

Animal Care and Protection Amendment Bill 2022

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (the HR Act), I, Mark Furner MP, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities, make this statement of compatibility with respect to the Animal Care and Protection Amendment Bill 2022 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The main policy objective of the Bill is to modernise Queensland's animal welfare legislation to reflect contemporary attitudes and expectations towards the treatment of animals. This purpose is achieved by amending the *Animal Care and Protection Act 2001* (ACPA), *Racing Integrity Act 2016* (RI Act), *Veterinary Surgeons Act 1936* (VSA), *Animal Care and Protection Regulation 2012* (ACPR) and *Veterinary Surgeons Regulation 2016* (VSR) to:

- facilitate the ethical use of animals for scientific purposes whilst ensuring that animal welfare is not compromised;
- strengthen enforcement powers to address risks to animal welfare by clarifying or prescribing new offences;
- prohibit inhumane practices;
- provide for an approved cattle procedures accreditation scheme to enable a person to gain accreditation to perform a prescribed procedure on an animal; and
- clarify and remove redundant provisions.

The Bill has further policy objectives to:

- implement recommendations of the Independent Inquiry into Animal Cruelty in the Management of Retired Thoroughbred and Standardbred Racehorses (the Martin Inquiry);
- implement recommendations of the Queensland Audit Office (QAO) audit report, *Regulating animal welfare services Report 6:2021-22*; and
- make minor amendments to the *Disability Services Act 1996* (DSA).

The amendments which achieve these policy objectives are outlined in detail below.

Facilitating the ethical use of animals for scientific purposes

The Bill contains a number of amendments to facilitate the ethical use of animals for scientific purposes. The amendments:

- permit a person other than a veterinary surgeon to perform acts of veterinary science on animals used for scientific use purposes provided that they are performed in accordance with the *Australian code for the care and use of animals for scientific purposes* (Scientific Use Code) which is a compulsory code under the ACPA;
- enable the chief executive to decide the term of scientific use registration up to a maximum of 4 years, rather than the current fixed 3-year term;
- align the definition of ‘scientific purposes’ with the Scientific Use Code;
- require a scientific use registration holder to notify the chief executive of any changes to the information provided in their registration application; and
- clarify that the scientific use register can be inspected by the public at the department’s head office.

Strengthening enforcement powers

The Bill makes a range of amendments to strengthen enforcement powers and reduce risks to the welfare of animals. These amendments:

- introduce a new offence of aggravated breach of duty of care;
- permit an inspector to enter a place to provide relief to an animal from adverse weather conditions or another aggressive animal;
- giving directions that align with decisions made under interstate laws for disposal and forfeiture and for prohibition of possession of animals by a person;
- clarify the meaning of ***unreasonable abandonment*** to ensure that the person in charge of an animal remains responsible for that animal even when another person is temporarily providing it with food or water;
- permit an inspector to issue an animal welfare direction to a person to whom a compulsory code requirement applies;
- require a person, who has obtained an animal that has undergone a regulated procedure such as tail docking, to obtain and keep a signed veterinary surgeon’s certificate stating that the procedure was done in the interests of the animal’s welfare; and
- prohibit the transportation of an unrestrained dog in a vehicle, or on a tray or trailer attached to a vehicle, to protect it from the risk of harm arising from this practice, for example, by falling off the tray of a vehicle.

Prohibiting inhumane practices

The Bill introduces new offences which prohibit a range of inhumane practices. The practices include:

- firing of a horse or dog;
- using or possessing a prong collar or another prohibited device;
- using or possessing a prohibited net (to be prescribed by regulation); and
- using a poison that contains carbon disulfide and phosphorus for control of feral animals.

Cattle procedures accreditation scheme

The Bill allows the chief executive to approve a cattle procedures accreditation scheme under which a person may gain accreditation to perform one or more procedures on cattle. Related to

this, the Bill permits accredited persons to spay cattle using the Willis dropped-ovary technique and to conduct pregnancy testing in cattle using rectal palpation or rectal ultrasound scanning.

Clarifying and removing any redundant provisions

The Bill also makes several amendments to clarify and remove redundant provisions. These amendments:

- state that codes of practice are based on good practice and scientific knowledge;
- make a minor amendment to the definition of *animal* to provide that all species from the class *Cephalopoda* are animals (rather than prescribing it by regulation);
- clarify that rodeos are not a prohibited event by removing the current exclusion in the definition of prohibited event;
- remove the obligation to exercise closely confined dogs as this is covered by the existing cruelty provisions;
- provide an offence exemption for veterinary surgeons who may euthanase seriously sick or injured animals if the owner cannot be readily located;
- omit the provisions allowing a lay person to spay cattle by the Willis dropped-ovary technique in schedule 2B (Code of practice about cattle) of the ACPR as a person will be required to be accredited under an approved accreditation scheme;
- make minor amendments to headings of sections and parts of chapters to reflect the amendments in the Bill; and
- remove the unused head of power that gives authority for tail docking to be conducted by a person other than a veterinary surgeon or for non-welfare reasons to be permitted under a regulation.

Implementing the recommendations of the Martin Inquiry

The Bill amends the ACPA and RI Act to implement several recommendations of the Martin Inquiry. The ACPA amendments:

- require the use of closed-circuit television equipment (CCTV) at livestock slaughter facilities at all critical animal handling and processing areas to record clear surveillance of the movement of animals from arrival to exsanguination (Recommendation 10.2.2);
- provide inspectors an entry power to enter a livestock processing facility and remain at the place while horses are being unloaded, kept and processed (Recommendation 10.2.6); and
- require a livestock slaughter facility to give the chief executive notice of arrival of animals to the livestock slaughter facility (Recommendation 10.2.7).

The RI Act amendments:

- extend the functions of the Queensland Racing Integrity Commission (QRIC) to protect the welfare of retired racehorses (Recommendation 2.3.3);
- clarify that a standard for a licensing scheme for a code of racing can be made for horses (Recommendation 2.2.4); and
- impose reporting and recording obligations on the suppliers to, and owners of, a livestock slaughter facility to enable QRIC access to information to verify whether retirement and rehoming information separately required by QRIC has been reported correctly (Recommendation 6.4).

Implementing the recommendations of the QAO audit report

The Bill amends the ACPA to implement the QAO audit report recommendations to strengthen the legislative framework. The amendments:

- clarify the accountabilities and accreditation of inspectors;
- provide the department with oversight of recommendations from inspectors for prosecutions and any related proposals for charge and plea negotiations between the defendants and prosecutors before presenting the case in the court;
- provide the department with access to all information that inspectors collect as part of their investigations and prosecutions;
- include requirements for training and managing conflicts of interest; and
- require the department to approve a fee schedule of reasonable cost recovery and make it publicly available.

Disability Services Act 2006

The Bill also makes two minor amendments to the DSA. The amendments:

- prescribe the new offence of aggravated breach of duty of care under the ACPA as a *serious offence* under the DSA; and
- correct an incorrect cross-reference in the DSA.

Human Rights Issues

Facilitating the ethical use of animals for scientific purposes

Notification of change in circumstances

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human right engaged or limited by this aspect of the Bill is the right to privacy and reputation (HR Act, section 25).

The use of animals for scientific purposes is an area of major public concern. In particular, there is a need to prevent or minimise unnecessary pain and stress to animals used for scientific purposes wherever possible. Registering persons to use animals for scientific purposes is a key component of the system for managing the use of animals in science.

The eligibility requirements for registration help ensure the use of animals for scientific purposes is conducted in an accountable, open and transparent manner because of the potential for suffering or negative effects on animal welfare.

Clause 21 inserts new section 87A (Notification of change in circumstances) into the ACPA, which requires a person registered to use animals for scientific purposes to give notice to the chief executive about a disqualifying event that has happened in relation to the holder or a change to any material particular in the information given in relation to the person's application for registration. The notice must be given within 7 business days after the event or change happens (section 87A(2)). A maximum penalty of 50 penalty units will apply.

A *disqualifying event* includes a conviction for an animal welfare offence, the cancellation or suspension (under part 2, division 4, subdivision 2) of registration, or the cancellation or suspension, under a law of another State or the Commonwealth, of an authority, instrument, licence, permit or registration, however called, that is the same as, or similar to, registration under this chapter (section 50).

An application for registration must include the person's name and address, each animal ethics committee for the person, the terms of reference for each committee, and if the person is not an individual – the person or office holder to whom each proposed chairperson of each committee must report (section 52(2)(b)(i)-(iv)). This information is also kept in a register (section 60).

Under section 25(a) of the HR Act, a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Under section 25(b) of the HR Act, a person has the right not to have their reputation unlawfully attacked. Requiring a person to disclose information about a disqualifying event or change to a material particular limit their privacy and may cause their reputation to be attacked.

In practice, the persons registered to use animals for scientific purposes include companies or public authorities, such as research institutions, federal, state or local governments, theme parks, zoos, pharmaceutical companies and individuals, as well as learning institutions, such as schools, colleges or universities. Section 11 of the HR Act provides that “All individuals in Queensland have human rights” and “Only individuals have human rights”. The note following section 11(2) expressly provides that a corporation does not have human rights. Accordingly, the human rights impact identified above is relevant only to individuals registered to use animals for a scientific purpose.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from ‘unlawful’ or ‘arbitrary’ interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Requiring a person that applies for registration to use animals for scientific purposes to provide the specified information to the chief executive and, once registered, notify the chief executive of changes in that information and of any disqualifying events will assist in maintaining an accurate register of scientific users in Queensland. These requirements will support the monitoring of registration holders for compliance with the ACPA, as changes in the registration holder's circumstances may impact on their likelihood of complying with the Scientific Use Code or affect the person's eligibility for registration. An accurate register will support monitoring for compliance with the ACPA. Compliance with, and enforcement of, the laws made by the democratically elected Parliament is consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Requiring persons who hold registration as a scientific user to update the chief executive of a disqualifying event or a change in a material particular, within a certain timeframe following the event or change, ensures the chief executive has all relevant information about a person to make a fully informed assessment as to the person's suitability to maintain registration to use animals for scientific purposes.

Limiting a person's right to privacy and reputation by requiring them to provide the specified information to the chief executive and, once registered, to notify the chief executive of changes in that information and of any disqualifying events, directly achieves the purpose of ensuring an accurate register of scientific users is maintained in Queensland.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

No other reasonably available alternatives to the amendments have been identified. It is not reasonably practical for the chief executive to obtain information about changes to an individual's personal information in a sufficiently timely way to ensure the register remains accurate during the period of a person's registration. While the chief executive will be aware of disqualifying events that occurred within Queensland, it is not practical for the chief executive to routinely monitor for disqualifying events occurring outside the jurisdiction. Accordingly, the purposes of these amendments cannot be achieved through any reasonably available and less restrictive means.

Seven days is considered a reasonable amount of time for a person to notify the chief executive of changes in the specified information and of any disqualifying events.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposed limitation of a person's right to privacy and reputation occurs only to the narrow extent of requiring a person who applies for registration under the ACPA to use animals for a scientific purpose to provide the specified information to the chief executive and, once

registered, notify the chief executive of changes in that information and of any disqualifying events that have occurred in relation to the person. The restriction only relates to the aspects of the information that are private or affect the person's reputation.

The limitation is necessary to ensure that an accurate register of scientific users is maintained in Queensland, supporting monitoring of registration holders for compliance with the ACPA. The community expects that scientific use of animals in Queensland is monitored to a high standard. The limitation aligns with this expectation. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

Strengthening enforcement powers

Inspectors' entry powers

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are property rights (HR Act, section 24) and the right to privacy and reputation (HR Act, section 25).

Property rights

Clause 28 amends section 123 (Limited entry power to provide relief to animal) of the ACPA to insert additional circumstances an inspector may suspect that authorise them to enter and stay at a place. The new circumstances include when an animal is exposed to extreme weather conditions or is at risk of being injured or killed by another animal acting aggressively towards it. New section 123(2) also extends the inspectors' power to enter and stay at a place while it is reasonably necessary to "move the animal to an area within the place that protects the animal from the extreme weather conditions or the aggressive animal." Extreme weather conditions include temperature or climatic conditions that are likely to predispose an animal to heat or cold stress (new section 123(5)).

