination is displaced by clauses 139(3) and 169(3)(b). However, these clauses only apply to documents required to be kept under the Bill (such as records kept when using animals for scientific purposes) and documents relating to the transport of animals required to be kept by law.

Without these provisions, inspectors and authorised officers would be unable to gain access to or consider information kept in such documents that is essential to make an assessment of an animal's welfare and so that inspectors and authorised officers can make informed judgements based on that information. A defence is provided in clause 209 to the directors of a corporation who would be incriminated by such documents when they are produced under clause 139 or 169.

Clause 209 (Executive officers must ensure corporation complies with Act)—*the onus of proof*

Clause 209 provides that responsibility for an offence under the Bill committed by a corporation is sheeted home to the executive officers of that corporation. However, a defence is provided to the executive officers in clause 209(4) and (5) to avoid harsh results arising from this clause. It is arguable that these subclauses contain a reversal of the onus of proof, however, it should be noted that the matters to be proved by the defence are not elements of the offence. Placing the onus to prove the defence on the executive officer is justified because the facts that support the defence will usually be entirely within the defendant's knowledge and would be impossible for the prosecutor to prove in the negative.

Clause 182(1)(c) (Disposal order) and 185(2) (Criteria for making disposal or prohibition order)—*acquisition of property without compensation*

When a court convicts a person of an animal welfare offence, the welfare of the animals involved may require that they or other animals or things be taken from the person who committed the offence. Such an order may only be made when the court considers it "just" to do so and clause 185 requires the court to consider the following matters before making an order:

- the nature of the offence;
- its effect on the animal's welfare;
- the welfare of other animals owned by the person; and
- the likelihood of the person committing another animal welfare offence.

There is no specific provision requiring the court to order payment of compensation to the convicted person when a disposal order is made. This is because compensation should not be provided to a person who has demonstrated by their commission of an animal welfare offence that they should not be entitled to own animals or things used to harm them.

Where a disposal order requires the sale of an animal, the court has the discretion to order the distribution of the proceeds of the sale as it sees fit. Any order made under clause 182 is subject to the normal appeal process under the *Justices Act 1886*.

Clause 183(2) (Prohibition order)—*deprivation of 'right' to own property*

As with disposal orders made under clause 182, some animal welfare offences will be serious enough to justify an order prohibiting a convicted person from possessing animals for a stated period of time. In these circumstances, a court may make a prohibition order under clause 183 when it considers that it is just to do so. Before making a prohibition order, the court must consider the matters in clause 185 and listed above.

In addition to the normal appeal process under the *Justices Act 1886*, an additional review process is provided in clause 188 so that the court is empowered to vary or repeal prohibition orders made for five years or longer.

Clause 184(2) (Order against owner in certain cases)—*deprivation of 'right' to own property*

There are some people who own animals and are incapable of properly caring for them because of their old age, their financial circumstances, psychological or intellectual impairment or mental illness. Although such people may not be committing animal welfare offences themselves, their incapacity may contribute to the commission of animal welfare offences on their animals by another person. In cases like these, if the owner is incapable of exercising their duty of care to their animals, the court is

empowered to make a disposal or prohibition order in relation to animals owned by that person when the person who committed the offences is convicted. To protect the interests of the person subject to the order, clause 186 provides that the court must give the person subject to the order an opportunity to be heard.

Clause 223 (Officers under repealed Act)—*termination of appointment without compensation*

Honorary officers: This clause will have the effect of terminating the appointments of honorary officers appointed under the *Animals Protection Act 1925*. No honorary officers have been appointed since the Department of Primary Industries took over the administration of the *Animals Protection Act 1925* in 1995, so the number of people who may be affected is small. Those honorary officers who were appointed before 1995 were not paid and will not suffer any financial detriment. The Bill ensures that inspectors and authorised officers are trained and accountable, however honorary officers have performed their role without any accountability requirements, in contrast with modern community expectations about the responsibilities attaching to such appointments.

Existing inspectors: No existing inspector is likely to suffer any financial detriment because of this clause, as his or her appointment will continue for 6 months after commencement of the Bill and within that time, any inspector so desiring re-appointment will be entitled to be re-appointed. Such re-appointment is subject to the conditions in clause 114, which ensures that all inspectors, who will hold significant powers and responsibilities under the Bill, possess the necessary expertise or experience or have completed appropriate training before re-appointment.

Legislative Standards Act 1992, s.4(2)(b)—regard to the institution of Parliament

The following four clauses of the Bill provide for regulations to consolidate the coverage of the Bill in limited and well-defined circumstances, ensuring that the Bill is able to quickly respond to changes that impact on animal welfare.

Clause 11(1)(d) (What is an “animal”)—*amendment of an Act only by another Act*

Clause 11(1)(d) provides that a regulation may bring animals of the class Cephalopoda (such as octopi and squid) or Malacostraca (such as crabs, crayfish, lobsters and prawns) under the protection of the Bill by prescribing them to be an “animal” for the purposes of the Bill.

There is increasing concern in the community that some methods of preparing these animals for consumption are inhumane. However, current scientific research is inconclusive on the issue of whether these creatures are able to experience pain and suffering. If research proves conclusively that these creatures are capable of experiencing pain and suffering, this limited class of creatures can be brought quickly under the protection of the Bill by regulation.

Clause 20(1)(e) (Meaning of “prohibited event”)—*amendment of an Act only by another Act*

Clause 20(1)(e) enables events held for public entertainment that cause pain to animals to be quickly designated by regulation as “prohibited events” under the Bill. New events are regularly devised to provide amusement at the expense of the animal that is the subject of the event. There are clear limitations on what such a regulation may include, as the events that may be prescribed must cause the animal pain and examples are provided of the types of event that may be prohibited as including events that involve the catching, fighting or throwing of an animal.

Clause 34(1)(a) (Possession of prohibited trap or spur unlawful)—*amendment of an Act only by another Act*

Clause 34(1)(a) allows a trap to be prescribed by regulation to be a “prohibited trap”. The power to make such a regulation is required because continuous developments in animal trap design means that some existing traps will quickly become unacceptable to the community in the light of new developments. Also, newly devised traps may need to be quickly prohibited if they cause excessive pain and suffering to the trapped animal.

Clause 42(3)(c) (Feral or pest animals)—*amendment of an Act only by another Act*

Animals that are not pest animals now may come to be regarded as pests in the future. Given the speed at which the number of pest animals may increase and the damage they may cause, it is essential that a regulation can quickly facilitate the control of a pest animal by declaring it to come within the offence exemption in clause 38 for control of pest animals.

Clause 15 (Regulation may require compliance with code of practice)—*the amount of the maximum penalty and the proportion of the maximum penalty to the offence*

Clause 15 provides a maximum penalty of 300 penalty units for breach of a requirement in a code of practice that has been declared by a regulation to be a “compulsory code requirement”. Codes of practice provide industries that use animals with minimal acceptable standards in their dealing with animals. The high penalty for breach of a compulsory code requirement is necessary to provide a punitive element for breaches of such basic standards. Because a breach of a compulsory code requirement may seriously impact on a large numbers of animals, a high maximum penalty is required to provide sufficient punishment and deterrence. The penalty level for a breach of a compulsory code requirement is consistent with other penalties in the Bill that deter activities having a similar impact on animal welfare.

Clause 49 (What is the “Scientific Use Code”)—*Parliamentary control over the Scientific Use Code and public access to that code*

Compliance with the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes is required by all States’ and Territories’ animal welfare legislation and provides nationally accepted standards for the scientific use of animals. Inclusion of this Code in the Bill ensures that animals used for scientific purposes are treated ethically and humanely.

The Code is regularly revised and provisions in the Bill require any new or revised editions of the Code to be tabled in Parliament. Other provisions in the Bill facilitate public access to the Code by providing the web site address where the Code can be found and by requiring that the Code is freely available for inspection.

Consultation*Industry and Animal Welfare Organisations*

Widespread consultation has taken place with animal welfare interest groups, livestock industries and other animal user groups in the development of the Bill. Some of the groups consulted include-

- Agforce
- Animal Liberation (Queensland)
- Australian Lot Feeders' Association
- Australian Professional Rodeo Association Inc
- Australian Veterinary Association
- Canine Control Council
- Chicken Meat Council
- National Meat Association of Australia
- National Rodeo Council of Australia Limited
- Pet Industry Joint Advisory Committee
- Queensland Animal Health Council
- Queensland Chicken Growers' Association
- Queensland Dairyfarmers' Organisation
- Queensland Egg Farmers' Association
- Queensland Farmers' Federation
- Queensland Harness Racing Board
- Queensland Livestock Agents' Association
- Queensland Livestock Exporters' Association
- Queensland Pork Producers' Organisation
- Queensland Principal Club
- Queensland Racing Pigeon Federation
- Queensland Seafood Industry Association
- Royal Society for the Protection of Cruelty to Animals (Queensland)
- Sunfish Queensland Inc
- The University of Queensland
- Queensland Rail
- Livestock Transporters Association of Queensland
- Mackay Society for the Protection of Cruelty to Animals.

Government

There has also been significant consultation with the following government agencies during the preparation of the Bill-

- Department of Aboriginal and Torres Strait Islander Policy & Development
- Department of Communication and Information, Local Government Planning & Sport
- Department of Employment Training and Industrial Relations
- Department of Justice and Attorney-General
- Department of Primary Industries—Queensland Fisheries Service
- Department of State Development
- Department of the Premier and Cabinet
- Department of Tourism, Sport & Racing
- Education Queensland
- Environmental Protection Agency
- Greyhound Racing Authority
- Office of Rural Communities
- Queensland Police Service
- Queensland Transport
- Queensland Treasury
- Veterinary Surgeons Board
- Department of Natural Resources and Mines.

Results of consultation

Industry and Animal Welfare Organisations

All animal welfare interest groups, livestock industries and other animal user groups consulted are generally supportive of the need for modern legislation. There is widespread support for the prompt enactment of the Bill.

Government

All government agencies consulted generally support the Bill.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Short title

Clause 1 provides that the short title of the Act will be the *Animal Care and Protection Act 2001* ('the Act').

Commencement

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

PART 2—PURPOSES AND APPLICATION OF ACT

Division 1—Purposes

Purposes of Act

Clause 3 details the purposes of the Act. The Act is designed to-

- promote the responsible care and use of animals by persons involved in their care or use;
- ensure the development and maintenance of proper standards of care that:
 - achieve a reasonable balance between the interests of people who depend on animals for their livelihood and the welfare of animals; and
 - recognise improvements in scientific knowledge on animal biology and changes in community expectations about practices involving animals;

- protect animals from unjust, unnecessary or unreasonable pain; and
- ensure that the use of animals for scientific purposes is conducted in an accountable, open and responsible manner.

These purposes are designed to reflect a positive and proactive approach to animal care and protection rather than simply a reactive approach of dealing with acts of cruelty after they have occurred, although dealing with acts of cruelty after they have occurred is still an essential part of the Bill.

How purposes are to be primarily achieved

Clause 4 details the way in which the purposes of the Act are to be primarily achieved. They are:

- providing for regulations about codes of practice for animal welfare;
 - Codes are currently widely used and are generally accepted as a way of describing acceptable and unacceptable standards for animal care and use within a number of animal industries. Under the Bill, codes may be adopted as a way of defining minimum acceptable standards for animal care and use in a variety of areas;
- allowing a regulation to require compliance with a code of practice;
 - The Bill does not require all codes of practice adopted to be complied with. However, in some areas of animal use, the real or perceived animal welfare risk to the animal is significant enough to warrant requiring compliance with standards set out in a code;
- imposing a duty of care on persons in charge of animals;
 - The concept of a duty of care is essential to promoting a proactive approach to animal care and protection. The duty of care is designed to ensure that animal owners/users recognise their responsibilities towards animals;
- prohibiting certain conduct in relation to animals;
 - The community generally regards certain conduct in relation to animals as unacceptable. This includes conduct that may generally be categorised as cruel as well as certain

specific practices and procedures that the community regards as inherently cruel or unnecessary;

- requiring a person using an animal for scientific purposes to comply with the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes* ('the scientific use code');
 - The scientific use code is a national code and aims to ensure the humane care of animals used for a broad range of scientific purposes;
- providing for the registration of certain users of animals for scientific purposes;
 - This reflects the Commonwealth Senate Select Committee into Animal Welfare (1989) recommendation that, as a means of controlling the use of animals for scientific purposes, research institutions using animals should be licensed;
- providing for the appointment of authorised officers to monitor compliance with compulsory code requirements and the scientific use code;
- providing for the appointment of inspectors to investigate and enforce the Act;
 - The existing *Animals Protection Act 1925* has been enforced primarily by police officers and the Royal Society for the Prevention of Cruelty to Animals (Queensland) ('RSPCA') officers. The Bill increases the classes of persons who may be appointed as inspectors to investigate and enforce the legislation;
- allowing the Minister to establish an animal welfare advisory committee or another body to advise the Minister on animal welfare issues;
 - This reflects the Commonwealth Senate Select Committee into Animal Welfare (1989) recommendation that all States and Territories establish animal welfare advisory councils.

