

Animal Care and Protection and Other Legislation Amendment Bill 2012

Explanatory Notes

Short title

The short title of the Bill is the *Animal Care and Protection and Other Legislation Amendment Bill 2012*.

Policy objectives and the reasons for them

The policy objective of the Bill is to ensure animal welfare obligations under the *Animal Care and Protection Act 2001* apply to acts done under Aboriginal tradition or Torres Strait Islander custom.

The Queensland Government made an express election commitment to amend the *Animal Care and Protection Act 2001* to bring Queensland in line with other States, removing exemptions for traditional owners. The election commitment followed community concern about alleged cruelty by traditional and customary hunters towards sea turtles and dugongs, and the immunity from prosecution for animal cruelty that Aboriginal and Torres Strait Islander people exercising tradition and custom are afforded by Queensland legislation.

The Bill is intended to strike a reasonable balance between the interests of Aboriginal and Torres Strait Islander people in maintaining their traditional and customary practices, and the animal welfare expectations of the broader community. The Bill will regulate, not extinguish or prevent the exercise of traditional and customary hunting rights.

Achievement of policy objectives

To achieve its objectives, the Bill will repeal section 8 of the *Animal Care and Protection Act 2001*. Section 8 currently excludes acts done or omissions made by Aboriginal and Torres Strait Islander people in

accordance with Aboriginal tradition or Islander custom from the application of the *Animal Care and Protection Act 2001*.

The Bill will also amend the *Animal Care and Protection Act 2001* to ensure that a person who is authorised to deal with animals in accordance with Aboriginal tradition or Islander custom under the *Nature Conservation Act 1992* is subject to the animal welfare obligations under the *Animal Care and Protection Act 2001*.

To ensure that a balance is struck between traditional and customary practices, and the animal welfare expectations of the broader community, the Bill will amend the *Animal Care and Protection Act 2001* to require that animals that are hunted under Aboriginal tradition or Islander custom are dealt with in a way that causes them as little pain as is reasonable.

The Bill will also amend the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* to ensure that a person who is authorised to hunt marine fauna under section 61 of that Act is subject to the animal welfare obligations under the *Animal Care and Protection Act 2001*.

The Bill will also amend the *Aurukun and Mornington Shire Leases Act 1978* to ensure that an Aboriginal person who is authorised to capture, possess, kill and consume native fauna under section 26 of that Act is subject to the animal welfare obligations under the *Animal Care and Protection Act 2001*.

The Bill will also amend the *Nature Conservation Act 1992* to ensure that an Aboriginal or Torres Strait Islander person authorised to deal with animals under section 93 of that Act, were that section to commence, would be subject to the animal welfare obligations under the *Animal Care and Protection Act 2001*.

Alternative ways of achieving policy objectives

There have been allegations over many years that some activities by some Aboriginal and Torres Strait Islander people in accordance with Aboriginal tradition or Islander custom may be discordant with the cruelty provisions in the *Animal Care and Protection Act 2001*.

A legislative approach is necessary to give effect to the Government's election commitment to "amend the *Animal Care and Protection Act 2001* to bring Queensland into line with other states." A purely non-regulatory or self-regulatory approach would not fulfil the election commitment because

dealings with animals in accordance with Aboriginal tradition or Islander custom would still not be subject to the *Animal Care and Protection Act 2001*.

The main alternative to repealing section 8 of the *Animal Care and Protection Act 2001* would be to make a regulation under section 8 of the *Animal Care and Protection Act 2001*. The regulation could prescribe conditions for dealings with animals in accordance with Aboriginal tradition and Islander custom. If such conditions were complied with, the obligations under the *Animal Care and Protection Act 2001* would not apply. This approach would fall short of ensuring that the broader animal welfare obligations under *Animal Care and Protection Act 2001* generally apply to Aboriginal and Torres Strait Islander persons exercising tradition and custom.

Amendment of section 7 of the *Animal Care and Protection Act 2001*, section 61 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 26 of the *Aurukun and Mornington Shire Leases Act 1978* and section 93 of the *Nature Conservation Act 1992* would also still be required so that the *Animal Care and Protection Act 2001* would apply to dealings with animals by Aboriginal and Torres Strait Islander persons in relevant circumstances.

Estimated cost for government implementation

The cost of implementation of the Bill will be minimised by both a coordinated and phased approach to implementation.

A number of government agencies already engage with Aboriginal and Torres Strait communities on issues including sustainability of turtles and dugong populations and surveillance for pests. Education about the changes will be delivered by officers from these agencies when they are in each community. More targeted engagement and enforcement will be limited to specific communities where there are ongoing or significant issues.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Fundamental legislative principles raised by the content of the Bill are addressed below.