Under section 24 of the HR Act, "All persons have the right to own property alone or in association with others" and "a person must not be arbitrarily deprived of the person's property." Deprivation of property is not limited to physical dispossession of property and can take the form of any interference with the use, enjoyment or exploitation of private property. Permitting an inspector to enter and stay at a person's property, and to move animals, limits that person's property rights as it interferes with control of their property.

Privacy and reputation

The effect of Clause 28 is discussed in 'Property rights', above.

Under section 25 of the HR Act, "a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have the person's reputation unlawfully attacked." Permitting an inspector to enter and move about within a place, including private property, limits a person's right to privacy and reputation as an inspector could intentionally or inadvertently access information about the person that could be considered private or affects their reputation. For example, an inspector may need to enter

buildings on a private property to access suitable equipment to move the animal which may expose the inspector to information about the person (the existing drafting of the Act limits an inspector's entry power to non-residential parts of a place).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust, and refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Shelter is an important contribution to an animal's welfare as it prevents or minimises the impact of climatic extremes on the animal. Shelter also helps vulnerable animals feel protected from other threats including animals that are aggressive or dangerous.

Permitting an inspector to enter a private property to move an animal to provide shelter from adverse weather conditions or another aggressive animal will protect the welfare of the animal at risk. Providing inspectors with a power to enter private property to protect animal welfare in specified circumstances is consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by allowing an inspector to enter a private property and move an animal within that property is necessary to achieve the purpose of protecting the welfare of the animal at risk. The limitation will ensure that swift action can be taken by an inspector to address an emergent animal welfare risk in the absence of the person in charge of the animal.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives to the amendments that would equally protect the welfare of the animal at risk. Alternative powers of entry already available to inspectors do not allow a timely response to an identified risk, for example entry with consent requires the occupier to be located, and obtaining a warrant requires an application to a magistrate or justice of the peace. Any delay in gaining entry undermines the purpose of providing the relief to an animal that is threatened by another aggressive animal, or that is in need of shelter.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit a person's property rights to the extent of allowing an inspector to enter a private property and move an animal within that property. The amendments would not substantially limit a person's use or enjoyment of their property and a person would remain able to move their animal as they choose. The limitation on property rights is necessary to ensure that animal welfare is protected, where there is an urgent animal welfare risk and the person in charge of the animal is absent.

In some cases, there could even be a positive impact on property rights as the inspector's actions may save a person's animal property from being injured or dying.

There are appropriate safeguards on the inspector's entry powers to reduce the impact on property rights. The entry powers under section 123 cannot be used if the animal is at a part of the place at which a person resides, or apparently resides (section 123(1)(b)). Further, when an 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 (section 123(3)). This information will enable the person in charge of the animal, and the owner or occupier of the place, to take action if the person considers that the action taken by the inspector was unreasonable. The inspector may enter and stay at a place only for the amount of time necessary to move an animal to a sheltered area or away from another aggressive animal (section 123(2)).

The limitation on property rights is therefore reasonable and demonstrably justified in the circumstance.

Privacy and reputation

- (a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the human rights limitation is discussed in “Property rights”, above.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person’s right to privacy and reputation by allowing an inspector to enter a private property and move an animal within that property is necessary to achieve the purpose of protecting the welfare of the animal at risk. The limitation will ensure that swift action can be taken by an inspector to address an emergent animal welfare risk in the absence of the person in charge of the animal.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The availability of less restrictive and reasonably available alternatives is discussed in “Property rights”, above.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments a person’s right to privacy and reputation to the extent of allowing an inspector to enter a private property and move an animal within that property. The limitation on property rights is necessary to ensure that animal welfare is protected, where there is an emergent animal welfare risk and the person in charge of the animal is absent.

There are appropriate safeguards on the inspector’s entry powers to reduce the impact on the right to privacy and reputation. The entry powers under section 123 cannot be used if the animal is at a part of the place at which a person resides, or apparently resides (section 123(1)(b)). Further, when an 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 (section 123(3)). This information will enable the person in charge of the animal, and the owner or occupier of the place, to take action if the person considers that the action taken by the inspector was unreasonable. The inspector may enter and stay at a place only for the amount of time necessary to move an animal to a sheltered area or away from another aggressive animal (section 123(2)).

The limitation on the right to privacy and reputation is therefore reasonable and demonstrably justified in the circumstance.

Recognising prohibition decisions under interstate laws

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are the right to a fair hearing (HR Act, section 31), property rights (HR Act, section 24), and the right not to be tried or punished more than once (HR Act, section 34). and

Fair hearing

In Australia, orders made as a result of an animal welfare offence conviction in one state or territory do not automatically apply in another. As a result, there have been instances where a person convicted of an animal welfare offence in another jurisdiction and prohibited from owning or possessing animals or ordered to forfeit or dispose of animals, has moved to Queensland and acquired new animals. As an interstate order does not apply outside of the original jurisdiction, such a person is lawfully able to acquire new animals in Queensland. This presents an unacceptable risk to animal welfare.

Clause 32 inserts new chapter 6A (Recognising offences under interstate laws). New section 173B (Power to give directions) permits the chief executive to make certain directions regarding a person who is the subject of an interstate prohibition decision. An *interstate prohibition decision* means an order or another decision that is made under an interstate law and has the effect of ordering the disposal or forfeiture of a thing or an animal, or prohibiting a person from possessing, purchasing or otherwise acquiring an animal.

Under section 173B(2)(a) the chief executive may direct the disposal or forfeiture of:

- the animal or anything else that is the subject of the interstate prohibition decision,
- another animal, or
- another thing the chief executive considers is likely to be used in committing an animal welfare offence (provided that the person owns the animal or thing).

Under section 173B(2)(b) the chief executive may direct that the person not possess, purchase or otherwise acquire a particular animal, a stated type of animal and under section 173B(2)(c) direct that the person not possess, purchase or otherwise acquire any animal, or a stated type of animal, for trade or commerce or another stated purpose. Per section 173B(3), the direction must be for a stated period.

New section 173C (Criteria for making direction) establishes criteria for directions made under 173B(2) and provides that the chief executive may make a direction under that section only if satisfied it is just to make the direction in the circumstances.

New section 173D (Compliance with direction) requires a person subject to a direction made under section 173B(2) to comply with that direction. A maximum penalty of 300 penalty units or 1 year's imprisonment applies.

New section 173E(1) provides that a person subject to a direction under section 173B(2) may apply to the chief executive to amend or revoke the direction. The application must be in the approved form and be supported by enough information to enable the chief executive to decide the application (section 173E(2)).

New section 173F(1) requires the chief executive to consider and decide to approve the application, refuse the application, or, if the applicant agrees in writing to another amendment,

to approve the agreed amendment. Under new section 173F(2) the chief executive may only approve an application if satisfied that there has been a substantial change in the person's circumstances since the direction was made or in all the circumstances, it is reasonable to amend or revoke the direction. The chief executive must approve an application to revoke a direction if the interstate prohibition decision to which the direction relates is revoked under an interstate law (section 173F(5)).

New section 173G provides that a person may immediately apply to the chief executive for a stay of a direction if the person is directed to dispose of a thing that the person owns under section 173B(2)(a).

Under section 31 of the HR Act, "a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing." Permitting the chief executive to make certain directions, that effectively impose a penalty incurred interstate, against a person who is the subject of an interstate prohibition decision limits that person's right to a fair hearing.

Property rights

The effect of Clause 32 is discussed in 'Fair hearing', above.

Under section 24 of the HR Act, "All persons have the right to own property alone or in association with others" and "a person must not be arbitrarily deprived of the person's property." Permitting the chief executive to make certain directions, including disposal and forfeiture of property, limits that person's property rights.

Not to be tried or punished more than once

The effect of Clause 32 is discussed in 'Fair hearing', above.

Under section 31 of the HR Act, "A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing." Permitting the chief executive to make certain directions, that effectively impose a penalty for an action that has been penalised interstate, against a person limits that person's right not to be tried more than once.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Fair hearing

(a) the nature of the right

Section 31 of the HR Act protects the right of a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

This right is based on Article This section is modelled on Article 14(1) of the ICCPR.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Providing for the chief executive to make a direction for the disposal or forfeiture of an animal or anything else that is the subject of an interstate prohibition decision, another animal, or another thing the chief executive considers is likely to be used in committing an animal welfare offence will protect animals from the unacceptable risk of harm posed by allowing a person who is subject to an interstate prohibition decision (and, therefore, has been convicted of an animal welfare offence in that jurisdiction) to own animals in Queensland. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to a fair hearing by allowing the chief executive to make certain directions against that person on the basis of an interstate prohibition decision is necessary to ensure that animals are protected from the unacceptable risk of harm posed by allowing a person who is subject to an interstate prohibition decision (and, therefore, has been convicted of an animal welfare offence in that jurisdiction) to own animals and certain other property in Queensland.

The limitation represents a discretionary decision of the chief executive in that the chief executive may direct forfeiture or other action under the provision and only if satisfied it is just to make the direction in all the circumstances. In arriving at a decision, the chief executive must take into consideration the interstate prohibition decision, the nature of the act or omission that is the subject of the interstate prohibition decision, the effect of the act or omission on the animal and the welfare of the animal that is the subject of the act or omission.

The limitation helps to achieve the purpose by preventing repeat behaviour towards animals which is inconsistent with animal welfare and with community expectations. The limitation provides Queensland authorities with an efficient and preventative approach for addressing an unacceptable risk to animal welfare that has already been established by a court and mitigated by an interstate prohibition decision.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Although the ACPA permits similar directions to be made against persons convicted of animal welfare offences in Queensland, offending must first occur and be prosecuted in order for a direction to be made against a person. This approach is not preventative, and would not achieve the purpose of protecting animals from the unacceptable risk of harm posed by allowing a person who is subject to an interstate prohibition decision to own animals and certain other property in Queensland.

Accordingly, there are no less restrictive and reasonably available alternatives to the amendments that would equally achieve the amendments' purpose.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposed limitation of a person's right to a fair hearing is restricted to the extent of permitting the chief executive to make a direction against a person who is the subject of an interstate prohibition decision. The limitation on the right to a fair hearing is necessary to ensure that unacceptable risk of harm posed by allowing a person who is subject to an interstate prohibition decision to own animals and certain other property in Queensland.

There are appropriate safeguards on the chief executive's powers to give directions. Each direction must be made for a stated period (new section 173B(3)). The chief executive must consider specified criteria in considering whether it is just to make the direction (new section 173C). New sections 173E and 173F provide an administrative process for a person to apply to have the direction amended or revoked, and the decision is subject to internal and external review. Under new section 173G, the direction must be revoked if the interstate prohibition decision to which the direction relates is revoked. These safeguards ensure natural justice and fairness. The availability of a stay under new section 173G is also beneficial.

The limitation on the right to a fair hearing is therefore reasonable and demonstrably justified in the circumstance.

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the human rights limitation is discussed in "Fair hearing", above.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by allowing the chief executive to make certain directions against that person that deprive that person of current property and prevent them from acquiring new property on the basis of an interstate prohibition decision is necessary to ensure that animals are protected from the unacceptable risk of harm posed by allowing a person who is subject to an interstate prohibition decision (and, therefore, has been convicted of an animal welfare offence in that jurisdiction) to own animals and certain other property in Queensland.

The limitation helps to achieve the purpose by providing Queensland authorities with an efficient and preventative approach for addressing an unacceptable risk to animal welfare that has already been established by a court and mitigated by an interstate prohibition decision.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The availability of less restrictive and reasonably available alternatives is discussed in “Fair hearing”, above.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

The proposed limitation of a person’s property rights is restricted to the extent of depriving (through forfeiture or disposal) a person who is the subject of an interstate prohibition decision of the animal or anything else that is the subject of the interstate prohibition decision, another animal, or another thing the chief executive considers is likely to be used in committing an animal welfare offence (provided that the person owns the animal or thing). The limitation on property rights is necessary to ensure that unacceptable risk of harm posed by allowing a person who is subject to an interstate prohibition decision to own animals and certain other property in Queensland.