Division 2—Application

Act binds all persons

Clause 5 provides that the Act will bind all persons, including the State and, so far as the Legislative Assembly of the Parliament permits, the Commonwealth and the other States. The policy behind the Act is that anyone who owns, uses or deals with animals should be subject to the provisions of the Act. This is in contrast to the existing *Animals Protection Act 1925* which arguably does not bind the Crown because it is silent on the matter. There are many situations where the Crown or its employees have animals in their immediate care. The Crown should have the same obligations to care for animals as everyone else in the community where the Crown has immediate contact with an animal.

Application of Act to State for protected or wild animals

Clause 6 provides that the Act does not apply to the State for an animal only because it is a protected animal or an animal in the wild under the *Nature Conservation Act 1992* and the property of the State under that Act, another Act or at common law. Clause 12 of the Bill defines the meaning of a “person in charge” of an animal and includes anyone who owns or has another interest in an animal. Many of the duties and liabilities detailed in the Act apply to a person in charge of an animal. The effect of clause 6 is that the State will not be deemed to be in charge of a wild or protected animal that is at large merely because the animal is deemed to be the property of the State.

Relationship to other Acts

Clause 7 explains the relationship between the Act and the *Fisheries Act 1994*, *Nature Conservation Act 1992* and *Racing and Betting Act 1980*. If a person performs an act that would be an offence under the Act but is lawful under the *Fisheries Act 1994*, *Nature Conservation Act 1992* or *Racing and Betting Act 1980*, the person is not taken to have committed an offence by reason only of doing the act. However, where fish or other animals are used for a scientific purpose, the person using those animals must still comply with the provisions of the Act relating to scientific use of animals.

Aboriginal tradition and Island custom

Clause 8 provides that, in general, the Act does not affect native title rights and customs. However, if a regulation prescribes conditions for the doing of a particular act by an Aborigine or Torres Strait Islander, the Act will apply unless the condition is complied with.

This clause acknowledges that native title rights, traditions and customs of Aboriginal and Torres Strait Islander people should be recognised but, consistent with the remainder of the Bill, attempts to achieve a balance between conflicting interests and maintain the welfare of animals at levels the community finds acceptable. An example of such a practice may be the taking of turtles. The section allows for a focused approach to determine which current traditional practices may involve significant pain to an animal and are cause for community concern. Those particular practices will then be targeted through a consultative approach with relevant indigenous groups.

Under the section, indigenous groups engaging in the particular practice will have to be consulted through the use of a Regulatory Impact Statement, prepared in accordance with the *Statutory Instruments Act 1992* before any regulation is made.

Act does not affect other rights or remedies

Clause 9 details the effect of this Act on other rights and remedies. Any civil right or remedy that exists apart from this Act is not limited and compliance with the Act does not necessarily show that any other civil right or remedy has not been breached. Conversely, a breach of the duty of care under the Act does not, of itself, give rise to an action for a breach of a civil right or remedy.

PART 3—INTERPRETATION

Division 1—Dictionary

Definitions

Clause 10 provides that the dictionary in the Schedule defines particular words used in the Act.

Division 2—Key definitions

What is an “animal”

Clause 11 defines what constitutes an animal for the purposes of the Act. The Act covers all live vertebrates (including mammals, birds, reptiles, amphibians and fish) but not human beings. The Act allows for coverage in the future of invertebrates of a species from the class Cephalopoda (for example octopus and squid) and class Malacostraca (for example crabs, crayfish, lobsters and prawns). These animals may need to be covered by the legislation in future as knowledge of their physiology improves.

Meaning of “person in charge” of an animal

Clause 12 defines who, under the Act, is defined as a “person in charge” of an animal. The definition includes a person who has custody or whose employee has custody of the animal or who has some form of ownership or interest in the animal. A security interest in the animal will only be relevant if the person takes steps to enforce the security interest.

CHAPTER 2—CODES OF PRACTICE

Making codes of practice

Clause 13 provides that a regulation may make codes of practice about animal welfare and provides examples of the codes of practice that may be made. Codes adopted under this clause will represent the minimum

acceptable standards for the animal use to which the code relates. Codes are used under the Act because they have a number of benefits including:

- they have educational value as a means of improving community awareness of animal needs and standards that exist for a particular type of animal use;
- they are generally produced only after extensive consultation with relevant animal user groups, governments, animal welfare organisations and professional organisations and therefore have acceptance amongst user groups affected by the particular code, increasing the likelihood of adherence to the code;
- they achieve consistency in animal care and protection standards where codes are developed and accepted as national codes.

Tabling and inspection of documents adopted in codes of practice

Clause 14 requires that a copy of any code of practice adopted, applied or incorporated by a regulation from another document not attached to the regulation must be made available by the chief executive for inspection. Any adopted provisions of a code that are not part of or attached to the regulation must be tabled in the Legislative Assembly within 14 sitting days after the regulation being gazetted. This provision will ensure that Parliament and the public are aware of and have access to the provisions of any code that is adopted, applied or incorporated.

Regulation may require compliance with code of practice

Clause 15 provides that a regulation may require a person to comply with the whole or a stated part of a code of practice (“a compulsory code requirement”). The Act makes it an offence where a person fails to comply with a compulsory code requirement. Not all codes under the Act will be compulsory but some industries support strict compliance with their relevant code. The Circus Federation of Australasia is an example of an industry that has produced the Queensland Code of Practice for the Welfare of Animals in Circuses and has requested mandatory compliance with that code.

Where only a stated part of a code is made compulsory, the remainder of the code may still be adopted under clause 13 of the Bill as representing the minimum acceptable standards applying to the animal use to which the code relates.

Use of code of practice in proceeding

Clause 16 provides that a code of practice is admissible in evidence in a proceeding for an offence against this Act if it relates to the act or omission to which the proceeding relates.

CHAPTER 3—GENERAL ANIMAL OFFENCES**PART 1—BREACH OF DUTY OF CARE****Breach of duty of care prohibited**

Clause 17 provides that a person in charge of an animal owes a duty of care to it and must not breach that duty. Breach of the duty amounts to an offence. The section sets out what constitutes the duty of care. What constitutes the duty of care is based on the ‘Five Freedoms’ of animal welfare, that is:

- freedom from hunger and thirst by ready access to fresh water and a diet to maintain full health and vigour;
- freedom from discomfort by providing an appropriate environment, including shelter and a comfortable resting area;
- freedom from pain, injury and disease by prevention or rapid diagnosis and treatment;
- freedom to express normal behaviour by providing sufficient space, proper facilities and company of the animal’s own kind; and
- freedom from fear and distress by ensuring conditions and treatment that avoid mental suffering.

The ‘Five Freedoms’ cannot always be realised in all situations where persons use animals for legitimate purposes. Requiring strict compliance with the ‘Five Freedoms’ may lead to restrictions on animal use and interaction that the community generally regards as unacceptable. Therefore the duty of care requirements represent a modified version of the ‘Five Freedoms’.

To further ensure that legitimate and acceptable animal use is not restricted or that unnecessarily harsh consequences arise from the imposition of the duty of care, regard must be had to the animal species, environment and circumstances of the animal. This will determine what reasonable steps a person in charge of animal should take to comply with their duty of care obligation.

PART 2—CRUELTY OFFENCES

Animal cruelty prohibited

Clause 18 provides for an offence of cruelty towards an animal. The clause details what type of conduct is regarded as cruelty for the purposes of the offence without limiting what may amount to cruelty towards an animal. It is not possible to exhaustively define the notion of cruelty. What amounts to cruelty will often depend on the individual circumstances of the animal in question and what the community perceives as ‘cruel’.

Unreasonable abandonment or release

Clause 19 provides that it is an offence for a person to abandon or release an animal without reasonable excuse. This provision, in part, is designed to ensure that persons do not simply abandon or release an animal that they have responsibility for without making appropriate arrangements for the animal’s care.

PART 3—PROHIBITED EVENTS

Division 1—Preliminary

Meaning of “prohibited event”

Clause 20 defines the meaning of “prohibited event”. Prohibited events are events the community generally regards as totally unacceptable because

the events involve deliberate infliction of pain and suffering on an animal and may result in the animal's death. Prohibited events include:

- bullfights, cockfights, dog fights or where an animal fights with another animal (however, conducting a rodeo event is not a prohibited event merely because of action taken in the rodeo to protect a person from an animal being used in a rodeo);
- coursing (where an animal is chased or hunted by another animal);
- where an animal is released to be hunted by a person (for example, in a shooting competition or contest) without an appropriate acclimatisation period between release and hunting to reduce stress;
- certain prescribed events held for public enjoyment or entertainment (whether free or not) where a person causes an animal pain.

Division 2—Prohibitions

Participation in prohibited event

Clause 21 prohibits a person from participation in a prohibited event. A person participates in a prohibited event where the person organises, takes part in the organisation of, permits to be organised, supplies animals to be used in or provides the place for the prohibited event.

Presence at prohibited event

Clause 22 makes it an offence for a person to be present at a prohibited event unless the person has a reasonable excuse.

PART 4—REGULATED SURGICAL PROCEDURES

This Part contains specific offences relating to certain procedures that are carried out on animals. The community generally regards these procedures as being acceptable only if they are carried out in a humane way

and, in some cases, only if they are being done in the interests of the animal's welfare.

Division 1—Regulated procedures for dogs

Cropping dog's ear

Clause 23 makes it an offence for a person to crop a dog's ears unless the person is a veterinary surgeon who considers the cropping to be necessary in the interests of the dog's welfare.

Docking dog's tail

Clause 24 makes it an offence for a person (other than a veterinary surgeon) to dock a dog's tail unless the docking is done in a way prescribed by regulation. Where the docking is to be performed by a veterinary surgeon, the veterinary surgeon may perform the docking if the surgeon considers it to be in the interests of the dog's welfare. Either a veterinary surgeon or other person may perform the docking if it is done in a way prescribed by regulation. Docking may not otherwise be carried out. The effect of this clause is to allow docking only in limited circumstances-

- for welfare reasons (for example, a tumour on the dog's tail) and then only by a veterinary surgeon in the interests of the dog's welfare; and
- for other reasons (such as cosmetic reasons usually associated with meeting breed standards) provided the docking is done the prescribed manner, in which case, lay persons or veterinary surgeons may do the docking.

The docking of tails for cosmetic reasons is a common practice, but from an animal welfare perspective, is unnecessary. Accordingly, rather than totally prohibiting this practice, this clause allows restrictions (through a regulation) to be placed on docking for non-animal welfare reasons. This will ensure the procedure is performed in an appropriate and humane manner.

Debarking operations

Clause 25 makes it an offence for a person to perform a debarking operation on a dog unless the person is a veterinary surgeon who:

- considers the operation to be necessary in the interests of the dog's welfare; or
- has been given a relevant nuisance abatement notice and considers the operation the only way to comply with the notice without destroying the dog; or
- has been given a notice by the dog's owners setting out that the dog's barking is a nuisance and the nature of efforts to correct the problem and the veterinary surgeon considers the operation the only way to stop the dog's barking from being a nuisance.

Division 2—Regulated procedures for other animals

Removal of cat's claw

Clause 26 makes it an offence for a person to remove a cat's claw unless the person is a veterinary surgeon who considers the removal to be necessary in the interests of the cat's welfare.

Docking tail of cattle or horse

Clause 27 makes it an offence for a person to dock the tail of cattle or a horse unless the person is a veterinary surgeon who considers the cropping to be necessary in the interests of the cattle or horse's welfare.

Division 3—Restriction on supplying animals that have undergone a regulated surgical procedure

Restriction on selling debarked dog

Clause 28 makes it an offence for a person to supply to someone else a dog that the supplier knows has had a debarking operation performed on it unless a certificate signed by a veterinary surgeon stating the operation was performed in accordance with clause 25 (debarking operations) is also supplied. By virtue of the defence exemption provided in clause 47, this requirement will not apply to prescribed entities or inspectors because they obtain and sell stray or forfeited animals with an unknown history.