Legislative Standards Act 1992, section 4(3)(j) - Legislation should have sufficient regard to Aboriginal tradition and Island custom

Legislative Standards Act 1992, section 4(2)(a) – Legislation should have sufficient regard to the rights and liberties of individuals (native title rights)

The Bill will impact on Aboriginal tradition and Islander custom by requiring that dealings with animals in accordance with Aboriginal tradition and Islander custom are undertaken in a way that complies with the animal welfare obligations under the *Animal Care and Protection Act 2001*. The Bill will also impact on native title rights by requiring that native title rights to deal with animals are exercised in a way that complies with the animal welfare obligations under the *Animal Care and Protection Act 2001*. Similarly, the Bill may also impact on dealings with animals as agreed to under Indigenous Land Use Agreements.

The Bill will not withdraw any authorisations to hunt (or conduct other dealings with animals) in accordance with Aboriginal tradition and Islander custom under Queensland or Commonwealth law; nor will the Bill extinguish any native title rights to hunt or otherwise deal with animals. Instead, the effect of the Bill will be to regulate the exercise of those authorisations and rights. The general effect of the Bill will be that those rights and authorisations must be exercised in a way that does not involve killing an animal in a manner that causes pain that is unreasonable in the circumstances.

It is intended that the regulation of traditional and customary hunting rights under the amended *Animal Care and Protection Act 2001* will not prevent the exercise of those hunting rights. Clause 10 will give effect to this intention by requiring that a person exercises their traditional or customary right or authorisation to kill an animal in a way that causes the animal as little pain as is reasonable. This strikes a reasonable balance between the interests of Aboriginal and Torres Strait Islander people in maintaining their traditional and customary practices, and the animal welfare expectations of the broader community.

Legislative Standards Act 1992, section 4(2)(a) – legislation should have sufficient regard to the rights and liberties of individuals (freedom from racial discrimination)

The effect of the Bill will be that Aboriginal and Torres Strait Islander people who exercise statutory rights to deal with animals in accordance

with Aboriginal tradition or Islander custom will be subject to the *Animal Care and Protection Act 2001*.

Legislative provisions which confer such rights include (but are not limited to) section 93 of the *Nature Conservation Act 1992*, sections 42, 43, 228 and 234 of the *Nature Conservation (Wildlife Management) Regulation 2006*, section 61 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* and section 26 of the *Aurukun and Mornington Shire Leases Act 1978*.

These provisions would likely be special measures under the *Racial Discrimination Act 1975* (Cth) that permit dealings with animals in accordance with Aboriginal tradition and Islander custom.

The Bill may lessen the benefits of these special measures by requiring that they are exercised in compliance with animal welfare obligations under the *Animal Care and Protection Act 2001*. This is necessary to strike a balance between the welfare needs of animals and allowing Aboriginal and Torres Strait Islander people to deal with animals in accordance with tradition and custom.

Legislative Standards Act 1992, section 4(3)(k) - legislation should be unambiguous and drafted in a sufficiently clear and precise way

To address any potential ambiguity about the effect of the Bill on native title rights to deal with animals, clause 8 makes it clear that a person does not avoid liability to be prosecuted for an offence under the *Animal Care and Protection Act 2001* because the act or omission that constitutes the offence happens in the exercise or enjoyment of native title rights and interests.

Consultation

The Government has an electoral mandate to implement its announced policy commitments, including the specific commitment contained in *Protecting Queensland's precious wildlife: Dugong and Turtles*:

“The LNP will remove the current exemption for traditional hunters from the law that makes it illegal for anyone to wound, mutilate, torture or unnecessarily prolong the death of an animal - enforceable with penalties of up to two years in jail or a \$100,000 fine.”

Consultation on implementation of the Bill will occur once it has been introduced into Parliament.

Consistency with legislation of other jurisdictions

Animal welfare legislation in other Australian jurisdictions does not exempt acts or omissions done in accordance with Aboriginal tradition or Islander custom from its operation. The *Animal Care and Protection Act 2001* is currently the only piece of animal welfare legislation in Australia that expressly exempts dealings with animals in accordance with Aboriginal tradition and Islander custom from its operation. By removing the exemption, the Bill will bring the *Animal Care and Protection Act 2001* into line with animal welfare legislation in other Australian jurisdictions. Animal welfare legislation in the Northern Territory provides that it applies equally to cultural, religious and traditional practices by explicitly excluding such practices as defences to a charge of cruelty.

Notes on provisions

Part 1 Preliminary

Clause 1 states that the short title of the Act is the *Animal Care and Protection and Other Legislation Amendment Act 2012*.

Part 2 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

Clause 2 states that this part amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Clause 3 amends section 61 (Right of Aborigines and Torres Strait Islanders to particular natural resources) so that an authorisation to deal with animals under section 61 is subject to the *Animal Care and Protection*

Act 2001 and sections 62 and 93 of the *Nature Conservation Act 1992* but is not subject to any other provisions of any Act. Previously an authorisation under section 61 was not subject to the *Animal Care and Protection Act 2001*.

Clause 3 also clarifies that the marine animals taken under section 61 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* are to be consumed in the community government or Indigenous Regional Council area by members of that community.

Part 3 Amendment of Animal Care and Protection Act 2001

Clause 4 states that this part amends the *Animal Care and Protection Act 2001*.