The safeguards on the chief executive’s powers to give directions are discussed in in “Fair hearing”, above.

The limitation on the right to a fair hearing is therefore reasonable and demonstrably justified in the circumstance.

Not to be tried or punished more than once

(a) the nature of the right

Section 34 of the HR Act protects the right of a person not to be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law.

This section is modelled on Article 14(7) of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the human rights limitation is discussed in “Fair hearing”, above.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person’s right not to be tried more than once by allowing the chief executive to make certain directions against that person on the basis of an interstate prohibition decision is necessary to ensure that animals are protected from the unacceptable risk of harm posed by allowing a person who is subject to an interstate prohibition decision (and, therefore, has been

convicted of an animal welfare offence in that jurisdiction) to own animals and certain other property in Queensland.

The limitation helps to achieve the purpose by providing Queensland authorities with an efficient and preventative approach for addressing an unacceptable risk to animal welfare that has already been established by a court and mitigated by an interstate prohibition decision.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The availability of less restrictive and reasonably available alternatives is discussed in “Fair hearing”, above.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposed limitation of a person’s right not to be tried more than once is restricted to the extent of permitting the chief executive to make direction against a person who is the subject of an interstate prohibition decision. The limitation on the right is necessary to ensure that unacceptable risk of harm posed by allowing a person who is subject to an interstate prohibition decision to own animals and certain other property in Queensland.

The safeguards on the chief executive’s powers to give directions are discussed in in “Fair hearing”, above.

The limitation on the right to a fair hearing is therefore reasonable and demonstrably justified in the circumstance.

Unreasonable abandonment or release

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The amendments which clarify when unreasonable abandonment or release of an animal occurs engage but do not limit property rights (HR Act, section 24).

Existing section 19 (Unreasonable abandonment or release) of the ACPA prohibits a person in charge of an animal from abandoning or releasing that animal unless the person has a reasonable excuse, or the abandonment or release is authorised by law (section 19(1)). Abandon is defined in the Schedule to include leaving an animal for an unreasonable period.

Clause 6 of the Bill amends section 19 by inserting new subsection 19(3) which states “for subsection (1) an animal may be abandoned by a person in charge of the animal regardless of whether the animal is provided with food or water by a person who is not in charge of the animal”. Clause 27 inserts new subsection 122(3) into section 122 (Power of entry), which is identical to new subsection 19(3).

Under section 24 of the HR Act, “all persons have the right to own property alone or in association with others” and “a person must not be arbitrarily deprived of the person’s property.” Deprivation of property is also not limited to physical dispossession of property,

and can take the form of any interference with the use, enjoyment or exploitation of private property.

Section 12 of the ACPA provides that a person is a *person in charge* of animal if the person owns or has a lease, licence or other proprietary interest in the animal, has the custody of the animal, or is employing or has engaged someone else who has the custody of the animal and the custody is within the scope of the employment or engagement. In effect, a person is in charge of an animal if they own or possess, or direct another person to possess, that animal. At common law, possession is a form of property right. It is foreseeable that a person being ‘in charge’ of an animal could be interpreted as a relationship of a property nature.

Accordingly, clarifying when unreasonable abandonment or release of an animal occurs to ensure that the person in charge of an abandoned animal continues to have a duty of care, positively impacts this right as it ensures the relationship of a property nature continues despite the person no longer possessing the animal. Preserving a person’s duty of care is consistent with the Queensland community’s expectation for the treatment of animals.

Inspectors power to give animal welfare direction

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human right engaged or limited by this aspect of the Bill is the right to freedom of movement (HR Act, section 19).

Animal welfare codes of practice set out minimum standards for the humane treatment of animals in specified circumstances. In some areas of animal use, the perceived risk to animal welfare is significant enough to require compulsory compliance with a code of practice. Under the compulsory codes of practice certain animal welfare obligations are imposed on persons who are not directly in charge of an animal. For example, the driver of a livestock truck must ensure the vehicle is free from internal protrusions that may cause injury to livestock.

An animal welfare direction requires stated action about the animal or its environment to be carried out. An animal welfare direction may include, but is not limited to, such actions as caring for or treating the animal in a stated way, consulting a veterinary surgeon about the animal’s condition, and providing the animal with the accommodation, food, rest, water or other living conditions as stated in the direction (section 159(3)). The maximum penalty for failure to comply with an animal welfare direction is 100 penalty units or 1 year’s imprisonment (section 161).

Current drafting of section 159 (Power to give animal welfare direction) only allows for an animal welfare direction to be given to a person who is, or who the inspector reasonably believes is in charge of an animal. This prevents an inspector from giving an animal welfare direction to a person who has not complied with a compulsory code requirement in relation to an animal if they are not directly in charge of an animal, limiting the enforcement options available to the inspector. This does not align with community expectations for the treatment of animals in Queensland.

Clause 29 amends existing section 158(1) of the ACPA to extend the application of division 5 (Animal welfare directions) to include situations where an inspector reasonably believes that “a person has not complied with a compulsory code requirement.” Clause 30 amends existing section 159(1) to authorise an inspector to give an animal welfare direction requiring stated

action about the animal or its environment or the non-compliance with a compulsory code requirement (if section 158(1)(c) applies). Section 159(2) is also amended to permit an animal welfare direction to be given to another person to whom a relevant compulsory code requirement applies. These amendments allow an inspector to give a direction to a person who may not be in charge of an animal but has obligations under a compulsory code of practice.

Under section 19 of the HR Act, every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it. Permitting an inspector to issue an animal welfare direction to a person to whom compulsory code requirement applies limits that person's right to freedom of movement where the animal welfare direction requires the person to carry out the stated action in a manner that restricts movement.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Freedom of movement

(a) the nature of the right

Section 19 of the HR Act provides for the right to freedom of movement, specifically that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This clause is modelled on article 12 of the ICCPR. It reflects the negative obligation on the State under article 12 of the ICCPR to not act in a way that would unduly restrict the freedom of movement but is not intended to impose positive obligations on the State to take positive actions to promote free movement (e.g. the provision of free public transport services).

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Providing for an inspector's power to give an animal welfare direction to a person to whom a compulsory code requirement applies and to give an animal welfare direction requiring action about non-compliance with a compulsory code requirement will protect animal welfare by providing inspectors with an additional compliance option for compulsory codes of practice. This enforcement option is less severe and more expedient than prosecution.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to freedom of movement, by requiring them to carry out the action stated in an animal welfare direction, directly achieves the limitations' purpose of protecting animal welfare by providing inspectors with a compliance option for compulsory codes of practice that is less severe and more expedient than prosecution.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The purpose of the amendments cannot be achieved through any reasonably available and less restrictive means.

To not allow an inspector to give an animal welfare direction to a person who has not complied with a compulsory code requirement would limit the range of enforcement options available for compulsory code requirements.

Clause 31 amends existing s 160 (Requirements for giving animal welfare direction) to require an animal welfare direction give because of non-compliance with a compulsory code requirement to state the particulars of the non-compliance. This allows the person who has been given the requirement to easily understand the non-compliance the direction requires them to rectify. The action that a person is required to rectify non-compliance with an animal welfare direction is likely to be an action that the person was already obliged to undertake under the relevant compulsory code, and is therefore not a significant impost on the person's freedom from of movement.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit the right to freedom of movement to the extent of requiring a person to carry out the actions stated in an animal welfare direction given as a result of their non-compliance with a requirement under a compulsory code of practice. This limitation must be balanced against the need to protect animal welfare by ensuring that the minimum standards under a compulsory code of practice can be enforced in a manner that is less severe and more expedient than prosecution. The restriction on the right to freedom of movement is necessary to ensure that this enforcement can occur. As such, the limitation on human rights is reasonable and justified in the circumstance.

(f) any other relevant factors

The majority of Queensland's animal welfare codes of practice are based on nationally endorsed standards.

Restrictions on supplying animals that have undergone a regulated procedure

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)

The human rights engaged or limited by this aspect of the Bill are property rights (HR Act, section 24).

Among the purposes of the ACPA is that animals are protected from unjustifiable, unnecessary or unreasonable pain. Certain surgical procedures, including debarking a dog, docking the tail of a horse, dog or cow, or removing cats' claws are regulated under the ACPA to ensure that these painful procedures are only performed by a veterinary surgeon, and that they are only done in the interests of the animal's welfare. Performing these procedures for cosmetic reasons or convenience no longer aligns with community expectations. A person must not supply an animal to another person unless the supplier gives the other person a signed veterinary surgeon's certificate stating that the procedure was performed in the interests of the animal's welfare, or in the case of debarking a dog, in accordance with section 25 of the ACPA.

Clause 12 replaces sections 28 and 29 of the ACPA with new sections 28, 29 and 29A to extend the existing regulatory arrangement to require that a person supplied with such a certificate must keep the certificate, and must not on-supply the animal without also supplying the certificate. However, the Bill also provides an exemption for pounds and animal shelters to ensure that they are not unreasonably expected to obtain, keep and on-supply documentation that may not be supplied with an abandoned or rescued animal.

Under section 24(2) of the HR Act, a person must not be arbitrarily deprived of their property. Deprivation of property is also not limited to physical dispossession of property, and can take the form of any interference with the use, enjoyment or exploitation of private property. Accordingly, requiring a person not to supply a specified animal unless they also give a signed veterinary surgeon's certificate stating the regulated procedure was performed in the interests of the animal's welfare and requiring them to also give the certificate with the animal limits their property rights as their control over the circumstances in which they can transfer their property is restricted. The property rights of the person supplied an animal under this division with respect to the certificate are similarly limited as their control over what they do with the certificate is restricted.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to facilitate enforcement of the law, resulting in a deterrent to animal breeders and owners from seeking the procedures for cosmetic or convenience reasons. Compliance with and enforcement of the laws made by a democratically elected Parliament is consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Restricting property rights by requiring a person supplied an animal that has undergone debarking or a regulated procedure to keep the signed veterinary surgeon's certificate given with that animal, and to make the certificate available for inspection by an inspector, will protect animal welfare by ensuring an inspector can verify that the procedure was done in accordance with the ACPA. In this way, the amendment directly achieves the purpose of facilitating enforcement of the law.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

To not require a signed veterinary surgeon's certificate to be kept and made available to an inspector would not achieve the purpose of the amendments. Without the system of signed veterinary surgeon's certificates, the owner of the animal would not be able to provide evidence that a procedure had been done in accordance with the ACPA and could empower certain persons to make false claims about the legal status procedure performed on their animals. This would significantly hamper enforcement of the respective laws regulating debarking and regulated procedures.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is foreseeable that a person would keep other documents relating to an animal they acquire. For example, a person supplied a dog would likely be provided with and keep documents relating to the dog's registration, vaccination, microchip and pedigree status. The impost of requiring the person to keep a signed veterinary surgeon's certificate regarding the animal's history of surgical procedures amongst these other documents would therefore be minimal. When balanced against the purpose of facilitating enforcement of the law, and therefore achieving the ACPA's purpose of protecting animals from unjustifiable, unnecessary and unreasonable pain, the limitation is reasonable and justified.

Transporting dogs

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The aspect of the Bill which regulates the transport of dogs engages the right to freedom of movement (HR Act, section 19) and property rights (HR Act, section 24).

Freedom of movement

Clause 13 replaces existing section 33 (Obligation to exercise closely confined dogs) of the ACPA with new section 33 (Transporting dogs). New subsection 33(1) prohibits a driver from transporting a dog inside a vehicle if any part of the dog, other than its head, is able to protrude from the vehicle. New subsection 33(2) provides that a driver must not transport a dog on the tray of a vehicle or a trailer attached to a vehicle unless the dog is secured in such a way as to prevent it from:

- falling off, or out of, the tray or trailer;
- falling from, or moving off, the tray or trailer; or
- being injured by the movement of the vehicle or trailer.