Other restrictions

Clause 29 makes it be an offence for a person to sell, without a certificate from a veterinary surgeon stating that the procedure was done in the interest of the animal's welfare-

- a dog with cropped ears;
- a declawed cat;
- a horse with its tail docked.

By virtue of the defence exemption provided in clause 47, this requirement will not apply to prescribed entities or inspectors because they obtain and sell stray or forfeited animals with an unknown history.

PART 5—OTHER PROHIBITED AND REGULATED CONDUCT***Division 1—Other offences relating to dogs*****Causing captive animal to be injured or killed by dog**

Clause 30 makes it an offence for a person to knowingly cause an animal in captivity to be injured or killed by a dog.

Releasing animal for injury or killing by dog

Clause 31 makes it an offence to release an animal for injury or killing by a dog. The clause also makes it an offence, in circumstances where it is likely that an animal released will be injured or killed by a dog, not to take reasonable steps to prevent the killing or injury.

Keeping or using lure or kill for blooding or coursing

Clause 32 makes it an offence for a person to keep or use an animal as a lure or kill for blooding a dog or to race or train a coursing dog (a dog that is used to chase or hunt another animal).

Obligation to exercise closely confined dogs

Clause 33 has been included in the Bill in response to the many complaints that are received from the public regarding tethered dogs. The clause makes it an offence to fail to exercise or cause to be exercised a closely confined dog during every 24 hour period either for a continuous period of at least 2 hours or for 2 separate periods of at least 1 hour each. In deciding whether a dog is closely confined, regard must be had to the dog's age, physical condition and size as these factors determine the exercise needs of the individual dog.

Division 2—Possession or use of certain traps or spurs**Possession of prohibited trap or spur unlawful**

Clause 34 makes it an offence to possess a prohibited trap or spur. There are many traps regarded by the community as inhumane as they cause considerable and unnecessary suffering to animals.

A prohibited trap or spur includes-

- a trap which is prescribed by regulation to be prohibited;
- a spur with sharpened or fixed rowels;
- a cockfighting spur cap.

It will not be an offence for a person to possess any of the above where they have a reasonable excuse, for example, the items are for a display or part of a collection and have been rendered inoperable.

Use of prohibited trap or spur unlawful

Clause 35 makes it an offence for a person to use a prohibited trap or spur.

Division 3—Baits or harmful substances**Prohibitions**

Clause 36 prohibits a person from administering a poisonous substance to an animal with the intention of injuring or killing it. Inspectors, prescribed entities and veterinary surgeons are exempt from this provision

because they will, on occasion, need to put down an animal in extreme pain.

The clause also makes it an offence for a person to lay a bait or poison with the intention of injuring or killing an animal. By virtue of clause 42, it will be an offence exemption to these offences if the animal concerned is a feral or pest animal and the requirements of that clause are complied with.

Division 4—Allowing animal to injure or kill another animal

Unlawfully allowing an animal to injure or kill another animal

Clause 37 makes it an offence to unlawfully allow an animal (the “first animal”) to injure or kill another animal (the “second animal”). The offence will occur when a person:

- has the first animal under the person’s immediate supervision, (for example, when a person is in the person’s home and knows the first animal, a dog is in the backyard);
- was aware of the second animal’s presence (for example, the person sees a koala enter the backyard);
- ought reasonably to have suspected that the second animal was immediately vulnerable (for example, the koala is in the backyard on the ground);
- the second animal is likely to be injured or killed by the first animal (for example, the koala is likely to be injured by the dog); and
- does not take reasonable steps to prevent the injury or killing (for example, by putting the dog on a lead).

PART 6—EXEMPTIONS

Division 1—Preliminary

Operation of pt 6

Clause 38 explains that the clauses in Part 6 of the Bill provide exemptions to the general animal offences contained in Chapter 3 of the Bill. If an offence exemption applies to a particular act or omission, the person does not commit an offence that would otherwise be committed by the act or omission.

Division 2—Compliance with relevant code

Offences excluded from div 2

Clause 39 provides that this division does not apply to an offence against section 15 (regulation may require compliance with a code of practice) or an offence to which division 3 (other offence exemptions) apply. The provision prevents the occurrence of multiple defence exemptions for the same offence. In other words, it is already a defence to the offence under clause 15 if a person has complied with that section. Similarly, division 3 contains defence exemptions.

Compliance with relevant code of practice or scientific use code

Clause 40 provides that it is an offence exemption if relevant provisions in a code of practice or the scientific use code have been complied with. However, if the provisions of the code are incomplete, it is only an offence exemption if the duty of care is also complied with in respect of matters not dealt with in the code. For example, under the ‘Model Code of Practice for the Welfare of Animals—The Sheep’ endorsed by the Agriculture and Resource Management Council of Australia and New Zealand (the policy council comprising of all Australian and the New Zealand Ministers for Agriculture), mulesing of sheep is to be performed as soon as possible after 2 weeks of age. The Code simply permits this procedure (which may otherwise be regarded as cruel) to be undertaken without providing details on how the procedure is to be undertaken. A person may carry out this procedure on a sheep as soon as possible after the animal is 2 weeks of age

but conducts the procedure in a manner that causes significant and unnecessary pain to the animal, (for example by using blunt or inappropriate instruments). In these circumstances, it will not be an exemption to a cruelty offence under the legislation, that the procedure was permissible under a code.

Compliance with standards set out in a code can only be used as an exemption to an offence under the Act in relation to the specific standards that the code deals with. Where no details of, for example, how a procedure or practice permitted under a code is to be undertaken, a person must still comply with a duty of care when performing the procedure.

Division 3—Other offence exemptions

Limits on application of offence exemptions under div 3

Clause 41 provides that the offence exemptions detailed in this division only apply, in relation to a code of practice that states requirements for how the act that constitutes the offence may be carried out, to the extent that the code is complied with.

Compliance with standards set out in a code can only be used as an exemption to an offence under the Act in relation to the specific standards that the code deals with. Where no details of, for example, how a procedure or practice permitted under a code is to be undertaken, a person must still comply with a duty of care when performing the procedure.

Feral or pest animals

Clause 42 provides an offence exemption in respect of feral or pest animals. This clause has the effect of permitting a person to do acts for the purposes of controlling pest or feral animals provided the act-

- causes the animal as little pain as is reasonable; and
- satisfies any conditions prescribed by regulation.

It is not intended to prohibit the control of feral and pest animals by individuals or commercial companies who may use poisons, traps (other than a prohibited trap or spur) or other methods of controlling such animals. Controlling feral and pest animals is regarded as legitimate practice as one species may compete with or kill native fauna, affect agricultural production, damage native habitat or act as a carrier of serious

animal and human diseases. However, persons engaged in these types of activities should adopt the most humane methods available consistent with effective control.

Animals used to feed another animal

Clause 43 provides an offence exemption where the act that constitutes an offence involves using an animal as live food for another animal. The offence exemption will apply where the person lawfully keeps both animals and the fed animal will only eat the food animal if it is alive and is essential for the fed animal's survival. This section would apply, for example, to certain species of raptor that will only eat live food.

Fishing using certain live bait

Clause 44 provides an offence exemption for the use of live bait (being a fish or an invertebrate of a species from the class Cephalopoda or Malacostraca) for fishing provided the fishing complies with any conditions prescribed under a regulation. It is intended that, under this clause, the legitimate use of live bait in commercial and recreational fishing will continue.

Slaughter under religious faith

Clause 45 provides an offence exemption where an animal is slaughtered in accordance with a religious faith. The intent of this clause is to ensure traditional livestock slaughtering practices of recognised religious faiths (such as those of the Jewish and Muslim communities) will be allowed to continue where the slaughtering is in accordance with any relevant code of practice.

Use of fishing apparatus under shark fishing contract

Clause 46 provides an offence exemption for the use of fishing apparatus under a shark-fishing contract with the State. The clause allows a person who has a contract with the State for the taking, tagging or disposal of sharks to use fishing apparatus for shark control to protect persons from shark attacks.

Supplying animal

Clause 47 provides an offence exemption to the offences under clause 28 (restriction on supplying debarked dog) and clause 29 (other restrictions on supplying animals that have undergone a regulated surgical procedure). The exemption applies when the sale or supply of the animal is done by or for a prescribed entity or by an inspector. The reason for this exemption is to cater for situations where animal welfare organisations, such as the RSPCA, sell stray animals. Clearly it is difficult, if not impossible, to ascertain for these animals, who performed the surgical procedure on the animal or in what circumstances. Similarly inspectors will occasionally obtain forfeited animals whose history is unknown and these animals are either directly sold or supplied to an organisation like the RSPCA.

CHAPTER 4—USING ANIMALS FOR SCIENTIFIC PURPOSES

This Chapter of the Bill regulates the use of animals for scientific purposes. The welfare of animals used for scientific purposes is a major area of public concern. There will continue to be valid reasons to use animals for scientific purposes in some cases. However, there is still the need to prevent or minimise unnecessary pain and stress to those animals wherever possible.

PART 1—PRELIMINARY**When an animal is used for “scientific purposes”**

Clause 48 defines the meaning of using an animal for “scientific purposes”. The definition covers those activities performed to acquire, develop or demonstrate knowledge or techniques in any scientific discipline, including activities for the purposes of teaching, field trials, environmental studies, research, diagnosis, product testing, and the production of biological products. The term ‘scientific purposes’ covers a wider range of animal uses than those understood to be included in the term ‘scientific experiments’. However, the activities of fish tagging and bird

banding are not, on their own, regarded as using animals for scientific purposes under the Act. The example of ‘diagnosis’ given in the definition is not intended to include diagnosis within routine veterinary practice.

The definition also encompasses the situation where only part of an animal is intended to be used for scientific purposes and an animal is specifically killed for the sole purpose of obtaining these parts. It does not cover the situation where an animal is killed for some other purpose (for example, where an animal is killed at an abattoir for food production) and the animal parts are then incidentally obtained for scientific purposes. In situations where only part of an animal is required for the scientific purpose, the policy is to encourage the obtaining of these parts, where possible, from animals already slaughtered for other purposes rather than killing a further animal solely to obtain the parts for the scientific purpose.

What is the “scientific use code”

Clause 49 defines the “scientific use code” as the most recent edition or revision of the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes*, published by or for the National Health and Medical Research Council (‘the Council’). The Council is a statutory authority established by the *National Health and Medical Research Council Act 1992* (Commonwealth) and includes members from the Commonwealth, State and Territory health authorities, professional and scientific colleges and associations, unions, universities, business, consumer groups, welfare organisations, conservation groups and aboriginal interests. The Council’s functions include providing advice to the Australian community, Commonwealth, State and Territory Governments on matters of individual and public health and medical research.

The *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes* is a national code and aims to ensure the humane care of animals used for a broad range of scientific purposes.

The clause also requires the chief executive officer to keep a copy of the code available for inspection by the public. If a new edition or revision of the code is published, the Minister must table a copy of the revision in the Legislative Assembly within 14 sitting days.

Definitions for ch 4

Clause 50 contains definitions used in Chapter 4.

PART 2—REGISTRATION OF SCIENTIFIC USERS

Division 1—Who must obtain registration

Requirement for registration

Clause 51 details requirements for registration of scientific users of animals. This reflects a recommendation of the Commonwealth Senate Select Committee into Animal Welfare (1989) designed as a means of controlling the use of animals for scientific purposes by-

- knowing which organisations or individuals use animals for scientific purposes; and
- enabling the collection of national statistics about animals used for scientific purposes.

The clause requires all persons using an animal for a scientific purpose to be registered unless the person is-

- an individual retained by a registered person (for example, a university employee conducting scientific research using animals is not required to be registered provided the university is registered and the employee is acting in the course of their employment with the university); or
- a student at an institution and is acting in the course of the student's studies with the institution.

Division 2—Obtaining registration

Subdivision 1—Registration applications

Applying for registration

Clause 52 details how to apply for registration or renewal of registration as a scientific user. The application must be in the approved form, set out certain details, be supported by enough information to enable the chief executive to decide the applications and be accompanied by the prescribed fee.

Chief executive may seek further documents or information

Clause 53 enables the chief executive to seek further documents or information after a registration application has been made.

Subdivision 2—Deciding registration application**Deciding application**

Clause 54 requires the chief executive to make a decision on an application for registration within 28 days of the making of the application or receipt of all necessary information or documents required, whichever is last.