Clause 5 amends section 5 (Act binds all persons) to remove references to section 8 of the *Animal Care and Protection Act 2001*. This is necessary as a consequence of the amendment of section 8 by clause 8 of the Bill.

The effect of the amended section 5 is that the *Animal Care and Protection Act 2001* binds all persons, except where sections 6, 6A or 7 apply. Previously, section 8 was also included in section 5 as an exception to the general application of the Act.

Clause 6 inserts new section 6A (Relationship with Nature Conservation Act 1992) which concerns the relationship between the *Animal Care and Protection Act 2001* and the *Nature Conservation Act 1992*.

The effect of the new section 6A is that the *Animal Care and Protection Act 2001* applies where a person acting under the *Nature Conservation Act 1992* takes, keeps or uses an animal to exercise Aboriginal tradition or Islander custom or uses an animal for scientific purposes. A person who lawfully does any other act authorised under the *Nature Conservation Act 1992* is taken not to commit an offence under the *Animal Care and Protection Act 2001* by reason only of doing that act.

The new section 6A generally preserves the substantive relationship between the *Animal Care and Protection Act 2001* and the *Nature Conservation Act 1992* that was previously provided under section 7 of the *Animal Care and Protection Act 2001* except to provide that a person

acting under the *Nature Conservation Act 1992* who takes, keeps or uses an animal to exercise Aboriginal tradition or Islander custom must comply with the *Animal Care and Protection Act 2001*. There are several provisions under the *Nature Conservation Act 1992* which authorise (or upon commencement would authorise) dealings with animals in accordance with Aboriginal tradition and Torres Strait Islander custom.

Clause 7 amends section 7 (Relationship with certain other Acts) to remove references to the *Nature Conservation Act 1992* as a consequence of the insertion by Clause 6 of new section 6A. As a result section 7 will only apply to acts done under the *Fisheries Act 1994* or the *Racing Act 2002*. In effect, section 7 as amended will mean a person who lawfully deals with animals under either of these Acts, unless they are used for a scientific purpose, is taken not to commit an offence under the *Animal Care and Protection Act 2001* by reason only of doing that act.

Clause 8 replaces the provisions of section 8 (Aboriginal tradition and Island custom) with a new provision.

Previously, section 8 excluded from the application of the *Animal Care and Protection Act 2001*, acts done or omissions made by Aboriginal or Torres Strait Islander people in accordance with Aboriginal tradition or Islander custom.

The amended section 8 (Relationship with native title) makes it clear that a person does not avoid liability for prosecution for an offence under the Act only because the act or omission that constituted the offence happens in the exercise or enjoyment of native title rights or interests.

Clause 9 amends section 38 (Operation of pt 6) to include the new section 41A as an offence exemption to the general animal offences set out in Chapter 3 of the Act. Where an offence exemption applies to an act or omission, it protects a person from committing the offence that would otherwise be committed by the act or omission.

Clause 10 inserts new section 41A (Killing an animal under Aboriginal tradition, Island custom or native title) to apply specific animal welfare obligations to certain activities that involve the killing of an animal in order to balance the interests and rights of Aboriginal and Torres Strait Islander people in maintaining traditional and customary practices with the welfare of animals.

The offence exemption applies to a person who kills an animal in the exercise of native title rights or interests or under the authority of a

Queensland or Commonwealth law to take the animal under Aboriginal tradition or Islander custom, under section 61 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* or under section 26 of the *Aurukun and Mornington Shire Council Leases Act 1978*.

To ensure that “take” in the context of the new section 41A is construed broadly, subsection (3) makes it clear that for the purposes of the new section 41A, “take” includes “taking” “keeping” and “using” within the meaning of the *Nature Conservation Act 1992*.

The effect of new section 41A is that a person who hunts an animal in such circumstances does not commit an offence provided the act that would otherwise constitute an offence is done in a way that causes the animal as little pain as is reasonable.

Part 4 **Amendment of Aurukun and Mornington Shire Leases Act 1978**

Clause 11 states that this part amends the *Aurukun and Mornington Shire Leases Act 1978*.

Clause 12 amends section 26 (Preservation of Aborigines’ hunting and gathering rights) so that an authorisation to deal with native fauna under section 26(1)(a) is subject to the *Animal Care and Protection Act 2001* and sections 62 and 93 of the *Nature Conservation Act 1992* but is not subject to any other provisions of any Act. Previously an authorisation under section 26(1)(a) was not subject to the *Animal Care and Protection Act 2001*.

Part 5 **Amendment of Nature Conservation Act 1992**

Clause 13 states that this part amends the *Nature Conservation Act 1992*.

Clause 14 amends section 93 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife) so that any dealings with protected wildlife under that section are subject to the *Animal Care and Protection Act 2001* but not any other Act. Section 93 previously applied despite any other Act.

As yet, section 93 of the *Nature Conservation Act 1992* has not commenced. However, if it commenced in its previous form, it could prevent the *Animal Care and Protection Act 2001* from applying to dealings with animals under Aboriginal tradition or Islander custom in places other than protected areas (within the meaning of the *Nature Conservation Act 1992*).

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