This subsection does not apply if the dog is being transported in a vehicle and the purpose of the transport is to assist in the movement of livestock (section 33(3)). A maximum penalty of 60 penalty units will apply for both subsections (1) and (2).

Restricting the ways in which dogs can be transported limits a person's freedom of movement where the person needs to modify their vehicle in order to restrain their dog or dogs during transport. For example, if the person needs to purchase and fit an appropriate restraint device (harness or cage) on or in their vehicle.

The limitation on freedom of movement would only apply in certain circumstances where a person does not already restrain their dog in a manner compliant with the new requirements. Otherwise, a person is able to move freely if they comply with the requirements or do not transport a dog in their vehicle.

Property rights

The effect of Clause 13 is discussed in 'Freedom of movement', above. Under section 24(2) of the HR Act, a person must not be arbitrarily deprived of their property. Deprivation of property is not limited to physical dispossession of property, and can take the form of any interference with the use, enjoyment or exploitation of private property. Prohibiting a person from transporting a dog in a vehicle, or on a tray or trailer in certain ways limits the person's property rights with respect to that dog as the person's control over how they deal with their property is restricted.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Freedom of movement

(a) the nature of the right

Section 19 of the HR Act provides for the right to freedom of movement, specifically that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This clause is modelled on article 12 of the ICCPR. It reflects the negative obligation on the State under article 12 of the ICCPR to not act in a way that would unduly restrict the freedom of movement but is not intended to impose positive obligations on the State to take positive actions to promote free movement (e.g. the provision of free public transport services).

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

RSPCA statistics have reported that nationwide 5,000 dogs each year are either injured or killed as a result of jumping from a moving car. Common causes of injury are:

- dogs being struck by tree branches,
- dogs being struck by oncoming or passing vehicles,

- dogs being dragged along the side of vehicles after overbalancing, and
- dogs attempting to jump from moving vehicles.

The welfare of animals is viewed as a significant matter of general community interest, changes are needed to meet community expectations that animal welfare risks are being managed with respect to the transport of dogs.

Restricting how dogs can be transported inside a vehicle, on a tray of a vehicle or trailer attached a vehicle, will protect dogs from the serious risk of death or injury posed by the practice of transporting dogs that are not appropriately secured. This also supports the safety of the broader community by preventing distractions and accidents for other road users. Regulating how dogs are secured in and on vehicles to protect their welfare is consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's freedom of movement by preventing them from transporting a dog that is not appropriately secured (and therefore potentially limiting the person's ability to move freely when transporting a dog) is necessary to ensure that dogs are protected from the serious risk of death or injury posed by the practice of transport dogs that are not appropriately secured. In this way the limitation on the right directly achieves the purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The purpose of the amendments cannot be achieved through any reasonably available and less restrictive means. To permit dogs to be transported unsecured or inappropriately secured would not achieve the amendment's purpose of protecting dogs from the serious risk of death or injury arising out of this practice.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit a person's right to freedom of movement to the extent of preventing a person from moving freely when seeking to transport a dog that is not appropriately secured. The benefits of restricting how dogs can be transported – protecting dogs from the serious risk of death or injury posed by their transport when not appropriately secured – outweigh the importance of maintaining the person's right to freedom of movement when transporting a dog.

The amendments do not have significant impost on the right to freedom of movement and this impost can be easily ameliorated. For example, if a dog is to be transported in a vehicle and it is able to protrude from the vehicle (other than its head), the person could comply by closing the vehicle's windows. In addition, the amendments do not prescribe the manner a dog should be restrained and leave it open to the person seeking to transport a dog to secure the dog in a manner appropriate with the circumstances.

The limitation of the right to freedom of movement is mitigated by the inclusion of new subsection 33(3) which permits a dog to be transported on the tray of a vehicle or a trailer unsecured only if the dog is being transported on a road and the purpose of the transport is to

assist in the movement of livestock. The effect of this provision is to continue to permit farmers to transport dogs in an unrestrained manner when the dogs are working livestock.

This limitation aligns with community expectations for the treatment of animals, particularly dogs, in Queensland. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

Most other Australian jurisdictions specifically prohibit a person from transporting dogs unrestrained on the back of vehicles or in a vehicle in a way that prevents the dog from falling or escaping from the vehicle.

Similar provisions have been adopted in the Victorian *Prevention of Cruelty to Animals Act 1986*.

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the human rights limitation is discussed in "Freedom of movement", above.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by requiring them to appropriately secure a dog when it is being transported, through restricting the way they deal with their property and potentially requiring them to obtain new property (e.g. lead, cage), is necessary to ensure that dogs are protected from the serious risk of death or injury posed by the practice of transporting dogs that are not appropriately secured.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The availability of less restrictive and reasonably available alternatives is discussed in "Freedom of movement", above.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit a person's right to freedom of movement to the extent of preventing a person from moving freely when transporting a dog that is not appropriately secured. The benefits of restricting how dogs can be transported – protecting dogs from the serious risk of death or injury posed by their transport when not appropriately secured – outweigh the importance of maintaining the person's right to freedom of movement when transporting a dog.

The amendments do not have significant impost on the right to freedom of movement and this impost can be easily ameliorated. For example, if a dog is to be transported in a vehicle and it is able to protrude from the vehicle (other than its head), the person could comply by closing the vehicle's windows. In addition, the amendments do not prescribe the manner a dog should be restrained and leave it open to the person seeking to transport a dog to secure the dog in a manner appropriate with the circumstances.

Mitigation of the impost on property rights is discussed in "Freedom of movement", above.

This limitation aligns with community expectations for the treatment of animals, particularly dogs, in Queensland. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

- (f) any other relevant factors

The other relevant factors are discussed in "Freedom of movement", above.

Prohibiting inhumane practices

Firing of horses and dogs

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The aspect of the Bill which prohibits firing of horses or dogs engages property rights (HR Act, section 24).

The Queensland community generally expects that animals are protected from unjustifiable, unnecessary or unreasonable pain. Allowing the practice of firing to be used on horses and dogs does not align with community expectations due to the serious risks to the welfare of the affected animal resulting from the practice of inflicting tissue damage and the development of scar tissue around the tendons and ligaments of the leg.

Property rights

Clause 14 inserts new section 37C (Firing or blistering on horses and dogs) into the ACPA, which provides that "a person must not apply extreme heat or cold or acid or another caustic chemical to the leg of a horse or dog with the intention of causing tissue damage or developing scar tissue around the ligaments or tendons of the animal's leg." A maximum penalty of 300 penalty units or 1 year's imprisonment will apply. Requiring a person to not use any existing firing equipment or fire or blister a dog or horse limits their property rights as the person's control over how they deal with their property is restricted.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of prohibiting the practice of firing or blistering on horses and dogs is to protect these animals from the serious risk of harm resulting from this practice. The practice causes tissue damage and the development of scar tissue around the tendons and ligaments of the leg. It is considered by many veterinarians and horse owners to cause unnecessary pain and to be obsolete as there is no scientific evidence to support that it provides any benefits.

Prohibiting firing or blistering is consistent with the purpose of the ACPA to protect animals from unjustifiable, unnecessary or unreasonable pain, and through achieving the purposes of the laws made by the elected Parliament the purpose of the limitation is consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by prohibiting the practice on horses and dogs, and therefore preventing a person from having firing or blistering performed on their horse or dog directly achieves the limitation's purpose of protecting horses and dogs from the serious risk of harm arising from that practice.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The purposes of these amendments cannot be equally achieved through any less restrictive and reasonably available means. If the practice of firing or blistering is not prohibited, horses and dogs will not be protected from the severe risk of harm arising from the practice.

Other, more humane, practices to support horses and dogs to recover from ligament and tendon injuries remain available.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation on a person's property rights is limited to the narrow scope of preventing a person from having firing or blistering performed on their horse or dog. The limitation is necessary to ensure that animals, particularly horses and dogs, are protected from the serious risk of harm resulting from the practice of firing or blistering. This outweighs the benefit of allowing people to continue the practice. This limitation aligns with community expectations for the treatment of animals in Queensland and the purposes of the ACPA to protect animals from unjustifiable, unnecessary and unreasonable pain. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

- (f) any other relevant factors

The practice of firing or blistering has been prohibited in the racing industry and is an offence in other jurisdictions.

Possession or use of prohibited devices

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The aspect of the Bill which prevents possession and use of prohibited devices on animals engages property rights (HR Act, section 24).

Prong collars are animal collars made of metal fang-shaped links and are designed to tighten around the neck of an animal, particularly a dog, when the animal pulls forward on a leash. The prongs can cause direct pain and suffering and are associated with long-term negative impacts of using punishment as a training method. The Queensland community generally expects that animals are protected from unjustifiable, unnecessary or unreasonable pain. Prong collars are considered unsuitable for use on animals for this reason.

Clause 14 inserts new section 37A (Possession or use of prohibited devices) into the ACPA. This amendment prevents a person from possessing or using a prong collar or other restraint device prescribed by regulation (each a prohibited device) on an animal. A ***restraint device*** is a device fitted to an animal for the purpose of restraining it. A maximum penalty of 30 penalty units for possession of a prohibited device and 100 penalty units for use of a prohibited device will apply.

Under section 24(2) of the HR Act, a person must not be arbitrarily deprived of their property. Deprivation of property is not limited to physical dispossession of property, and can take the form of any interference with the use, enjoyment or exploitation of private property. Requiring a person to not use a prohibited device on an animal or to dispose of any prohibited device they are in possession of limits their property rights as the person's control over how they deal with their property is restricted.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Prohibiting firing or blistering is consistent with the purpose of the ACPA to protect animals from unjustifiable, unnecessary or unreasonable pain (section 3(c)). Through achieving the purposes of the laws made by the elected Parliament the purpose of the limitation is consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by preventing them from using a prohibited device on an animal and requiring them to dispose of any prohibited device they already possess is necessary to achieve the limitation's purpose of protecting animals from unjustifiable, unreasonable and unnecessary pain caused by the use of prohibited devices.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Whilst permitting a person to possess but not use a prohibited device could be a less restrictive alternative to the amendments, this option is unlikely to equally protect animals from unjustifiable, unreasonable and unnecessary pain by the use of prohibited devices as it would facilitate easy access to these devices for people who seek to use them unlawfully.

There are therefore no less restrictive and reasonably available alternatives to the amendments that would equally achieve the purpose of protecting animals from unjustifiable, unreasonable and unnecessary pain caused by the use of prohibited devices.

Humane alternatives for animal restraint training, such as collars and positive reinforcement, remain available.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposed limitation of a person's property rights is restricted to the extent of preventing that person from using a prohibited device on an animal and requiring them to dispose of any

prohibited device they already possess. The benefits of restricting possession and use of a prohibited devices – protecting animals from unjustifiable, unreasonable and unnecessary pain caused by the use of prohibited devices – outweigh the importance of maintaining the person’s property rights with respect to their animal or prohibited device. This limitation aligns with community expectations for the treatment of animals in Queensland. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

The use of prong collars and other devices is already banned in Victoria and New Zealand devices due to the serious harm these devices inflict on animals.

Possession or use of certain nets

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The aspect of the Bill which prohibits possession and use of certain nets engages property rights (HR Act, section 24).

Tree netting is popularly used to protect fruit tree crops from damage caused by wildlife. Several netting options are available to protect these crops in both domestic and commercial settings. Certain types of tree netting may stress, injure or kill wildlife if it becomes entangled in the netting. The Queensland community recognises tree netting entanglement as a cruel and unnecessary cause of trauma for wildlife.