Criteria for decision

Clause 55 sets out the criteria the chief executive must use in determining an application for registration as a scientific user. The chief executive must be satisfied that the applicant and each animal ethics committee proposed for the applicant are likely to comply with the scientific use code.

The chief executive must also consider-

- whether a disqualifying event has occurred in relation to the applicant or a proposed member of the applicant's animal ethics committee or executive officers of any corporate applicant; and
- any other matter prescribed by regulation.

A 'disqualifying event' is defined in clause 50 as a conviction for an animal welfare offence or suspension or cancellation of registration.

Registration conditions

Clause 56 empowers the chief executive to impose conditions on the registration that are relevant and reasonable.

Subdivision 3—Action after decision on registration application**Grant of registration application**

Clause 57 requires the chief executive, on granting registration, to record details of the applicant's registration on the register of persons using animals for scientific purposes and give the applicant a signed registration certificate.

Term of registration

Clause 58 provides that the term of registration is three years.

Notice of refusal of registration application

Clause 59 requires the chief executive, as soon as practicable after deciding to refuse an application for registration or to impose a registration condition, to notify the applicant.

Division 3—Register of scientific users***Subdivision 1—The register*****Register**

Clause 60 requires the chief executive to keep a register of persons registered to use animals for scientific purposes.

Registration details

Clause 61 sets out the details that must be contained in the register of persons registered to use animals for scientific purposes.

Inspection of register

Clause 62 requires the chief executive to keep the register open for inspection and allow persons to take extracts or copies of the register. This clause is subject to the disclosure exemptions set out in clause 70.

False representations about registration

Clause 63 makes it an offence for a person, in connection with the use of an animal for a scientific purpose, to falsely represent that the person or someone else is registered to use animals for scientific purposes.

Subdivision 2—Exemption from disclosure of registration details**Who may apply**

Clause 64 enables an applicant for registration or a registered person to apply to the chief executive for a disclosure exemption for stated registration details. The disclosure exemption can only be given for the person's name if that person is an individual.

Requirements for application

Clause 65 sets out the requirements for an exemption application. The application must state, in part, the likely disadvantage to the interests of the applicant or a member of the relevant animal ethics committee that will occur if the information is disclosed.

Deciding application

Clause 66 sets out the decision-making period for the chief executive in making a decision on a disclosure exemption.

Criteria for decision

Clause 67 details the criteria the chief executive must apply in making a decision on a disclosure exemption application. In particular, the chief executive must be satisfied that the disadvantage to the applicant of any disclosure outweighs the public interest in the details being disclosed.

Exemption may be limited

Clause 68 enables the chief executive to grant a disclosure exemption for the whole or a part of the registration details the subject of the application.

Notice of refusal of disclosure exemption application

Clause 69 requires the chief executive to give an unsuccessful applicant notice of a refusal of a disclosure exemption application as soon as practicable after making a decision to refuse or partially refuse an application.

Effects of disclosure exemption

Clause 70 sets out the effects of a disclosure exemption. The clause prevents the release of information the subject of the disclosure exemption except in specified circumstances. These specified circumstances include where the registered person has agreed in writing to the release or where a person is performing a function under or relating to the administration of the Act or is permitted under another Act.

Division 4—Amendment, cancellation or suspension***Subdivision 1—Amendment of registration details*****Amendments for which proposed action notice not required**

Clause 71 enables the chief executive to amend a person's registration details at any time without following the procedure under subdivision 3 to correct a clerical error or in a way that does not adversely affect the person's right or at the person's written request. In these circumstances, the chief executive may simply make the amendment and inform the person of the change made.

Amendments for which proposed action notice is required

Clause 72 provides, that except in the circumstances set out in clause 71, the chief executive must follow the procedure under subdivision 3 for amending a person's registration where the chief executive considers the amendment necessary or desirable.

Subdivision 2—Cancellation or suspension of registration**Conditions for cancellation or suspension**

Clause 73 sets out the circumstances in which the chief executive may cancel or suspend a person's registration for scientific purposes. Cancellation or suspension may occur:

- where registration occurred due to a false or misleading representation;
- due to failure to comply with a registration condition;
- for failure to pay registration fees;
- where a disqualifying event occurs to the applicant or any of its executive officers or animal ethics committee members;
- where the applicant becomes bankrupt or insolvent; or
- due to failure by an animal ethics committee to perform any of its functions or to comply with the code.

Subdivision 3—Procedure for amendment, cancellation or suspension**Application of sdiv 3**

Clause 74 provides that this subdivision applies if the chief executive proposes to amend a person's registration details under clause 72 or cancel or suspend the registration.

Notice of proposed action

Clause 75 requires the chief executive to give a notice, containing certain information, including the proposed action the chief executive intends to take regarding the person's registration (that is, whether the chief executive intends to amend the registration under clause 72 or cancel or suspend the registration). The holder of the registration must be given at least 28 days in which to show why the proposed action should not be taken.

Considering representations

Clause 76 requires the chief executive to consider any written representations made by the registration holder within the stated period in a notice under clause 75. If the chief executive decides at any time not to take the action set out in the notice, the chief executive must promptly give the person on whom the notice was served notice of the decision.

Decision on proposed action

Clause 77 sets out the action the chief executive may take where the chief executive, after considering any written representations in accordance with clause 76, still believes there are grounds for taking the proposed action.

Notice and taking of effect of proposed action decision

Clause 78 provides that as soon as practicable after making a decision under clause 77, the chief executive must give the person an information notice about the decision. The clause also details the date of effect of decisions of the chief executive.

Subdivision 4—Steps after amendment or suspension**Replacement of registration certificate**

Clause 79 provides that where the chief executive amends a person's registration, the chief executive must issue a new registration certificate as soon as practicable.

Requirement to record suspension

Clause 80 requires the chief executive, upon suspending registration, to record the start and end dates of the suspension in the register.

Division 5—Investigation of applicants and registered persons**Application of div 5**

Clause 81 provides that this division applies when the chief executive is making a registration decision.

Animal welfare offence reports

Clause 82 requires the commissioner of the police service, on the chief executive's request, to provide the chief executive with a written report (an "animal welfare report") about any convictions for animal welfare offences recorded against specified persons connected with an application for registration.

Use of information in animal welfare offence report

Clause 83 provides that the chief executive cannot use an animal welfare offence report provided by the commissioner of police under clause 82 for any purpose other than to make a registration decision. The chief executive must have regard to when the offence was committed, the nature of the offence and the relevance to the decision.

Notice of use of information in animal welfare offence report

Clause 84 requires the chief executive to disclose information contained in an animal welfare offence report, before using it, to the person to whom the report relates and allow that person a reasonable opportunity to respond. This is to ensure that the person receives natural justice.

Confidentiality of animal welfare offence reports

Clause 85 makes it an offence for any public service employee who acquires information contained in an animal welfare offence report in his or her capacity as a public service employee, to disclose the information or give access to the report to anyone else. The offence does not apply where the disclosure is for the purposes of making a registration decision, is with the person's consent or is required under another Act.

Destruction of animal welfare offence reports

Clause 86 details when the chief executive must destroy animal welfare offence reports.

Division 6—Miscellaneous provisions**Reporting obligations of registered persons**

Clause 87 details the reporting obligations of persons registered for use of animals for scientific purposes. The Commonwealth Senate Select Committee into Animal Welfare (1989) ('the Committee') recommended the national collection and publication of statistical information about animals used for scientific purposes. The Committee was of the opinion that this was a way of addressing public concern about animals used for scientific purposes.

Annual reports must be given detailing:

- animals the person has used, or allowed to be used for scientific purposes;
- complaints, enquiries and grievances about the use of animals for scientific purposes;
- any other matters prescribed by regulation. Regulations may cover matters such as the acquisition, transport, production, housing, care, use and disposal of animals used.

Replacement registration certificates

Clause 88 details the process for the replacement of a damaged, lost or destroyed registration certificate.

No transfer of registration

Clause 89 provides that a person's registration cannot be transferred. Transfer of registration is not regarded as appropriate. The matters outlined in clause 55 (criteria for decision of registration application) need to be considered for each person seeking to be registered to ensure that they are likely to treat the animals in their care humanely.

Surrender of registration

Clause 90 enables a person to surrender a registration.

PART 3—RESTRICTIONS ON SCIENTIFIC USERS**Use for scientific purposes must comply with code**

Clause 91 details the conditions a person must comply with when using an animal for scientific purposes, which are:

- the use is approved by an animal ethics committee whose registered terms of reference includes monitoring the use;
- any requirements of the committee made under the scientific use code in relation to the use have been complied with; and
- the provisions of the code, to the extent they are relevant to the use, have been complied with.

Failure to comply with these conditions is an offence.

Use for certain scientific purposes unlawful

Clause 92 prohibits the use of animals for certain scientific purposes without the chief executive's approval. This provision reflects the fact that certain scientific procedures conducted on animals are designed to cause the death of the animal or may cause significant stress for the animals involved and there are often alternatives to using animals. These procedures are-

- the test commonly known as the Draize eye or skin irritancy test;
- the test commonly known as the classical LD 50 test;
- other tests or scientific experiments using a cosmetic, sunscreen product or ingredient for a cosmetic or sunscreen product.

In some circumstances, there may still be sufficient reason for the procedure being undertaken, for example, where the procedure is conducted for the purpose of developing a preventative or curative substance or a pest control poison. For this reason, the clause allows these procedures to be conducted but only with the chief executive's approval.

Obtaining approval to use for unlawful scientific purpose

Clause 93 details the procedure for seeking to obtain the chief executive's approval to use an animal for a scientific purpose set out in clause 92. Clause 93 provides for the lodgment of an application with a prescribed fee. The chief executive must consider the application within 28 days of receipt. The chief executive may only grant the application if an animal ethics committee has approved the test or use and any requirements of the committee have or are likely to be complied with.

CHAPTER 5—CODE COMPLIANCE MONITORING**PART 1—PRELIMINARY****Purposes of ch 5**

Clause 94 describes the purpose of Chapter 5. As part of the Bill's proactive approach, monitoring of compulsory code requirements and the scientific use code will be undertaken by authorised officers to assist in preventing situations of animal suffering developing and to promote standards of animal care. Monitoring is also a way to ensure animal users adhere to compulsory code requirements and the scientific use code. The powers of authorised officers will not be the full range of the usual 'enforcement type' powers. Rather, their powers are designed to ensure that animal users are complying with certain animal welfare standards and, where they are not, give them an opportunity to make improvements to meet those standards (such as the power to provide directions to animal users). Monitoring programs will be developed setting out how the authorised officers will exercise these powers.

PART 2—MONITORING PROGRAMS

Chief executive may make monitoring program

Clause 95 empowers the chief executive to make monitoring programs that state the requirements for authorised officers about the monitoring of a compulsory code requirement or the scientific use code. A monitoring program may cover more than one compulsory code requirement and compulsory code requirements under different codes of practice.

These programs will not provide authorised officers with additional powers to those provided under the Act. Nor will the programs impose additional requirements or obligations on animal users covered by the programs. Rather, the programs are more of an administrative nature designed to give animal users guidance about how authorised officers will exercise their powers for the compulsory code requirement covered by the particular program. Examples of matters a monitoring program may deal with include-

- the specific aspects of the compulsory code requirement or scientific use code to be monitored. (For example, where the compulsory code requirement sets out the feed and accommodation requirements for a specific animal species, a monitoring program may provide that authorised officers will be specifically monitoring the accommodation requirements);
- how these aspects are to be monitored;
- guidelines for the action to be taken where an unsatisfactory situation exists;
- the method for determining which locations will be monitored at a particular time.

Publication of draft monitoring program

Clause 96 requires the chief executive to publish a notice of a draft monitoring program in a newspaper likely to be read by people in the State particularly affected by the scientific use code or each compulsory code requirement to which the draft program relates. The period of consultation on the draft program must be at least 28 days and copies of the draft program must be available at a place specified in the notice.

The intention is that monitoring programs will be developed in consultation with the relevant animal user group, animal welfare group or

industry which is most likely to be affected by the compulsory code requirements the proposed program is about.

Comments to be considered before final program made

Clause 97 requires the chief executive to consider all comments received about a draft monitoring program before making the monitoring program.

Final monitoring program

Clause 98 provides that the chief executive may make a final monitoring program only by gazette notice. As soon as practicable after making the program, the chief executive must publish a notice in a suitable newspaper. The chief executive must keep copies of the program at specific locations for public inspection.