Clause 14 inserts new section 37B (Possession or use of prohibited nets) into the ACPA. Section 37B(1) provides that a person must not possess a net prescribed under a regulation to be a prohibited net unless the person has a reasonable excuse and section 37B(2) provides that a person must not use a prohibited net. A maximum penalty of 30 penalty units for possession of a prohibited net and 100 penalty units for use of a prohibited net will apply. Requiring a person to not use a prohibited net or to dispose of any prohibited net they are in possession of limits their property rights as the person’s control over how they deal with their property is restricted.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person’s property. In this context, case authority suggests that ‘arbitrarily’ refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any ‘de facto expropriation’ by means of a substantial restriction in fact of a person’s use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to restricting possession and use of certain types of tree netting to protect wildlife from the risk of injury or death posed by the use of unsuitable netting to protect fruit tree crops, and therefore from unjustifiable, unnecessary or unreasonable pain. This purpose is consistent with the purpose of the ACPA (section 3(c)). Through achieving the purposes of the laws made by the elected Parliament the purpose of the limitation is consistent with a free and democratic society based on dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by preventing them from owning or using a prohibited net is necessary to ensure that wildlife is protected from the unjustifiable, unnecessary or unreasonable pain caused by entanglement in unsuitable tree netting.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Whilst permitting a person to possess but not use a prohibited net could be a less restrictive alternative to the amendments, this option is unlikely to equally achieve the purpose, as it would facilitate easy access to such netting for people who seek to use it unlawfully.

Unused unsuitable tree netting continues to pose a serious risk of harm to wildlife through entanglement. For example, snakes may still become entangled in tree nets stored in sheds.

There are therefore no less restrictive and reasonably available alternatives to the amendments that would equally achieve the purpose.

Other, wildlife-friendly, netting options remain available to protect fruit tree crops.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposed limitation of a person's property rights is restricted to preventing the person from possessing and using a prohibited net. The benefits of restricting possession and use of a prohibited net – protecting wildlife from unjustifiable, unnecessary and unreasonable harm caused by entanglement in unsuitable tree netting – outweigh the importance of maintaining the person's property rights with respect to that net. This limitation aligns with community expectations for the treatment of animals, particularly wildlife, in Queensland. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

- (f) any other relevant factors

In Victoria, the *Prevention of Cruelty to Animals Regulations 2019* was amended to require domestic fruit growers to use netting with a maximum aperture of 5 millimetres at full stretch from 1 September 2021.

Carbon disulfide and phosphorous

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are property rights (HR Act, section 24).

Introduced species pose a range of risks in Queensland. These include competing with or killing native species, affecting agricultural production, damaging native habitat and carrying serious human and animal diseases. Control of feral animals is a legitimate practice that is needed to manage these risks. However, this should be carried out using the most humane methods available that achieve effective control, as consistent with community expectations that animals are protected from unjustifiable, unnecessary or unreasonable pain.

Poisons which contain carbon disulfide and phosphorus have been historically used to control feral pig populations. These poisons are toxic to a wide range of bird and animal species and generally cause a long and painful death due to their slow-acting properties. Secondary poisoning can also occur from the vomit or carcasses of poisoned animals. More humane alternatives to these poisons are now available for the control of feral pig populations.

Clause 16 amends existing section 42 (Feral or pest animals) of the ACPA to remove the offence exemption for acts done to control feral animals where the act involves the use of a poison that includes the ingredients carbon disulfide and phosphorous. In the absence of the offence exemption, there is scope for a prosecution for cruelty under section 18 for which a maximum penalty of 2000 penalty units or 3 years imprisonment applies. Prohibiting a person from using a poison they already own and from using it on private property limits their property rights as the person's control over how they deal with their property is restricted.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of restricting possession and use of poisons which contain carbon disulfide and phosphorous for control of feral animals is to protect animals, both the target and other species, from the significant suffering caused by the use of poisons containing these chemicals. This is consistent with the purposes of the ACPA (section 3(c)). Through achieving the purposes of the laws made by the elected Parliament the purpose of the limitation is consistent with a free and democratic society based on dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by preventing them from using poisons containing carbon disulfide and phosphorous for feral animal control is necessary to ensure that animals, both the target and other species, are protected from the significant suffering caused by the use of poisons containing these chemicals.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The purpose of the Bill cannot be achieved through any less restrictive and reasonably available means. If the use of poisons containing carbon disulfide and phosphorous for feral animal control was not prohibited, animals will not be protected from the significant suffering caused by the use of these poisons.

Alternative, more humane poisons and other control methods are available for feral animal control.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation of a person's property rights is restricted to preventing the person using poisons containing carbon disulfide and phosphorous for feral animal control. The limitation is necessary to ensure that animals, both the target and other species, are protected from the significant suffering caused by the use of these poisons. This outweighs the benefit of allowing people to continue to use these poisons for feral animal control. This limitation aligns with community expectations for the treatment of animals in Queensland. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

Approved cattle procedures accreditation schemes

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human right engaged or limited by this aspect of the Bill is the right to privacy and reputation (HR Act, section 25).

Clause 22 inserts new Chapter 4A (Approved cattle procedures accreditation schemes) into the ACPA, which allows the chief executive to approve an accreditation scheme which will

accredit persons to perform prescribed procedures on cattle under this Act (new section 93C). Prescribed procedures is defined by new s93A (Definitions for chapter) to mean spaying cattle using the Willis dropped-ovary technique, or testing for pregnancy in cattle using rectal palpation or a transrectal ultrasound.

New section 93D (Applying for approval) permits the owner of a cattle procedures accreditation scheme to apply to the chief executive for approval of the scheme. The application must be accompanied by a document setting out the arrangements for each of the functions of the cattle procedures accreditation scheme mentioned in section 93B. The chief executive may approve a cattle procedures accreditation scheme if satisfied the scheme has the arrangements, including procedures and controls, that provide for each of the functions mentioned in section 93B (What is a cattle procedures accreditation scheme) (section 93E). The chief executive is also empowered to request further information from an applicant that they reasonably require to decide an application (section 93F).

Section 93B provides that a cattle procedures accreditation scheme is a scheme that provides for the following functions:

- accrediting persons to perform a prescribed procedure on cattle under the scheme, including—
 - the competency requirements for accreditation;
 - the grant, issue and form of an accreditation;
 - the terms and conditions of accreditation, including provisional accreditation;
 - auditing an accredited person’s activities under an accreditation; and
 - responding to an accredited person’s noncompliance with the accreditation, including by suspending or cancelling the accreditation;
- reviewing decisions made, and resolving disputes, under the scheme;
- assessing and investigating complaints about the conduct of accredited persons;
- developing operational procedures to apply under the scheme; and
- recording and disclosing information about a person’s accreditation.

New section 93H (Applying for amendment of approval) permits the holder of an approval to apply to the chief executive to amend the approval. Per new section 93I (Request for further information), the chief executive may ask for further information that the chief executive reasonably requires to decide the application. When deciding an application for approval or amendment of approval, the chief executive may choose to grant the application subject to conditions (sections 93G and 93J).

New section 93K (Amendment of approval by chief executive) provides that the chief executive may amend an approval at any time without an application from the holder, including removing or imposing a condition on the approval. The chief executive is also empowered to suspend or cancel an approval granted under section 93G or 93J because the approval was granted because of a materially false or misleading representation or declaration, made either orally or in writing; a condition of the approval has not been complied with; or the chief executive reasonably believes the holder of the approval has failed to satisfactorily perform the functions of the cattle procedures accreditation scheme.

Under section 25 of the HR Act, a person has the right “not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with.” The right to privacy protects against interference with work, including access to a profession. A decision to suspend or cancel an approval of a cattle procedures accreditation scheme may indirectly limit the right to

privacy of an accredited person who is currently undertaking or has arranged to undertake a prescribed procedure under an approved accreditation scheme as the person's access to work may be restricted.

New section 93R (Register) provides that the chief executive must keep a register of approved cattle procedures accreditation schemes and publish this register on the department's website. Under subsection 93R(2), the register must contain certain particulars for each scheme including the name and contact details of the owner of the scheme.

Publishing the register potentially limits the right to privacy of a person who owns a cattle procedures accreditation scheme. However, in practice, the owners of approved accreditation schemes are not likely to be individuals; rather, they are likely to be corporations. Section 11 of the HR Act provides that "All individuals in Queensland have human rights" and "Only individuals have human rights". The note following section 11(2) expressly provides that a corporation does not have human rights. Accordingly, the publication of the details of approved cattle procedures accreditation schemes engages but is not expected to limit human rights.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Providing for approved cattle procedures accreditation schemes, that will accredit persons to perform prescribed procedures, will mitigate the animal welfare risk posed by allowing persons other than veterinary surgeons to perform a prescribed procedure by ensuring that persons accredited to perform these procedures are competent. This purpose is consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting the right to privacy and reputation of an accredited person who is currently undertaking or has arranged to undertake a prescribed procedure under an approved accreditation scheme by providing the chief executive with the power to suspend or cancel an approval of a cattle procedures accreditation scheme is necessary to ensure that the animal welfare risk posed by allowing persons other than veterinary surgeons to perform a prescribed procedure is mitigated. The grounds for suspending or cancelling an approval (section 93L) generally relate to unfavourable conduct on behalf of the person who holds the accreditation that would go towards the person's suitability to provide accreditation.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives that would fully achieve the purpose of the amendments. To not provide for suspension or cancellation of an approval on the basis of unfavourable conduct by the person who holds the accreditation would call into the question the suitability of that person to provide accreditation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments a person's right to privacy and reputation to the extent of providing the chief executive with the power to suspend or cancel an approval of a cattle procedures accreditation and by publishing the name and contact details of each owner of a cattle procedures accreditation scheme on the department's website. The limitation on property rights is necessary to ensure that the risk posed animal welfare risk by allowing persons other than veterinary surgeons to perform a prescribed procedure is mitigated by ensuring that persons accredited to perform these procedures are competent. This limitation aligns with community expectations for the treatment of animals in Queensland. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

Clarifying and removing any redundant provisions

Euthanasing sick or injured animals by veterinary surgeons

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are property rights (HR Act, section 24).

Animals are frequently presented at veterinary surgeons' practices in need of emergency veterinary treatment, for example, where an animal has been hit by a car and injured. This includes cases where the animal is so diseased or severely injured, or in such poor physical or psychological condition that it is cruel to keep it alive. A significant number of veterinary surgeons are reluctant to euthanase an animal without some certainty in their legislative authority to do so, particularly where the owner of an animal cannot be identified or contacted. In these circumstances, a veterinary surgeon must wait until the animal's owner can be contacted and identified (and give consent) for the animal to be euthanased or divert the animal to the RSPCA where, under an inspector's seizure powers, the animal can be euthanased without consent. The suffering of these animals is usually prolonged or exacerbated by the

delay or extended journey to RSPCA facilities. The Queensland community generally expects that animals are protected from unjustifiable, unnecessary or unreasonable pain.

Clause 15 inserts new section 41B (Euthanasing sick or injured animals by veterinary surgeons) into the ACPA. New section 41B(2) provides an offence exemption for a veterinary surgeon who euthanases an animal in the belief that the animal is so diseased or severely injured, or in such poor physical or psychological condition that it is cruel to keep it alive, and that the euthanasia was done in a humane way. This offence exemption only applies if, before euthanasing the animal, the veterinary surgeon took reasonable steps to identify and contact the person in charge of the animal. Reasonable steps may include, but are not limited to, searching for a microchip or any other form of identification and searching any relevant registers (new section 41B(3)).

Clause 34 inserts new section 215AA (Protection from liability for euthanasing sick or injured animals) which provides that if a veterinary surgeon has euthanased an animal under section 41B, the veterinary surgeon is not liable, civilly, criminally or under an administrative process, for an act done, or omission made, in good faith under that section.

Providing a veterinary surgeon indemnity for euthanasing of an animal without the authority of the person in charge of the animal limits their property rights as the person's control over how they deal with their property is restricted and they are ultimately deprived of that property.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of providing a veterinary surgeon with clear authorisation and indemnity for humanely euthanasing an animal when the veterinary surgeon believes that the animal so diseased or severely injured, or in such poor physical or psychological condition that it is cruel to keep it alive and has taken reasonable steps to identify and contact the person in charge of the animal will protect animal welfare by preventing the unnecessary suffering of seriously unwell animals. This is consistent with the purpose of the ACPA to protect animals from

unjustifiable, unnecessary or unreasonable pain. Through achieving the purposes of the laws made by the elected Parliament the purpose of the limitation is consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by providing a veterinarian with authorisation and indemnity for humanely euthanising an animal when the veterinary surgeon believes that the animal so diseased or severely injured, or in such poor physical or psychological condition that it is cruel to keep it alive and has taken reasonable steps to identify and contact the person in charge of the animal directly achieves the purpose of preventing the unnecessary suffering of seriously unwell animals.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The purpose of these amendments cannot be achieved through any less restrictive and reasonably available means. If a veterinary surgeon is not provided with authorisation indemnity for humanely euthanising an animal, recent practice has shown that the veterinary surgeon will likely wait for consent from the owner or divert the animal to an RSPCA facility. This would not protect the animal from the unnecessary suffering caused by waiting for the owner to be identified and contacted or for an RSPCA inspector to seize, and exercise the powers available under seizure towards, the animal.

It remains within the owner's responsibility to ensure that the animal, and therefore the owner, can be readily identified in such circumstances. For example, it is within a dog owner's discretion to choose whether their dog wears a collar with an identification tag, whether the dog is registered and microchipped, and that the details attached to these forms of identification are current.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation on a person's property rights is restricted to permitting that person's animal to be humanely euthanased by a veterinary surgeon in circumstances where the veterinary surgeon believes the animal that is so diseased or severely injured, or in such poor physical or psychological condition that it is cruel to keep it alive and has reasonably searched for the owner. The restriction of property rights is necessary to ensure that animals are protected the unnecessary suffering caused by waiting for the owner to be identified and contacted or for the animal to be diverted to an RSPCA facility. This limitation aligns with community expectations for the treatment of animals in Queensland. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

The restriction on property rights is mitigated by the inclusion of subsections 41B(3) and (4) which provide that the offence exemption only applies if, before euthanasing the animal, the veterinary surgeon took reasonable steps to identify and contact the person in charge of the animal. Reasonable steps include scanning the animal for a microchip, searching any relevant registers or searching for any other form of identification e.g. collar or identification tag.

(f) any other relevant factors

Queensland remains the only jurisdiction that does not provide a legislative authority for veterinary surgeons to euthanase animals when it is cruel to keep them alive.

Docking a dog's tail

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are property rights (HR Act, section 24).

The Queensland community generally expects that animals are protected from unjustifiable, unnecessary or unreasonable pain. Allowing for dog's tails to be docked, other than for welfare reasons and by a veterinary surgeon, no longer aligns with community expectations due to the risk of inflicting serious harm on the dog.

Property rights

Existing section 24 (Docking dog's tail) of the ACPA permits a veterinary surgeon to dock a dog's tail only if they reasonably consider the docking is in the interests of the dog's welfare or the docking is done in a way prescribed under a regulation. The section also permits a person other a veterinary surgeon to dock a dog's tail only if the docking is done in a way prescribed by regulation. To date, no regulation has been prescribed for docking of a dog's tail.

Clause 9 replaces existing section 24 in the ACPA to provide that: (1) a person, other than a veterinary surgeon, must not dock a dog's tail and (2) that a veterinary surgeon must not dock a dog's tail unless the surgeon reasonably considers the docking is in the interests of the dog's welfare. A maximum penalty of 100 penalty units will apply for both subsections (1) and (2).

Under 24(2) of the HR Act, a person must not be arbitrarily deprived of their property. Deprivation of property is not limited to physical dispossession of property, and can take the form of any interference with the use, enjoyment or exploitation of private property. Preventing a person from having their dog's tail docked for non-welfare reasons or engaging an unqualified person to dock their dog's tail limits their property rights as the person's control over how they deal with their property is restricted.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership,

but would include any ‘de facto expropriation’ by means of a substantial restriction in fact of a person’s use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendments is to protect dogs from unnecessary, unjustifiable and unreasonable pain. This is consistent with the purposes of the ACPA section 3(c). Through achieving the purposes of the laws made by the elected Parliament the purpose of the limitation is consistent with a free and democratic society based on dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person’s property rights by preventing them from engaging an unqualified person to dock their dog’s tail, or docking their dog’s tail for non-welfare reasons directly achieves the limitation’s purpose of protecting dogs from unjustifiable, unnecessary and unreasonable pain.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The purpose of the amendments cannot be achieved through any less restrictive and reasonably available means.

The less restrictive alternative of allowing an unqualified person to dock a dog’s tail would not protect dogs from the unjustifiable, unnecessary and unreasonable pain. In addition, allowing an unqualified person to dock a dog’s tail would create administrative difficulty in enforcing the new requirement for a person supplying a dog with a docked tail to keep and give to a person receiving that dog a (veterinary surgeon’s) certificate stating the procedure was performed in the interests of the animal’s welfare. This is because the unqualified person would not possess the ability to professionally assess the animal’s welfare interests.

To permit the docking of a dog’s tail for solely non-welfare purposes would not achieve the amendment’s purpose of protecting dogs from the serious risk harm posed by such procedures, particularly as cosmetic docking may be considered unjustifiable and unnecessary pain.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The restriction on a person’s property rights is limited to the narrow extent of preventing them from engaging an unqualified person to dock their dog’s tail or docking their dog’s tail for non-welfare reasons. The restriction of property rights is necessary to ensure that dogs are protected from the serious risk of harm posed by tail docking that is not done by a veterinary surgeon in the interest of the dog’s welfare. This limitation aligns with community expectations for the treatment of animals in Queensland.

No procedure has ever been prescribed to enliven the provisions for a layperson to dock a dog's tail or for a veterinary surgeon to dock a dog's tail for any reason other than the dog's welfare. In effect there is no change to the current abilities of various categories of persons to dock a dog's tail; therefore, the extent of the limitation is, in practice, negligible.

As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

(f) any other relevant factors

As a regulation permitting dog's tails to be docked for non-welfare reasons or by a person other than a veterinary surgeon has never been prescribed under the head of power in this section, access to these forms of tail docking has not been available. The impost on human rights caused by this amendment is therefore minimal.

In all other Australian jurisdictions, docking of dog's tails is only permitted to be conducted by veterinary surgeons for welfare reasons.

Implementing the recommendations of the Martin Inquiry

Closed-circuit television equipment

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are property rights (HR Act, section 24) and the right to privacy and reputation (HR Act, section 25).

Property rights

Clause 22 inserts new Chapter 4B (Obligations relating to livestock slaughter facilities) into the ACPA. Part 2 of this chapter addresses closed-circuit television (CCTV) equipment for livestock slaughter facilities. For the chapter, 'Livestock slaughter facility' means a facility that slaughters horses or another type of livestock prescribed by regulation (new section 93S). The new sections in Chapter 4B create a range of obligations for the owner of a livestock slaughter facility to establish and continue a CCTV monitoring system.

New section 93T (Closed-circuit television equipment) requires the owner of a livestock slaughter facility (the owner) to install, maintain and operate CCTV equipment at the facility. A maximum penalty of 300 penalty units applies. This section also prescribes the locations throughout the facility at which the CCTV must record the movement of livestock (section 93T(2)). This includes, but is not limited to, each entrance to the facility and each area used to unload livestock.

The owner of a livestock slaughter facility must ensure that the CCTV equipment meets the minimum requirements for the equipment prescribed by regulation, complies with any requirements about maintaining the equipment prescribed by regulation and is recording at all times when an animal is at the facility (new section 93U(a)(i)-(iii)).

New section 93U(b) requires the owner to store the recordings in a secure place at the facility in compliance with any requirements about the storage prescribed by regulation. The owner is required to keep each recording available for inspection by an inspector until it is erased or

destroyed 30 days after it is made, or another later date as required by written notice of an inspector (maximum 1 year 30 days) (new section 93W). A maximum penalty of 300 penalty units applies.

The owner must not allow the CCTV equipment to be operated by any person other than themselves or a person they have approved to do so (new section 93X). A maximum penalty of 300 penalty units applies. The owner must also display signage at the facility in a way that is likely to make any person at the facility aware that closed-circuit television is installed at the facility (new section 93V). A maximum penalty of 30 penalty units applies.

Clause 38 inserts new Part 2A (Closed-circuit television equipment for livestock slaughter facilities) into the ACPR. Within new Part 2A,, new section 4A prescribes the minimum requirements for closed-circuit television equipment as authorised by the regulation-making power in new ACPA section 93U.

Under section 24(2) of the HR Act a person must not be arbitrarily deprived of their property. The various requirements in Chapter 4B for a livestock slaughter facility owner to install, maintain and operate CCTV equipment in specified ways limit that person's property rights as their use and control of the CCTV equipment, and livestock processing facility more broadly, is restricted by the new requirements.

Privacy and reputation

Clause 22 inserts new Chapter 4B (Obligations relating to livestock slaughter facilities). The effect of the new sections in this chapter is discussed in 'Property rights', above.

Section 25(a) of the HR Act states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The requirements for the installation, maintenance and operation of CCTV limit the right to privacy of a person who attends the facility.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to support the detection of animal welfare risks and compliance of livestock slaughter facilities with Queensland's animal welfare laws through requiring the installation, maintenance and operation of CCTV equipment in all livestock slaughter facilities in Queensland to. Supporting the enforcement of requirements legislated by Parliament is consistent with a free and democratic society based on human dignity, equality, and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting the property rights of a person who owns a livestock slaughter facility by requiring them to install, maintain and operate CCTV equipment at that facility, directly supports the purpose of ensuring that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

CCTV allows an open and transparent approach to animal welfare monitoring at livestock slaughter facilities. CCTV recordings serve as useful evidence and supports the investigation and enforcement of animal welfare offences when they do occur. The success of livestock industries is dependent upon community confidence in the regulation of animal welfare.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available alternatives to the amendments that would equally achieve the purpose of supporting the detection of animal welfare risks and compliance of livestock slaughter facilities with Queensland's animal welfare laws.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit a person's property rights to the extent of requiring a person who owns a livestock slaughter facility to install, maintain and operate CCTV equipment at that livestock slaughter facility. The limitation on property rights is necessary to ensure that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

The amendments strike a fair balance between the person's property rights, the employer's interest in complying with the ACPA, and the public interest that the significant animal welfare risks are being addressed. The success of livestock industries is dependent upon community confidence in the regulation of animal welfare. Domestic and international retailers have increasingly focused on animal welfare as an important consideration of product quality. The use of CCTV will provide reassurance that animal welfare risks are being appropriately regulated and managed. Safeguards, including requirements signage, operators of the equipment and use of the footage will be implemented.

The limitation on property rights is therefore reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

CCTV is already used in some Australian livestock processing facilities including the main horse slaughtering establishment in Queensland. In Australia, the Woolworths Group implemented a policy for all its livestock processing facilities to install CCTV at all key animal handling and processing areas. In 2018, the United Kingdom made it compulsory for all slaughterhouses in England to have CCTV installed in all areas where there are live animals.

The amendments implement Recommendation 10.2.2 of the Martin Inquiry.

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects a person from unlawful or arbitrary interference and attacks on their privacy, family, home, correspondence, and reputation. This right is modelled on article 17 of the ICCPR.

The scope of the right to privacy is very broad and includes the protection of personal information which extends to a person's workplace. This right is based on Article 17 of the Universal Declaration of Human Rights

Human rights only apply to a natural person. Accordingly, the amendments have the potential to limit the right to privacy and reputation of all persons employed or present at the facility.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the human rights limitation is discussed in "Property rights", above.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person who attends a livestock slaughter facility of their right to privacy and reputation by requiring the operation of CCTV equipment throughout the facility, and therefore recording that person's activities, directly supports the purpose of ensuring that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

CCTV allows an open and transparent approach to animal welfare monitoring at livestock slaughter facilities. CCTV recordings serve as useful evidence and supports the investigation and enforcement of animal welfare offences when they do occur. The success of livestock industries is dependent upon community confidence in the regulation of animal welfare.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The availability of less restrictive and reasonably available alternatives is discussed in "Property rights", above.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit a person's right to privacy and reputation to the extent of requiring operation of CCTV equipment throughout a livestock processing facility, and therefore recording each person who attend's activities. The limitation is necessary to ensure that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

The amendments strike a fair balance between the person's right to privacy and reputation, the employer's interest in complying with the ACPA, and the public interest that the significant animal welfare risks are being addressed. The success of livestock industries is dependent upon community confidence in the regulation of animal welfare. Domestic and international retailers have increasingly focused on animal welfare as an important consideration of product quality.