PART 3 –AUTHORISED OFFICERS

Division 1—Appointment

Appointment and qualification

Clause 99 empowers the chief executive to appoint authorised officers to monitor compulsory code requirements and the scientific use code where a relevant monitoring program exists. To be eligible for appointment as an authorised officer, the person must be a public service officer or employee, or from a class of persons specified by regulation (for example, abattoir veterinary officers or RSPCA officers may be considered).

Due to the specialist nature of role of authorised officers, a person must have the necessary expertise or experience and have satisfactorily finished training approved by the chief executive before being appointed as an authorised officer.

Functions

Clause 100 details the functions of an authorised officer, which are to:

- monitor compliance with compulsory code requirements and the scientific use code; and
- promote standards of animal care provided for under codes of practice.

Authorised officers will not carry out the usual investigation and enforcement role under the Act. Inspectors will carry out this role.

Appointment conditions and limit on powers

Clause 101 provides that an authorised officer holds office on the conditions stated in the officer's instrument of appointment, under a regulation or notice of the chief executive. This allows the exercise of the functions and powers of an authorised officer to be restricted to a specific compulsory code requirement. For example, they may only be able to exercise their powers to monitor the code area in which they have been trained, such as the scientific use code. This is consistent with the notion that authorised officers will have a 'specialist role' under the Bill.

Conditions of appointment may require an authorised officer to provide information or a report to the chief executive about the performance of the officer's functions or the exercise of the officer's powers. This is designed to ensure authorised officers are accountable for the exercise of their statutory powers.

When authorised officer ceases to hold office

Clause 102 details the circumstances in which an authorised officer ceases to hold office.

Resignation

Clause 103 specifies the conditions and method of resignation of an authorised officer.

Division 2—Identity cards

Issue of identity card

Clause 104 requires the chief executive to provide each authorised officer with an identity card, containing a recent photograph of the person

and other relevant particulars. The purpose of the clause is to ensure authorised officers can be easily identified.

Production or display of identity card

Clause 105 requires that an authorised officer must produce or display the authorised officer's identity card before exercising any powers under the Act. However, provision is also made for the authorised officer to produce the card at the first reasonable opportunity where it is not immediately practical to do so.

Return of identity card

Clause 106 provides that when a person ceases to be an authorised person, the person must return the identity card to the chief executive. This is to ensure that a person does not represent that the person is an authorised officer after ceasing to be one.

PART 4—POWERS OF AUTHORISED OFFICERS

Division 1—General

General provisions about powers

Clause 107 provides that an authorised officer has the powers given under divisions 2 and 3. The clause also provides that the authorised officer may only exercise a power for the purpose of a monitoring program but that a person may hold appointment as an authorised officer and an inspector.

Division 2—Entry powers***Subdivision 1—Entry to places other than vehicles*****Power of entry**

Clause 108 sets out when an authorised officer may enter a place other than a vehicle. Under this clause, an authorised officer may enter a place if:

- (a) the occupier consents to entry;
- (b) it is a public place, when the place is open to the public;
- (c) its occupier has been given at least 48 hours notice of the entry by an authorised officer; or
- (d) its occupier has been given an animal welfare direction and the entry is made at a time stated in the direction to check compliance with the direction.

If the authorised officer intends to enter a place to ask the occupier for consent to enter under paragraph (a), the authorised officer may enter the land around premises to the extent that it is reasonable to contact the occupier or enter part of the place that the authorised officer reasonably considers that members of the public are allowed to enter.

Procedure for entry with consent

Clause 109 outlines the procedures an authorised officer must follow when seeking consent to enter a place.

Procedure for other entries

Clause 110 deals with situations in which the authorised officer is intending to enter a place in accordance with clause 108, other than with the consent of the owner. In these circumstances, if the person who is the occupier is present at the place, the authorised officer must make a reasonable attempt to:

- produce the officer's identity card;
- tell the person the purpose of the entry; and
- tell the person the officer is permitted under the Act to enter the place without the person's consent.

Subdivision 2—Entry to vehicles**Power of entry**

Clause 111 empowers an authorised officer to enter a vehicle:

- with the consent of the person in control of the vehicle; or
- if the officer reasonably suspects the vehicle is or has been used to transport animals in connection with a business; or
- if entry is in accordance with the details in an animal welfare direction that has previously been given to the person in control of the vehicle.

Entry to a vehicle, other than with consent of the person in control of the vehicle, can only be exercised where the vehicle is stationary.

Procedure for entry without consent if person in control or occupier present

Clause 112 details the procedures for an authorised officer to follow where the officer is intending to enter a stationary vehicle under clause 111. In these circumstances, if the person in control of the vehicle or an occupier of the vehicle is present at the vehicle, the authorised officer must make a reasonable attempt to:

- produce the officer's identity card;
- tell the person the purpose of the entry;
- seek consent if no consent has been given; and
- tell the person the officer is permitted under this Act to enter the place without the person's consent.

If the person in control of the vehicle is not present, the officer must still take reasonable steps to inform the person or any registered operator of the officer's intention to enter the vehicle.

Division 3—Other powers**Certain inspectors' powers apply for entry**

Clause 113 describes the powers and duties (powers and duties on entry) that an authorised officer may exercise for or after entering a place in accordance with the officer's entry powers. If the officer has entered the premises to ask the occupier's consent to enter premises, the powers of entry may only be exercised if the consent is given or entry otherwise authorised.

The powers and duties on entry are the same as certain powers and duties given to inspectors exercising enforcement powers. Those powers and duties are described in detail under the clauses indicated in brackets. The powers and duties are:

- power to require help to enter from a person in control (clause 134 and clause 135);
- power to require the production of documents (clause 168 and clause 169);
- power for entry to all places (chapter 6, part 2, division 3) other than the power to take measures to alleviate the pain of an animal;
- power to give animal welfare directions (chapter 6, part 2, division 5);
- the duty to give a notice of damage because of the exercise of powers (chapter 6, part 3).

CHAPTER 6—INVESTIGATION AND ENFORCEMENT

PART 1—INSPECTORS

Division 1—Appointment

Appointments and qualifications

Clause 114 provides for the chief executive to appoint a person as an inspector from the list set out in the clause. The list is limited to public service officers, employees of the RSPCA or another class of individuals declared under a regulation to be an approved class of persons for this clause. The chief executive must be satisfied that any person who is to be appointed as an inspector has the necessary expertise or experience or has satisfactorily finished approved training.

The existing *Animals Protection Act 1925* has been enforced primarily by police officers and RSPCA officers.

The class of persons who may be appointed as inspectors has been broadened to increase the ability to address animal welfare issues throughout the State. For example, the clause will make Department of Primary Industries' employees who are veterinarians or stock inspectors under the *Stock Act 1915* eligible for appointment as inspectors. Departmental stock inspectors and veterinarians have expert animal, extension and regulatory skills but require further training in the new legislation before any appointment.

Other classes of persons who may be considered, in future, for appointment as inspectors could include veterinarians, meat inspectors at abattoirs, local government animal control officials, interstate and Commonwealth government officers.

There is currently no requirement that an officer have specific training or expertise before being appointed under the *Animals Protection Act 1925*. To ensure the efficient enforcement of the Bill, a person will be required to have relevant training or expertise before being appointed as an inspector.

There will be no appointments of 'honorary' officers under the Bill. Often, persons appointed as honorary officers under the existing *Animals Protection Act 1925* have not belonged to any particular animal welfare

organisation or government agency and have performed their role without any clear direction, training or accountability requirements.

Functions

Clause 115 provides that the functions of an inspector are to investigate and enforce compliance with the Act.

Appointment conditions and limit on powers

Clause 116 provides for the appointment conditions of inspectors.

Not all inspectors will have the same role under the Bill. Some inspectors may only have power under the Bill in relation to a specific class of animal or animal industry. This section therefore allows an inspector's powers to be limited by regulation, a condition contained in the inspector's appointment or notice of the chief executive.

Under the existing *Animals Protection Act 1925*, non-government organisations such as the RSPCA exercise enforcement powers without any formal public accountability mechanisms. They are responsible for the training of their officers appointed under the Act. There is no formal mechanism for reporting or reviewing their enforcement activities and policies. To ensure inspectors are accountable for the exercise of their statutory powers, the instrument of appointment by the chief executive, a regulation or notice may require the inspector to provide reports about the performance of the inspector's functions or the exercise of the inspector's powers.

When inspector ceases to hold office

Clause 117 details the circumstances in which an inspector ceases to hold office.

Resignation

Clause 118 specifies the conditions and method of resignation of an inspector.

Division 2—Identity cards**Issue of identity card**

Clause 119 requires the chief executive to provide inspectors with an identity card. Each identity card will-

- contain a recent photograph of the inspector;
- be in a form approved by the chief executive;
- have a copy of the inspector's signature;
- identify the person as an inspector under the Act; and
- if the inspector has a term of appointment, state when the term of appointment ends.

The purpose of the clause is to ensure inspectors can be easily identified.

Production or display of identity card

Clause 120 requires all inspectors to produce or clearly display their identity card for inspection when exercising a power under the Bill. However, there may be situations where it is impractical for the inspector to produce their identity card (for example, where the person in charge of the animal cannot be located or where the inspector believes an offence is about to be committed). In these situations, the inspector must produce the identity card for inspection at the first available opportunity.

Return of identity card

Clause 121 sets out the circumstances under which an identity card issued to an inspector must be returned to the chief executive. This is to ensure that a person does not represent that they are an inspector after ceasing to be one.

PART 2—POWERS OF INSPECTORS

Division 1—Entry to places other than vehicles

Subdivision 1—Entry powers

Power of entry

Clause 122 sets out when an inspector may enter a place other than a vehicle. Under this clause, an inspector may enter a place if:

- (a) the occupier consents to entry;
- (b) it is a public place, when the place is open to the public;
- (c) the entry is authorised by warrant;
- (d) its occupier has been given an animal welfare direction and the entry is made at a time stated in the direction to check compliance with the direction.

If an inspector intends to enter a place to ask the occupier for consent to enter under paragraph (a), the inspector may enter the land around premises to the extent that it is reasonable to contact the occupier or enter part of the place that the inspector reasonably considers that members of the public are allowed to enter.

In addition to these powers, inspectors also have power to enter a place (other than a vehicle) to protect the welfare of animals that are at risk of imminent death or injury in circumstances such as a dogfight, torture of an animal or from an accident. Inspectors also have a power of entry where an animal has just been severely injured and it is unlikely that the injury will be treated in a reasonable period (for example, where a dog has been hit by a vehicle, runs onto private property, the occupants of which are known to be away).

An inspector also has a power to enter a place (other than a vehicle), where the inspector reasonably suspects that a delay will result in the concealment, death or destruction of anything at the place that is evidence of an animal welfare offence or is being used to commit, continue or repeat an offence.

Limited entry power to provide relief to animal

Clause 123 provides inspectors with limited powers to provide relief to an animal at a place (other than a vehicle or part of the place at which a person resides or apparently resides). The inspector can enter if they reasonably suspect that the animal is suffering from lack of food or water or is entangled.

In these circumstances, the inspector may enter and stay at the place only for a period reasonably necessary to provide food or water or disentangle the animal. This clause is designed to address situations such as where a neighbour reports a dog is tied up in a backyard without food or water and the dog's owners have gone away for a number of days.

Where the inspector exercises this power, they must leave a notice identifying the inspector, the action taken and when the action was taken before leaving the place. This information will enable the person in charge of the animal to take action if the person considers that the action taken by the inspector was unreasonable.

Subdivision 2—Procedure for entry without warrant**Procedure for entry with consent**

Clause 124 outlines the procedures an inspector must follow when seeking consent to enter a place.

Procedure for other entries without warrant

Clause 125 applies where an inspector is intending to enter a place other than with the consent of its occupier, where it is a public place or with a warrant. In those circumstances the inspector must, if the occupier is present, before entering, make a reasonable attempt to-

- display the inspector's identity card;
- tell the person the purpose of entry; and
- tell the person the inspector is permitted to enter the place without the person's consent or a warrant.

Subdivision 3—Warrants**Application for warrant**

Clause 126 makes provision for an inspector to apply to a magistrate or a justice of the peace (qualified) for a warrant to enter a place. Under this provision, a magistrate or a justice of the peace (qualified) may refuse to consider an application until an inspector provides them with the information he or she requires. The application cannot be made to a magistrate or a justice of the peace (qualified) who is employed by the same department or person that employs the inspector.

Issue of warrant

Clause 127 sets out the conditions under which a magistrate or a justice of the peace (qualified) may issue a warrant and specifies the information that must be stated in a warrant.

Special warrants

Clause 128 makes provision for and outlines the procedures by which an inspector can apply for a warrant by phone, fax, radio or another means of communication because of urgent or special circumstances.

Warrants—procedure for entry

Clause 129 outlines the procedures that an inspector must follow or attempt to follow prior to entering a place under a warrant. However, the procedures need not be complied with if immediate entry is required to ensure the effective execution of the warrant is not frustrated.

Division 2—Entry to vehicles***Subdivision 1—Power to enter vehicles*****Power of entry**

Clause 130 provides for powers of entry to vehicles. Transportation of animals is an area where there are many animal welfare problems (for

example, overcrowding and excessive distances travelled without spelling). This clause provides inspectors with appropriate powers to address these problems. The clause empowers an inspector to enter a vehicle:

- with the consent of the person in control of the vehicle; or
- if the person in control of the vehicle has been given an animal welfare direction and the entry is made at a time stated in the direction to check compliance with the direction.

An inspector may also enter a vehicle if the inspector reasonably suspects the vehicle is being or has been used in the commission of an animal welfare offence or contains evidence of an offence.

Finally, an inspector may enter the vehicle if the inspector reasonably suspects that there is an imminent risk of death or injury of an animal in the vehicle (such as a dog locked in a car suffering heat exhaustion) or it is necessary to relieve an animal in pain or prevent an animal suffering pain in the vehicle.

Procedure for entry without consent if person in control or occupier present

Clause 131 applies where an inspector is intending to enter a vehicle under clause 130 other than with the consent of the person in control of the vehicle. Before entering, the inspector must, if the person in control or the occupier of the vehicle is present, make a reasonable attempt to-

- display the inspector's identity card;
- tell the person the purpose of entry;
- seek the consent of the person to the entry; and
- tell the person the inspector is permitted to enter the place without the person's consent.

If the person in control of the vehicle is not present at the vehicle, the inspector must take reasonable steps to advise the person or any registered operator of the vehicle of the inspector's intention to enter the vehicle.

The inspector is not required to take any of the above steps if the inspector reasonably believes it may frustrate or otherwise hinder an investigation under the Act or the purpose of the intended entry.

Subdivision 2—Powers to support entry**Power to stop vehicle that may be entered**

Clause 132 provides an inspector with the power to stop a moving vehicle or to prevent a vehicle from moving that the inspector intends to enter.

Failure to comply with stop signal

Clause 133 creates an offence where a person in control of a vehicle fails to comply with a stop signal given by an inspector. It will not be an offence if the person had a reasonable excuse such as that immediately obeying would have endangered the person or someone else and the signal was complied with as soon as practicable.

Power to require help to enter from person in control

Clause 134 empowers an inspector, where the inspector may enter a vehicle under this Part, to require the person in control of the vehicle to give the inspector reasonable help to enter the vehicle (an entry requirement). For example, where a vehicle is locked and the person in control of the vehicle has the keys, the inspector may require the person to unlock the vehicle.

When making an entry requirement the inspector must warn the person in control of the vehicle that it is an offence not to comply.

Failure to comply with entry requirement

Clause 135 creates an offence for failure to comply with an entry requirement given by an inspector under clause 134 unless the person has a reasonable excuse.

Division 3—Powers for entry to all places**Application of div 3**

Clause 136 provides that this Division applies where an inspector may enter or has entered a place under the Part (Powers of Inspectors) other than

under the limited entry power to provide relief to an animal (clause 123). If the inspector enters a place to get the occupier's consent to enter the premises (clause 122), this division will only apply to the inspector if the consent is given or the entry otherwise authorised.

General powers

Clause 137 specifies the powers available to an inspector who has entered a place for the purposes enforcing compliance with the legislation. The inspector may:

- enter the place using reasonable force;
- search any part of the place;
- open, using reasonable force, any container or any cage, pen, yard or other structure confining an animal so as to examine the animal, structure or other thing;
- take reasonable measures to relieve an animal's pain (for example, feed, water or untether an animal);
- inspect, examine, photograph or film an animal, document or any other thing at the place;
- make copies of a document at the place;
- take into or onto the place any persons, equipment or materials the inspector reasonably requires for exercising any powers in relation to the place;
- take samples for testing (for example, to obtain evidence of dehydration or poor food quality);
- identify an animal, for example, by ear tagging or paint branding (this may be necessary to indicate which animals require treatment or are to be seized).
- take any other necessary step to exercise a power under the Clause, such as mustering, unloading or yarding cattle to allow them to be examined.

Power to require reasonable help

Clause 138 empowers an inspector to require reasonable help from a person at the place being entered by the inspector (a "help requirement"), for example, by producing a document or giving information. When

making a help requirement the inspector is under a duty to warn the person that it is an offence not to comply with the requirement without a reasonable excuse.

Failure to comply with help requirement

Clause 139 provides that it is an offence for a person not to comply with a help requirement given by an inspector under clause 138 unless the person has a reasonable excuse. The clause provides that it will be a reasonable excuse for a person not complying with a help requirement if complying might tend to incriminate the person. However, this does not apply if the requirement is to produce a document required to be kept under the Act or another Act where the document relates to the transportation of animals. An example of this type of document is a vehicle logbook required to be kept under transport legislation. The logbook may provide details of the animals being transported (such as, where the animals were loaded and the period they have been travelling) which is important to an inspector's investigation.

Power to require person in control of vehicle to take action

Clause 140 gives an inspector, in order for the inspector to exercise a power under this Act, the power to require a person in control of a vehicle to:

- bring the vehicle, or an animal or thing in it, to a stated place (for example, a cattle truck driver may be required to bring the truck to unloading facilities); or
- remain in control of the vehicle, animal or other thing at the place for a reasonable period.

This power is called an "action requirement". The power is needed to allow an inspector to properly examine animals that are being transported.

When making the action requirement the inspector must give the person an offence warning.

Failure to comply with action requirement

Clause 141 makes it an offence not to comply with an "action requirement" ordered by an inspector under clause 140 unless the person has a reasonable excuse.

Division 4—Seizure and forfeiture***Subdivision 1—Powers of seizure*****General power to seize evidence**

Clause 142 provides that an inspector who enters a place under this part may seize an animal or thing at the place:

- if the inspector reasonably suspects the thing is evidence of an offence against the Act;
- if the inspector reasonably believes it is necessary to prevent it being hidden, lost or destroyed, or used to commit, continue or repeat the offence;
- which the inspector reasonably believes has just been used in committing an offence against the Act;
- with the written consent of a person the inspector reasonably believes is the person in charge of an animal or the owner or person in possession of the thing. In this case, the owner may also consent to transfer ownership of the animal or thing to the State or a prescribed entity.

If the entry to the place by the inspector was by consent of a person, the inspector may seize a thing at the place only if the seizure is consistent with the purpose of entry as told to the person.

The intent of this clause is to limit seizure to only those circumstances where it is regarded as necessary.

Seizing evidence under warrant

Clause 143 provides that an inspector who enters a place under a warrant may seize the evidence for which the warrant was issued.

Seizure for welfare of animal

Clause 144 enables an inspector who has entered a place under this part to seize an animal in order to protect its welfare. Seizure can be made when the inspector reasonably believes that the animal is under imminent risk of death or injury, requires veterinary treatment or is experiencing undue pain and the welfare of the animal requires its immediate seizure.

This power can be used in circumstances, such as where a prohibited event like a dogfight, is taking place or where an animal is being beaten or tortured. Other circumstances where this power may be required include where an animal's owners are absent and cannot be contacted to arrange urgent veterinary treatment or the animal's owners are refusing to provide urgently needed treatment.

An inspector may also seize an animal if the person in charge of it has contravened or is contravening an animal welfare direction or court order about the animal.

Seizure of property subject to security

Clause 145 provides that an inspector may seize an animal or thing under this subdivision or exercise powers in relation to it despite the fact that another person has a lien or security over it. The seizure does not, however, affect the person's lien or security against a person other than the inspector or a person acting for the inspector.

Subdivision 2—Powers to support seizure

Direction to person in charge

Clause 146 provides an inspector with power to give a direction to the person in charge or owner or person in possession of an animal or thing to be seized (a "seizure direction"). The direction can be to take the animal or thing to a reasonable place or places or, if necessary, to remain in control of it at the stated place for a reasonable time. For example, the direction may require animals that were being transported, to be taken to a secure pound yard to enable treatment to be provided during the seizure.

The direction must be in the approved form or, if that is not practicable, a notice in the approved form must be given as soon as practicable.

Failure to comply with seizure direction

Clause 147 makes it an offence not to comply with a seizure direction given by an inspector under clause 146.

Powers for seized things

Clause 148 details the powers available to inspectors for seized animals or things. The inspector may-

- move it or take an animal to a place the inspector believes is appropriate;
- leave it at place of seizure but restrict access to it by, for example, branding, marking sealing or tagging it or sealing the entrance to a room where the thing is stored to show access to it is restricted;
- make equipment inoperable;
- arrange for veterinary treatment or examination if the inspector reasonably believes that the animal requires treatment;
- take other reasonable measures to alleviate the animal's suffering (for example, provide food and drink);
- take action to ensure that any previously given animal welfare direction is complied with (for example, where a direction to provide adequate feed to drought affected stock was not complied with, the inspector may organise a contractor to supply and feed the stock at the place they are held during seizure).

Offence to tamper with seized thing

Clause 149 provides that it is an offence for any person, other than an inspector or a person authorised by an inspector, to do or attempt to do, in relation to an animal or seized thing under this part:

- tamper with it or something done to restrict access to it;
- enter, or be at, the place where it is being kept;
- move it from the place where it is being kept;
- have the animal or other thing in the person's possession.

Subdivision 3—Safeguards for seized property**Information notice and receipt for seized property**

Clause 150 requires an inspector to issue a receipt and an information notice for any seized thing and give the receipt and information notice to

the person from whom it was seized. However, the clause does not apply if:

- the seizure was by written consent;
- the inspector reasonably believes no one is in possession of the thing;
- the thing has been abandoned; or
- the seized thing is not an animal and it would be impractical or unreasonable to expect the inspector to account for it given its nature, condition and value. This would apply to, for example, animal droppings collected for evidence.

The receipt must generally describe each thing seized and its condition. If the person is not present, the inspector must leave the receipt and information notice at the place of seizure in a conspicuous position and in a secure way.

The inspector may delay giving the receipt and information notice for as long as the inspector has reasonable suspicion that to do otherwise may frustrate or hinder an investigation.

Access to seized property

Clause 151 requires an inspector who has seized anything to allow the owner of the thing access to inspect it at any reasonable time or, if it is a document, to copy it. The section does not apply when it would be unreasonable to allow these rights to the owner. The inspection or copying must be provided free of charge.

Return of seized animal

Clause 152 provides that an inspector must return an animal seized under this part within 28 days unless:

- the animal's owner has agreed in writing to transfer ownership to the State or a prescribed entity such as the RSPCA;
- the animal has been forfeited to the State under this part;
- an application has been made for a disposal or prohibition order in relation to the animal;

- the inspector needs to retain the animal for evidence in proceedings for an offence involving the animal (for example, for the purposes of assessment);
- an animal welfare direction in regard to the animal has not been complied with and the inspector is taking or proposes to take action to ensure compliance; or
- the inspector reasonably believes that the animal's condition may require its destruction under clause 162 (power of destruction).

The intention of this clause is to avoid the prolonged seizure of animals and the resultant costs to parties without compromising the welfare of the animals. For more marginal welfare situations, the Bill provides alternative means to seizure of addressing welfare needs through the issuing of animal welfare directions.

Return of other seized property

Clause 153 provides for the return by an inspector of a seized thing with some intrinsic value other than where the owner has not agreed to transfer ownership to the State or a prescribed entity or it has been forfeited.

Under the clause, the inspector must, unless an application has been made for a disposal order:

- return the thing at the end of six months after seizure; or
- if a proceeding has been commenced within six months of seizure, at the end of the proceedings and any appeal from the proceeding; or
- return the item as soon as the inspector is satisfied the thing is no longer required as evidence or to prevent the thing being used to continue or repeat the offence.