Safeguards on the operation of CCTV equipment are discussed in "Property rights", above.

The limitation on property rights is therefore reasonable and demonstrably justified in the circumstance.

- (f) any other relevant factors

Other relevant factors are discussed in "Property rights", above.

Inspectors entry power to livestock slaughter facility when a horse is present

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are property rights (HR Act, section 24) and the right to privacy and reputation (HR Act, section 25).

Property rights

Clause 27 amends existing section 122 (Power of entry) of the ACPA to permit an inspector to enter and stay at a livestock slaughter facility, without consent, if the entry is made when a horse is at the facility. This power is distinct from other reasons for which an inspector may exercise their entry power under section 122, as, generally, the inspector must have consent from the owner or be responding to an animal welfare concern held by that inspector to enter a place.

Under section 24 of the HR Act, "All persons have the right to own property alone or in association with others" and "a person must not be arbitrarily deprived of the person's property." Deprivation of property is not limited to physical dispossession of property, and can take the form of any interference with the use, enjoyment or exploitation of private property. Permitting an inspector to enter and stay at a person's property, including a livestock slaughter facility, limits that person's property rights as it interferes with control of their property.

Privacy and reputation

The effect of Clause 27 is discussed in ‘Property rights’, above. Permitting an inspector to enter and move about within a place, including private property such as a livestock slaughter facility, limits a person’s right to privacy and reputation as an inspector could intentionally or inadvertently access information about the person or their business dealings that could be considered private or affects their reputation. For example, an inspector may need to enter the office of a livestock slaughter facility to access CCTV recordings which may expose the inspector to information about the person who owns the facility or their business dealings.

Under section 25 of the HR Act, “a person has the right not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have the person’s reputation unlawfully attacked.” Permitting an inspector to enter and stay at a livestock slaughter facility limits the owner of that facility’s right to privacy and reputation as it potentially allows an inspector to access private information.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person’s property. In this context, case authority suggests that ‘arbitrarily’ refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any ‘de facto expropriation’ by means of a substantial restriction in fact of a person’s use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Providing inspectors with the power to enter a livestock slaughter facility without consent, when a horse is at the facility will support the detection of animal welfare risks and compliance of these facilities with Queensland’s animal welfare laws. The power allows inspectors to undertake proactive compliance at a livestock slaughter facility, without the need for consent or to hold an animal welfare concern. Supporting the enforcement of requirements legislated by an elected Parliament is consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a livestock slaughter facility owner’s property rights by providing inspectors with the power to enter a livestock slaughter facility, without consent, when a horse is at the facility

directly supports the purpose of ensuring that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives to the amendments. To not provide inspectors with the power to enter a livestock slaughter facility without consent or an animal welfare concern would make them unable to undertake proactive compliance in livestock slaughter facilities and would not achieve the purpose of the amendments.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

The amendments limit the property rights of an owner of a livestock slaughter facility to the narrow extent of allowing inspectors to enter a livestock slaughter facility, without consent, when a horse is at the facility. The limitation is necessary to ensure that inspectors can undertake proactive compliance at livestock slaughter facilities, which helps ensure that animal welfare risks can be detected and that these facilities comply with Queensland's animal welfare laws. This outweighs the benefit of protecting the owners' property rights with respect to controlling who enters their facility. This limitation aligns with community expectations for the treatment of animals in Queensland, including that governments should take a proactive rather than a reactive approach to animal welfare issues. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects a person from unlawful or arbitrary interference and attacks on their privacy, family, home, correspondence, and reputation. This right is modelled on article 17 of the ICCPR.

The scope of the right to privacy is very broad and includes the protection of personal information which extends to a person's workplace. This right is based on Article 17 of the Universal Declaration of Human Rights

Human rights only apply to a natural person, and although the entry requirements will apply to a livestock processing facility the amendments have the potential to limit the right to privacy and reputation of persons employed or present at the facility during the presence of the inspectors if evidence obtained in the course of an investigation relates to the activities of an employee.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the human rights limitation is discussed in "Property rights", above.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person who owns a livestock slaughter facility's right to privacy and reputation by providing inspectors with the power to enter a livestock slaughter facility, without consent, when a horse is at the facility directly supports the purpose of ensuring that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The availability of less restrictive and reasonably available alternatives is discussed in "Property rights", above.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit the right to privacy and reputation of an owner of a livestock slaughter facility to the extent of allowing inspectors to enter a livestock slaughter facility, without consent, when a horse is at the facility which potentially allows an inspector to access private information about the person and their business dealings. The limitation is necessary to ensure that inspectors can undertake proactive compliance at livestock slaughter facilities, which helps ensure that animal welfare risks can be detected and that these facilities comply with Queensland's animal welfare laws. This outweighs the benefit of protecting the owners' right to privacy and reputation with respect to inspectors accessing information about the person or their business dealings either as part of or incidental to the exercise of their powers. This limitation aligns with community expectations for the treatment of animals in Queensland, including that governments should take a proactive rather than a reactive approach to animal welfare issues. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

- (f) any other relevant factors

The amendments implement recommendation 10.2.6 of the Martin Inquiry.

Requirement to notify the department of horse arrival

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)

The human right engaged or limited by this aspect of the Bill is the right privacy and reputation (HR Act, section 25).

Privacy and reputation

Clause 22 inserts new Chapter 4B (Obligations relating to livestock slaughter facilities), including Part 3 (Requirement to notify), into the ACPA. New section 93Z (Owner of livestock slaughter facility must notify chief executive of particular matters) requires the owner of a livestock slaughter facility to give the chief executive notice of the arrival of any horse at the facility. A maximum penalty of 300 penalty units applies. This notice must be made in the approved form and given no later than 2 business days before the horse arrives at the facility

(new section 93Z(2)). If the owner become aware of the horse's arrival less than 2 business days beforehand, the notice must be given as soon as possible after the owner becomes aware (new section 93Z(3)). These amendments support the new inspector's power to enter a livestock processing facility as it provides an avenue for inspectors to become aware of animals entering the facility, of which they would otherwise be unlikely to be aware.

Section 25(a) of the HR Act states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Requiring the owner of a livestock processing facility to notify the department each time a horse arrives at that facility limits that person's right to privacy and reputation with respect to the conduct of their business.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Requiring the owner of a livestock slaughter facility to give notice of the arrival of any horse at that facility will support the detection of animal welfare risks and compliance of these facilities with Queensland's animal welfare laws. The requirement allows inspectors to become aware of livestock presence at a facility of which they would otherwise not be aware, which allows inspectors to exercise the inspectors' power to enter a livestock facility, without consent, when livestock is at the facility. Supporting the enforcement of requirements legislated by an elected Parliament is consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person who owns a livestock slaughter facility's right to privacy and reputation by requiring them to give notice of the arrival of any horse at that facility directly achieves the purpose of supporting the detection of welfare risks and ensuring that that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives to the amendments. To not require the owner of a livestock slaughter facility to give notice of the arrival of any horse at the facility would stymie the operation of the new inspectors' power to enter a livestock slaughter facility when livestock is at the facility as this is the primary avenue through which inspectors would become aware of that presence. The purpose of the amendments would therefore not be achieved.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit the right to privacy and reputation of an owner of a livestock slaughter facility to the extent of requiring the owner of a livestock slaughter facility to give the chief executive notice of the arrival of any horse at the facility. The limitation is necessary to ensure that inspectors can undertake proactive compliance at livestock slaughter facilities, which helps ensure that animal welfare risks can be detected and that these facilities comply with Queensland's animal welfare laws. This outweighs the benefit of protecting the owners' right to privacy and reputation with respect to the business dealings of their facility. This limitation aligns with community expectations for the treatment of animals in Queensland, including that governments should take a proactive rather than a reactive approach to animal welfare issues. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

The amendments implement recommendation 10.2.7 of the Martin Inquiry.

Reporting and recording requirements for livestock slaughter facilities

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human right engaged or limited by this aspect of the Bill is the right to privacy and reputation (HR Act, section 25).

Clause 48 inserts new Chapter 5A (Reporting and recording requirements for livestock slaughter facilities) into the RI Act, including new section 210A (Reporting requirement for supplier of horses to livestock slaughter facilities) and new section 210B (Records to be kept by owner of livestock slaughter facility).

New section 210A provides that a person who supplies a horse to a livestock slaughter facility (the supplier) must give certain information to the owner of the facility. The information includes:

- if the horse has a brand, a photograph or drawing of the brand;
- the horse's microchip number;

- the supplier's contact details;
- the day the supplier took possession of the horse;
- the contact details of the person who transported the horse to the facility.

A maximum penalty of 200 penalty units will apply.

New section 210B provides that the owner of a livestock facility must keep a record of certain information about each horse that arrives at the facility. The information includes:

- the day the horse arrives;
- the horse's microchip number;
- the information provided to the owner in relation to the supply of the horse under section 210A;
- other information prescribed by regulation.

A maximum penalty of 200 penalty units will apply. The records must be kept for at least 2 years after the day on which the horse arrives at the facility (section 210B(2)). A maximum penalty of 200 penalty units will apply.

Section 25(a) of the HR Act states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Requiring a person who supplies a horse to a livestock slaughter facility to give and requiring the owner of a livestock slaughter facility to keep certain information, including personal information, relevant to a horse that arrives at the facility limits the right to privacy and reputation with of each person whose details are given or kept. This includes the supplier, the person who transported the horse to the facility, and any person connected to the horse's brand or microchip information.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Requiring a person who supplies a horse to a livestock slaughter facility to give and requiring the owner of a livestock slaughter facility to keep certain information in relation to a horse that arrives at the facility will protect animal welfare by ensuring that QRIC is provided with the information it requires to effectively monitor the rehoming of retired racehorses, particularly to ensure that at least two genuine attempts have been made to rehome a horse before the horse is supplied for slaughter.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to privacy and reputation by including their personal information amongst the information that is required to be given and kept in relation to a horse that arrives at a livestock slaughter facility is necessary to achieve the purpose of protecting animal welfare through ensuring that QRIC is provided with the information it requires to effectively monitor the rehoming of retired racehorses. Supporting the enforcement of requirements legislated by an elected Parliament is consistent with a free and democratic society based on human dignity, equality, and freedom. .

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no other reasonably available alternatives to obtaining the information required for QRIC to monitor the number of horses that could not be rehomed.

There are no less restrictive and reasonably available alternatives to the amendments. To not require the specified information to be given and kept in relation to a horse that arrives at a livestock slaughter facility would hinder QRIC's ability to monitor the rehoming of retired racehorses. It is also not feasible or practical for QRIC to be present at a livestock processing facility to monitor for any retired racehorses being processed.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit a person's right to privacy and reputation to the extent of requiring personal information about the supplier, the person who transported the horse to the facility, and any person connected to the horse's brand or microchip to be given and kept in relation to a horse that arrives at a livestock slaughter facility. The limitation is necessary to protect animal welfare by ensuring that QRIC is provided with the information it requires to effectively monitor the rehoming of retired racehorses, particularly to ensure that at least two genuine attempts have been made to rehome a horse before the horse is supplied for slaughter.

Personal information is safeguarded by the privacy obligations in the *Information Privacy Act 2009* (IPA).

The limitation on the right to privacy and reputation is therefore reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

The amendments implement Recommendation 6.4 of the Martin Inquiry.