Subdivision 4—Forfeiture

Power to forfeit

Clause 154 sets out the circumstances under which a seized animal or other thing will be forfeited to the State, for example:

- if the owner cannot be found, after making reasonable inquiries;

- it cannot be returned to its owner after making reasonable efforts; or
- it is necessary to prevent it from being used in committing, or becoming the subject of, an animal welfare offence.

The clause applies to animals or things seized under this Act or the *Police Powers and Responsibilities Act 2000*. The intention is to establish a means of providing for the safety of animals in more serious circumstances where it is clearly not possible or not feasible to return the animal to their owner. Forfeiture is designed to also avoid substantial costs that may occur for both the owner and the enforcement agency of holding seized animals.

Information notice about forfeiture

Clause 155 provides that if the chief executive decides to forfeit an animal or other thing, the chief executive must promptly give its owner an information notice. The information notice will advise the owner of the animal or other thing that he or she may apply for a stay of the decision if he or she appeals the decision. The requirement to supply an information notice does not apply where it relates to an animal seized in a public place or other place where it is unlikely to be read by the person who owned the animal before forfeiture (for example, where an animal seized has roamed from an unknown place into a person's yard).

Subdivision 5—Dealing with property forfeited or transferred to State or prescribed entity

When transfer takes effect

Clause 156 provides that an animal or other thing becomes State property when it is forfeited to the State or when the owner agrees in writing to transfer ownership to the State or a prescribed entity and the State or entity agrees to the transfer.

How property may be dealt with

Clause 157 details how an animal or other thing may be dealt with if it becomes the property of the State under clause 156. The clause provides that the State may deal with the property as it sees fit including destroying it or giving it away provided that the property is not dealt with in a way that

could prejudice the outcome of an appeal. If the property is sold, the proceeds of the sale may be returned to the former owner after deducting net proceeds of sale and any costs recoverable under clause 189 (Recovery of seizure, compliance or destruction costs). The clause is subject to any orders relating to animal welfare offences or reviews or appeals.

Division 5—Animal welfare directions

Application of div 5

Clause 158 details the application of this Part, which is about animal welfare directions. Under this Part an inspector has the power to give directions about an animal's welfare to a person in charge of an animal. The ability of inspectors to give directions is a way to simplify enforcement of the legislation. It is a means of achieving the best outcomes in many animal welfare situations for the animals, their owners and the enforcement agency. Although animal welfare directions can be used in conjunction with seizure powers, they provide a way of avoiding taking an animal from their owner in the appropriate situations. Animal welfare directions also have educational value by indicating to persons in charge of animals what they should be doing for the animal's welfare.

The Part applies, and therefore directions may be given where the inspector believes on reasonable grounds that the animal-

- is not being cared for properly;
- is experiencing undue pain;
- requires veterinary treatment; or
- should not be used for work (for example, a horse with saddle sore should not be used by a riding school);
- is seized under this Act.

This is designed to cover situations such as where an animal is not being provided with suitable feed or water, lives in unsanitary conditions or is suffering from an untreated injury or illness.

Directions can be given in any circumstances and not just where an inspector has exercised powers of entry into places or vehicles. For example, an inspector can give written directions on public roads or an authorised officer can give a direction when exercising monitoring powers.

Power to give animal welfare direction

Clause 159 sets out who may be given an animal welfare direction and what action may be required under an animal welfare direction. A direction may be given to a person in charge of an animal, a person who an inspector reasonably believes is in charge of an animal or was in charge immediately before the animal was seized.

The steps the person in charge of the animal may be required to do to rectify the problem include to-

- care for or treat the animal in the way specified in the direction;
- provide the animal with the rest, food, drink or living conditions specified in the direction; or
- consult a veterinary surgeon about the animal's condition;
- move the animal from the place where it is situated to another place for the purposes mentioned above; or
- not move the animal from the place where it is situated.

Only requirements the inspector considers necessary and reasonable in the interests of the animal's welfare may be specified in the direction.

Requirements for giving animal welfare direction

Clause 160 prescribes the requirements for giving animal welfare directions. Directions must always be provided in writing (in an approved form) unless this is not possible for some good reason in which case an oral direction may be provided. Written confirmation of any oral direction must be provided within a reasonable period of time.

The direction may include a stated time or times the inspector will re-enter a place to check compliance with the direction.

Failure to comply with animal welfare direction

Clause 161 provides that failure to comply with a direction will be an offence unless the person has a reasonable excuse.

Division 6—Inspector’s power to destroy animals**Power of destruction**

Clause 162 gives inspectors the power to destroy animals. It is recognised that the destruction of a person’s animal seriously impacts on that person’s rights. Therefore, an inspector is given the power to destroy an animal only where:

- an inspector has seized the animal under this part or the person in charge has given written consent to the destruction; and
- the inspector reasonably believes that the animal is suffering to such an extent that it would be cruel to keep the animal alive.

Division 7—Other powers**Power to require name and address**

Clause 163 provides an inspector with the power to require a person’s name and address in certain circumstances. When making such a requirement, the inspector must warn the person that it is an offence to fail to state their name and address, unless the person has a reasonable excuse.

If the inspector reasonably suspects that the name or address stated is false, the inspector may require the person to give evidence of the correctness of the stated name or address.

Failure to comply with personal details requirement

Clause 164 makes it an offence to fail to comply with a requirement made under clause 163, unless the person has a reasonable excuse. However, a person does not commit an offence by not complying with such a requirement, if the requirement was given where an inspector suspected the person had committed an offence against the Act and the person is proven not to have committed that offence.

Power to require information about contravention

Clause 165 provides that an inspector may require a person to provide information about an offence against this Act (an “information

requirement”). The inspector may exercise this power only if the officer reasonably believes that:

- an offence against the Act has been committed and the person may be able to give information about the offence; or
- an animal welfare direction has been given and an inspector reasonably believes a veterinary surgeon or other person may be able to give information about whether the direction has been complied with.

When making the requirement, the inspector must warn the person that it is an offence not to give the information unless the person has a reasonable excuse.

On the surface, this provision, in relation to a veterinary surgeon, may appear to encroach on the confidentiality of veterinary surgeon—client relationship. In practice, the inspector will not be seeking confidential details, only basic information about whether the person had adequately consulted the veterinary surgeon in relation to the subject animal.

Failure to comply with information requirement

Clause 166 provides that it is an offence not to comply with an information requirement under clause 165 unless the person has a reasonable excuse. It is a reasonable excuse if giving the information might tend to incriminate the person or the information sought was not in fact relevant for the contravention for which it was made.

False or misleading statements

Clause 167 makes it an offence for a person to state anything to an inspector that the person knows is false or misleading.

Power to require production of documents

Clause 168 makes provision for an inspector to require a person to produce a document in the person’s custody or possession about a matter relating to the Act, or a document required to be kept by the person for this Act or under another Act, if the document relates to the transportation of live animals.

An example of a document relating to the transportation of live animals is a vehicle logbook required to be kept under transport legislation. The

logbook may provide details of the animals being transported (such as, where the animals were loaded and the period they have been travelling) which is important to an inspector's investigation.

The inspector may keep the document to copy it and must return the document to the person as soon as practicable after copying it.

Failure to comply with document production requirement

Clause 169 makes it an offence to fail to produce a document in accordance with a requirement under clause 168 unless the person has a reasonable excuse. It is a reasonable excuse if the production of the document may tend to incriminate the person unless the document is required to be held or kept by the person under this Act or another Act if the document relates to the transportation of live animals.

False or misleading documents

Clause 170 makes it an offence for a person to give an inspector a document containing information that the person knows is false or misleading in a material particular.

PART 3—NOTICE OF DAMAGE BECAUSE OF EXERCISE OF POWERS

Application of pt 3

Clause 171 provides that this part applies where an inspector or a person helping an inspector damages a thing whilst exercising powers under the Act. The part will not apply where the inspector reasonably thinks the damage is trivial, the thing has been abandoned or where there is no one apparently in possession of the thing.

The purpose of this part is to ensure that inspectors are accountable for the exercise of their powers under the Act and respect person's property while acknowledging that, in some circumstances, some damage to a person's property may be unavoidable.

Requirement to give notice

Clause 172 requires an inspector to give written notice if an inspector damages property when exercising or purporting to exercise a power. The notice must be given to the person who appears to be the owner of the property. However, if for some reason this proves impractical, the inspector must leave the notice in a conspicuous and secure way at the place where the damage happened. This is to ensure that the notice is likely to come to the attention of the owner.

The inspector may delay giving notice if the inspector reasonably believes that complying with this clause may frustrate or hinder an investigation.

Content of notice

Clause 173 sets out the required contents of a notice of damage. The notice must give particulars of the damage and state that the person who suffered the damage may claim compensation. This ensures that persons are made aware of their rights in relation to damaged property.

If the inspector believes that the damage was caused by a latent defect or was otherwise beyond the control of the inspector, that belief may be stated in the notice.

CHAPTER 7—EVIDENCE AND LEGAL PROCEEDINGS**PART 1—EVIDENCE*****Division 1—General evidentiary aids***

The provisions in this Division are designed to assist in legal proceedings taken under the Act and to expedite those proceedings.

Application of div 1

Clause 174 provides that this division applies to a proceeding under or in relation to the Act.

Appointments and authority

Clause 175 provides that appointments and powers under the Act must be presumed unless a party to a proceeding, by reasonable notice, requires proof of it.

Signatures

Clause 176 provides that a signature purporting to be the signature of the chief executive or persons appointed under the Act is evidence of the signature it purports to be.

Other evidentiary aids

Clause 177 provides that a certificate purporting to be signed by the chief executive stating certain matters under the Act is evidence of the matter.

Division 2—Offence proceedings**Offences under Act are summary**

Clause 178 provides that an offence against this Act is a summary offence (any person may prosecute) and details the time limits for commencement of proceedings for offences.

Statement of complainant's knowledge

Clause 179 provides that in a complaint starting a proceeding for an offence against this Act, a statement that the matter came to the complainant's knowledge on a stated day is evidence of the matter stated.

False or misleading statements

Clause 180 applies to proceedings for offences against this Act involving false or misleading information, statements or documents. It is enough in a complaint starting a proceeding to state the document was false or misleading without stating which. Also, evidence that the document, information or statement was given recklessly is evidence that it was made so as to be false or misleading.

Conduct of representatives

Clause 181 provides that the clause applies to a proceeding for an offence against this Act where it is relevant to prove a person's state of mind about particular conduct. It is enough to show the conduct was carried out by a representative of the person within the scope of that representative's actual or apparent authority and the representative had the state of mind. The conduct of the representative will not, however, be taken to be the conduct of the person if the person took reasonable steps to prevent the conduct or the person was not in a position to influence the representative about the conduct.

PART 2—ORDERS RELATING TO ANIMAL WELFARE OFFENCES**Disposal order**

Clause 182 empowers the court to order the disposal or forfeiture of the following things that a person convicted of an animal welfare offence owns:

- the animal or anything used to commit the offence;
- another animal; or
- another thing the court considers is likely to be used in committing a further animal welfare offence.

Prohibition order

Clause 183 provides that the court may order that a person convicted of an animal welfare offence must not, for a stated period or permanently, purchase or otherwise acquire or take possession of:

- any animal;
- a stated type of animal; or
- any animal or stated type of animal for trade or commerce or other stated purpose.

It is envisaged that the court may need to exercise this power where the person is not regarded as a 'fit and proper' person to care for an animal. It

is designed to prevent animals being returned to the care of a person who will not act in the best interests of the animal's welfare.

Order against owner in certain circumstances

Clause 184 deals with situations where a person has been convicted of an animal welfare offence and the owner is someone else who contributed or allowed the commission of the offence and is unable to exercise the owner's duty of care. This will apply where, for example, the owner can no longer adequately safeguard the animal to prevent it from being involved in an animal welfare offence. In these circumstances, the court may make a disposal or prohibition order against the owner in order to protect the welfare of the animal.

Criteria for making disposal or prohibition order

Clause 185 sets out the criteria for the making of a disposal or prohibition order by the court. The criteria are designed to safeguard the welfare of the animal and other animals owned by the person as well as take into account the nature of the offence and likelihood of the person committing another offence.

Procedure and powers for disposal or prohibition orders

Clause 186 details the procedure and powers for disposal or prohibition orders. An order may be made only at the court's initiative or on application by the prosecution. The clause makes provision to ensure that the relevant persons are given an opportunity to be heard in accordance with the rules of natural justice before making the order.

Contravention of prohibition order unlawful

Clause 187 makes it an offence to contravene a prohibition order.

Review of certain prohibition orders

Clause 188 provides that if a prohibition order is made against a person lasting more than five years or permanently, the person may apply to cancel or vary the order. The application cannot be made within 5 years of the prohibition order being made or within 12 months of a previous application for a review order about the prohibition.

PART 3—REMEDIES

Recovery of seizure, compliance or destruction costs

Clause 189 sets out the circumstances in which the State or a prescribed entity (an ‘enforcement agency’) can recover a cost incurred by an inspector employed or engaged by it. The type of costs recoverable are those relating to seizure or destruction of an animal, or action to comply with an animal welfare direction

Compensation because of animal welfare offence

Clause 190 allows a court to order that a person convicted of an animal welfare offence pay compensation to a person who has suffered loss because of the commission of the offence. The loss may be due to damage to property, taking possession of or moving animals, caring for animals or arranging for animals to receive veterinary or other treatment. An order cannot be made in favour of the State or a prescribed entity.

Compensation because of exercise of powers

Clause 191 enables a person to be compensated by the State where the person has incurred loss or expense because of the exercise or purported exercise of a power under Chapter 5 (Code compliance monitoring) or Chapter 6 (Investigation and enforcement) other than because of a lawful seizure. The clause also makes provision for compensation to be payable where the person has incurred loss or expense in complying with a requirement made of the person.

General provisions for orders under pt 3

Clause 192 provides that a court may only order the payment of compensation if it considers it just to do so. In determining that question, the court may have regard to any relevant offence committed by the claimant. The clause also provides that a regulation may prescribe other matters that may or must be taken into account by the court in considering whether it is just to order compensation.

PART 4—REVIEWS AND APPEALS

Division 1—Review of decisions

Appeal process starts with review

Clause 193 provides that every appeal against an original decision must be, in the first instance, by way of an application for a review.

Who may apply for review

Clause 194 provides that an interested person for an original decision may apply to the chief executive for a review of a decision. The dictionary in the Schedule to the Bill provides that an interested person is one who has been given an information notice by the chief executive or an inspector under the Act or the person in charge of an animal where the decision relates to an animal.

Requirements for making application

Clause 195 sets out the requirements for making an application for a review of a decision.

Stay of operation of original decision

Clause 196 gives the Court power to stay an original decision appealed against by way of review application on such conditions and for such period as the Court determines. The Court may stay the decision to secure the effectiveness of the appeal.

Review decision

Clause 197 sets out the procedures for a review by the chief executive of an original decision.

Notice of review decision

Clause 198 requires the chief executive to give a notice of a ‘review decision’ within 10 days after making the decision. Where the review

decision is not the decision sought by the applicant, the notice must also set out the reasons for the decision and details of the applicant's appeal rights.

Division 2—Appeals

Who may appeal

Clause 199 provides that an interested person may appeal to a Magistrates Court against a review decision.

Starting appeal

Clause 200 describes the process for starting an appeal. A written notice must be filed with the Clerk of the Court within 28 days after the appellant receives notice of the decision appealed against. The clause gives the Court the discretion to extend the period for filing a notice of appeal.

Stay of operation of review decision

Clause 201 gives the Court power to stay a decision appealed against on such conditions and for such period as the Court determines. The Court may stay the decision to secure the effectiveness of the appeal.

Hearing procedures

Clause 202 details the hearing procedures for appeals under this Act. The appeal will be by way of re-hearing the matter appealed against. The Court is not bound by the rules of evidence and must observe natural justice. The Court has the same powers as the chief executive in making the review decision.

Court's powers on appeal—general

Clause 203 details the powers of the Court on appeal. The Court may:

- confirm the decision appealed against;
- set aside the decision and substitute another decision; or
- set aside the decision and return the matter to the chief executive with directions the Court considers appropriate.

Further powers for appeal about seizure or forfeiture

Clause 204 provides the Magistrates Court with further powers for appeal about seizure and forfeiture. If the Magistrates Court confirms the forfeiture, it may also give directions about the sale or disposal of the thing. If the court sets aside the seizure or forfeiture, it may also make an order for the return of the thing, for disposal of the thing or for compensation.

Appeal to District Court

Clause 205 allows for an appeal to the District Court for any person dissatisfied by a decision of the Magistrates Court. The appeal can only be on a question of law.

CHAPTER 8—GENERAL PROVISIONS**PART 1—OTHER OFFENCES****Obstruction of authorised officer or inspector**

Clause 206 makes it an offence to obstruct an authorised officer or inspector in the exercise of a power, unless the person has a reasonable excuse. If the authorised officer or inspector intends to use this power, the officer or inspector must warn the person that this offence exists and that the person's conduct is considered an obstruction.

Impersonation of authorised officer or inspector

Clause 207 makes it an offence for a person to pretend to be an authorised officer or inspector.

False or misleading entry in document kept under Act

Clause 208 makes it an offence to knowingly make a false or misleading entry in a document required or permitted to be kept under this Act.

Executive officers must ensure corporation complies with Act

Clause 209 imposes an obligation on executive officers of a corporation to ensure the corporation complies with this Act. If a corporation does commit an offence under this Act, each executive officer of the corporation also commits an offence unless the officer can show:

- that the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- that the officer was not in a position to influence the conduct of the corporation in relation to the offence; or
- the information that tended to incriminate the corporation was obtained under a help requirement or a document production requirement.

Attempts to commit offences

Clause 210 provides that a person who attempts to commit an offence against this Act commits the offence.

PART 2—MISCELLANEOUS PROVISIONS**Minister may establish advisory bodies**

Clause 211 enables the Minister to appoint an animal welfare advisory committee ('AWAC') or another body to advise the Minister on animal welfare issues. This clause is in line with the Commonwealth Senate Select Committee into Animal Welfare (1989) recommendation that all States and Territories establish animal welfare advisory committees. A number of other States already have well established animal welfare advisory committees. These committees provide a key role in examining and providing Ministers with broad community advice on animal welfare issues.

Membership of the AWAC or other advisory body will be at the discretion of the Minister. It is intended that membership will be expertise based rather than representing specific interest groups and may, for example, include representatives from animal welfare organisations, animal industry groups, transport industries and the government.

Delegations

Clause 212 enables the Minister to delegate the Minister's powers under this Act to the chief executive or an appropriately qualified officer of the department. The clause also enables the chief executive to delegate the chief executive's powers to:

- an authorised officer or inspector;
- a public service officer or employee;
- a local government officer or employee;
- a prescribed entity.

The ability to delegate the Minister's and the chief executive's powers under the Act to appropriate persons is necessary to ensure the effective operation of the Act.

Electronic applications

Clause 213 enables applications required to be made in an approved form under this Act, to be made electronically.

Electronic notices about applications

Clause 214 provides that if an application under this Act has been made in an approved form, a notice from the applicant to the chief executive about the application may also be made electronically. The clause also provides that the chief executive may give a notice to an applicant about the application by sending an e-mail to the applicant.

Protection from liability

Clause 215 protects, from civil liability for an act done under the Act, the following persons:

- the chief executive;
- authorised officers;
- inspectors;
- persons helping an authorised officer or inspector;
- persons complying with certain directions, orders or requirements such as a help requirement, seizure direction,

information requirement, a document production requirement or disposal order.

The protection will only apply where the act is done honestly and without negligence. Where the section prevents liability attaching to a relevant person, the liability attaches to the State instead.

Approved forms

Clause 216 provides that the chief executive may approve forms for use under this Act.

Regulation-making power

Clause 217 empowers the Governor in Council to make regulations under this Act and provides examples of the matters that a regulation may be made about. The clause also provides that if a regulation imposes a penalty, the penalty may be no greater than 20 penalty units.

PART 3—REPEALS SAVINGS AND TRANSITIONAL PROVISIONS

Division 1—Preliminary

Definitions for pt 3

Clause 218 sets out definitions used in this part.

Division 2—Repeal of Animals Protection Act 1925

Repeal

Clause 219 repeals the *Animals Protection Act 1925*.

Limited continuation of Animals Protection Regulation 1991

Clause 220 continues the *Animals Protection Regulation 1991*, as in force immediately prior to the repeal of the *Animals Protection Act 1925*, for a period of twelve months or such earlier date as a regulation is made under this Act superseding the *Animals Protection Regulation 1991*.

The *Animals Protection Regulation 1991* is continued with changes to make it consistent with this Act and with its operations adapted to this Act.

Division 3—Savings and transitional provisions**References to repealed Act**

Clause 221 provides that a reference to the former *Animals Protection Act 1925* in a document or an Act may, if the context permits, be taken to be a reference to this Act.

Orders under repealed Act, s 19(2)

Clause 222 deems an order made under section 19(2) of the *Animals Protection Act 1925* (Person convicted may be deprived of ownership) in force immediately before the repeal of the *Animals Protection Act 1925*, to be a prohibition order under this Act.

Officers under repealed Act

Clause 223 deems officers appointed under the *Animals Protection Act 1925*, other than honorary officers, to be inspectors under this Act until the earlier of the expiry of their appointment, the person's reappointment or six months after the commencing day. All appointments of honorary inspectors will lapse upon repeal of the *Animals Protection Act 1925*.

Division 4—Expiry of pt 3**Expiry**

Clause 224 provides that this part expires 6 months after the commencing day. This is because the transitional and savings provisions will have completed their operation by that time.

PART 4 –AMENDMENTS

Division 1—Amendment of Police Powers and Responsibilities Act 2000

This part amends the *Police Powers and Responsibilities Act 2000* (the ‘PPR Act’) to give police powers equivalent to those given to inspectors under this Bill. Under the *Animals Protection Act 1925*, police were appointed as inspectors. Police will still exercise powers equivalent to inspectors under this Act but, consistent with the philosophy behind the PPR Act, they will not be appointed as inspectors. In most cases the police already have sufficient power to deal with animal welfare matters under the PPR Act. These amendments will ensure the police have any additional powers, peculiar to this Bill, that are necessary such as the power to give animal welfare directions.

Act amended in div 1

Clause 225 provides that this division amends the PPR Act.

Insertion of new ch 2, pt 6, div 2A

Clause 226 amends the PPR Act to provide the police with the power to issue animal welfare directions. The provisions inserted mirror the powers given to inspectors under Chapter 6, Part 2, Division 5 of this Bill.

Amendment of s 66 (Power in relation to offences involving animals)

Clause 227 inserts into the PPR Act powers of entry and seizure that are related to animal welfare directions or imminent risk of death or injury to an animal. The powers are equivalent to powers given to inspectors under clause 122 (Powers of entry) and clause 144 (Seizure for welfare of animal).

Insertion of new ss 66A and 66B

Clause 228 inserts new sections 66A and 66B into the PPR Act giving police the powers to provide relief to animal and to destroy animal. These powers are equivalent to the powers given to inspectors under clause 123 (Limited entry power to provide relief animal) and clause 162 (Power of destruction).

Amendment of sch 4 (Dictionary)

Clause 229 amends the dictionary to the PPR Act to include definitions of “animal welfare direction” and “veterinary surgeon” equivalent to the definitions of those terms included in the dictionary to this Bill plus a number of other terms that need to be defined.

Division 2—Consequential Amendments**Corrective Services Act 2000**

Clause 230 omits section 208(2) of the *Corrective Services Act 2000* to reflect the repeal of the *Animals Protection Act 1925* and its replacement with this Act. Section 208(2) of the *Corrective Services Act 2000* provides that section 4(3) of the *Animals Protection Act 1925* does not apply to a corrective services dog when it is under the control of a corrective services handler. Section 4(3) of the *Animals Protection Act 1925* provides, in part, that a dog that rushes at or barks at any person may be killed. No such similar offence is provided for in the Bill. Therefore, section 208(2) of the *Corrective Services Act 2000* may be omitted.

Police Service Administration Act 1990

Clause 231 omits section 10.21B(2) of the *Police Service Administration Act 1990* to reflect the repeal of the *Animals Protection Act 1925* and its replacement with this Act. Section 10.21B(2) of the *Police Service Administration Act 1990* provides that section 4(3) of the *Animals Protection Act 1925* does not apply to a police dog when it is under the control of a handler. Section 4(3) of the *Animals Protection Act 1925* provides, in part, that a dog that rushes at or barks at any person may be killed. No such similar offence is provided for in the Bill. Therefore, section 10.21B(2) of the *Police Service Administration Act 1990* may be omitted.

Clause 231 also renumbers section 10.21B(3) of the *Police Service Administration Act 1990*.

SCHEDULE

DICTIONARY

The Schedule sets out the dictionary of terms used in the Act.