Implementing the recommendations of the QAO audit report

Accountability and accreditation of inspectors

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human right engaged or limited by this aspect of the Bill is the right to privacy and reputation (HR Act, section 25).

The QAO report *Regulating animal welfare services Report 6:2021-22* recommended that the department amend the ACPA to “clarify the accountabilities and accreditation of inspectors.” This is because the QAO reported that the department does not oversee whether inspectors remain suitable for the period of their appointment and the accountability of RSPCA inspectors to the department is left open to interpretation of their employment conditions and various laws and regulations. This situation casts doubt about the extent of the department’s authority to oversee and act to hold the inspectors accountable for their actions.

Clause 24 inserts new chapter 6, part 1, division 1A (Cancellation or suspension of appointment) which provides for how the appointment of an inspector under the ACPA may be cancelled or suspended.

New section 118B (Notice of proposed action) requires the chief executive to give the inspector a notice stating:

- the action (the proposed action) the chief executive proposes to take under this division;
- the grounds for the proposed action (as set out in new section 118A);
- the facts and circumstances that are the basis for the grounds;
- if the proposed action is to suspend the appointment—the proposed suspension period;
- that the inspector may make, within a stated period, make written representations to show why the proposed action should not be taken.

The stated period must not end earlier than 28 days after the inspector is given the notice (new section 118B(3)). New section 118C requires that the chief executive must consider any written representations made under section 118B.

If the chief executive decides not to take the proposed action, the chief executive must give the inspector notice of the decision (section 118C(3)). If, after considering any written representations made under section 118B, the chief executive believes a ground exists to take the proposed action, the chief executive may decide to:

- if the proposed action was to suspend the appointment—suspend the appointment for the proposed suspension period; or
- if the proposed action was to cancel the appointment—cancel the appointment; or suspend it for a fixed period (section 118D).

The chief executive is required to give the inspector an information notice about the decision (section 118E). The decision takes effect on the day the notice is given to the inspector or another date stated in the notice, whichever is later.

Under section 25 of the HR Act, a person has the right “not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with.” The right to privacy protects against interference with work, including access to a profession. Providing for the cancellation or suspension of an inspector’s appointment under the ACPA may limit this right.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person’s private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from ‘unlawful’ or ‘arbitrary’ interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone’s reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Empowering the department to cancel or suspend the appointment of an inspector under the ACPA implements the QAO recommendation and provides the department with sufficient oversight over inspectors’ tenure. The QAO is established to ensure better public services for Queenslanders and as an independent entity their purpose is to maintain confidence in accountability transparency and reporting. Implementing the QAO’s recommendation to the duly elected Parliament is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person’s right to privacy and reputation by providing for the cancellation or suspension of their appointment as an inspector directly achieves the amendment’s purpose of implementing the QAO’s recommendations to provide the department with sufficient oversight of inspectors’ tenure. Providing this oversight will enable that the department can ensure that inspectors are suitable to carry out their duties.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives to the amendments that would equally implement the QAO's recommendations. The less restrictive alternative of allowing for the cancellation or suspension of an inspector appointment would not provide the department with sufficient oversight of inspector tenure.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit a person's right to privacy and reputation to the extent of allowing the department to cancel or suspend their inspector appointment, therefore interfering that person's access to work. The benefits of providing for the cancellation and suspension of inspector appointments – providing the department suitable oversight of inspector tenure – outweigh the benefit of protecting a person's right to privacy and reputation with respect to protection from interference with work. The community expects that the enforcement of Queensland's animal welfare law is carried out impartially and independently. The limitation aligns with this expectation. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

(f) any other relevant factors

In the QAO's final report, the department agreed to the recommendations.

Oversight of investigations and prosecutions

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human right limited by this aspect of the Bill is the right to privacy and reputation (HR Act, section 25).

The QAO report *Regulating animal welfare services Report 6:2021-22* recommended that the department amend the ACPA to “have oversight of recommendations from inspectors for prosecutions [...]” and “provide it with access to all information that inspectors collect as part of their investigations and prosecutions.” This is because whilst the activity agreement between the department and the RSPCA states that procedures for prosecution should align with the department's most current prosecution policy (November 2018) and model litigant principles, the department has not obtained assurance that the RSPCA has implemented it, does not require the RSPCA to report against compliance with policies and procedures, and does not have visibility of the RSPCA's processes for prosecutions.

Clause 35 inserts new section 215DA (Disclosure requirement). This section provides that where an inspector is investigating an alleged animal welfare offence the chief executive may ask RSPCA Queensland (the RSPCA) to give them copies of, or access to, all documents and information relating to the investigation that are held by the RSPCA. The RSPCA is required to provide this information and must do so by the day stated in the chief executive's notice (the stated day cannot be less than 14 days after the notice is given to the RSPCA).

Clause 33 amends section 178 (Offences under Act are summary) to insert a new subsection (3) to provide that a person must be granted approval from the chief executive before starting proceedings against any other person for an offence against the ACPA. In order for the chief executive to decide whether to approve a proceeding, the chief executive would foreseeably require detailed information about the proceeding.

Requiring the RSPCA to provide all information about an investigation to the chief executive, either upon request or for approval of a proceeding, infringes upon the right to privacy and reputation of the person that is the subject of the investigation as highly sensitive information about that person and their conduct would be disclosed, accessed and used across agencies.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendments is to implement the recommendations of the QAO report and through this ensure that the department has sufficient oversight over investigations and prosecutions conducted by the RSPCA. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to privacy and reputation by requiring the RSPCA to provide all information about an investigation to the chief executive infringes and requiring the chief executive to decide on prosecution directly achieves the amendment's purpose of implementing the QAO's recommendations and through this ensuring that the department has sufficient oversight over investigations and prosecutions conducted by the RSPCA.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives to the amendments that would equally implement the QAO's recommendations. The less restrictive alternative of not requiring prosecutions to be approved by the chief executive or for all information about investigations and prosecutions to be provided to the department would not provide the department with sufficient oversight of the management of prosecutions and would not achieve the purpose of the recommendation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation of a person's right to privacy and reputation is restricted to the narrow extent of requiring the RSPCA to provide all information about an investigation to the chief executive and requiring the chief executive to decide on prosecutions on the basis of relevant information. The restriction only relates to information about the person collected in the process of an investigation against the person. The impost is also likely to be minor due to the largely administrative and operational nature of the information transfer – it is only to be used for the purpose of oversight and prosecution decision-making and is otherwise protected by the IPA. This restriction is necessary to implement the QAO's recommendations. The community expects that the enforcement of Queensland's animal welfare law is carried out impartially and independently. The limitation aligns with this expectation. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

(f) any other relevant factors

In the QAO's final report, the department agreed to the recommendations.

Inspectors' conflicts of interest

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)

The human right engaged or limited by this aspect of the Bill is the right to privacy and reputation (HR Act, section 25).

The Queensland Audit Office (QAO) report 'Regulating animal welfare services' recommended that the department amend the ACPA to include requirements in the legislative framework for managing conflicts of interest and that the department oversee how the RSPCA is managing conflicts of interest relating to its enforcement function. This is because whilst the RSPCA may have controls and processes for managing conflicts of interest and aligning with regulatory good practice, the department has no visibility of them and therefore cannot assure itself of their suitability or effectiveness.

Clause 26 inserts new chapter 6, part 1, division 3 (Training and reporting obligations). New section 121B (Conflicts of interest) requires an inspector to give notice to the chief executive of all interests, pecuniary or otherwise, that the inspector has, or acquires, and that conflict, or could cause conflict, with the proper performance of the inspector's functions. A maximum penalty of 20 penalty units will apply.

Under section 25(a) of the HR Act, a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Requiring a person to disclose information about their personal interests to the chief executive limits the right to privacy.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendments is therefore to protect the integrity of the animal welfare enforcement system by requiring inspectors to disclose all interests they hold that do or could conflict with the proper performance of the inspector's functions. Disclosures of this kind will enable the department to improve its oversight of the RSPCA with respect to its management of those conflicts. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to privacy and reputation by requiring them to disclose all interests they hold that do or could conflict with the proper performance of the inspector's functions directly achieves the amendment's purpose of implementing the QAO's recommendations to include in the legislative requirements a framework for managing conflicts of interest and allow the department to oversee how the RSPCA is managing conflicts of interest relating to its enforcement function. Requiring disclosure directly to the chief executive of the department will ensure that the department can oversee the RSPCA's management of the disclosed conflicts of interests.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available alternatives to the amendments that would equally implement the QAO's recommendations. The less restrictive alternative of allowing inspectors to disclose actual or potential conflicts of interests only to the RSPCA would not provide the department with sufficient oversight of the management of those interests and would not achieve the purpose of the recommendation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The restriction on a person's right to privacy and reputation is limited to the narrow extent of requiring a person, who is an inspector under the ACPA, requiring them to disclose all interests they hold that do or could conflict with the proper performance of the inspector's functions to the chief executive. The restriction only relates to information about the person's interests that would conflict with their role as an inspector carrying out enforcement functions.

This restriction is necessary to implement the QAO's recommendations to include in the legislative requirements a framework for managing conflicts of interest and allow the department to oversee how the RSPCA is managing conflicts of interest relating to its enforcement function. The community expects that the enforcement of Queensland's animal welfare law is carried out impartially and independently. The limitation aligns with this expectation. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

(f) any other relevant factors

In the QAO's final report, the department agreed to the recommendations.

Disability Services Act 2006

Aggravated breach of duty of care – recognition under DSA as a serious offence

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are the right to recognition and equality before the law (HR Act, section 13) and the right to a fair hearing (HR Act, section 31).

Recognition and equality

Section 17 (Breach of duty of care prohibited) of the ACPA provides that (1) a person in charge of an animal owes a duty of care to it and (2) the person must not breach the duty of care. At present, a maximum penalty of 300 penalty units or 1 year's imprisonment applies.

Clause 5 amends section 17 to provide the maximum penalty for beach of duty of care as follows:

- if the offence causes death, serious deformity, serious disablement or prolonged suffering of the animal—2,000 penalty units or 3 years imprisonment; or
- otherwise—300 penalty units or 1 year's imprisonment.

Schedule 2 (Current serious offences) of the DSA provides the serious offences for which a charge or conviction may exclude a person from obtaining a disability worker screening clearance to carry out disability work under that Act. The animal cruelty offence under section 18 of the ACPA is already prescribed as a serious offence (Schedule 2, item 1).

Clause 43 amends Schedule 2 of the DSA to prescribe an aggravated breach of duty of care under section 17 of the ACPA as a serious offence. Prescribing the offence as a serious offence has the effect of requiring an applicant for a disability worker screening clearance with a charge or conviction for the offence, if committed or alleged to have been committed as an adult, to be issued with an exclusion, unless they can demonstrate exceptional circumstances.

Once a person has been issued with an exclusion, it is an offence for the person to carry out, or to be engaged by a registered NDIS service provider or funded service provider to carry out, certain NDIS or state disability work. An exclusion remains in force unless cancelled on the person's application, subject to certain limitations and requirements under the DSA.

Section 15(3) of the HR Act provides that "Every person is equal before the law and is entitled to the equal protection of the law without discrimination." Section 15(4) of the HR Act further provides that "Every person has the right to equal and effective protection against discrimination." Restricting a person's ability to obtain a disability worker screening clearance on the basis of a charge or conviction for aggravated breach of duty of care restricts their right to recognition and equality before the law as it interferes with the right of persons to be treated equally in their ability to apply for, access, and maintain work in relation to the provision of disability services.

Fair hearing

The effect of the amendments relating to aggravated breach of duty of care is discussed at 'Recognition and equality', above.

The HR Act states that a person has the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal following a fair, public hearing. The purpose of the right to a fair hearing, as it relates to the Bill, involves the right of persons to obtain a fair hearing and be afforded procedural fairness regarding administrative decisions in relation to employment in the provision of disability services.

Prescribing the new aggravated breach of duty of care offence under the ACPA as a serious offence under the DSA engages this right by requiring that certain administrative decisions to be made in relation to the person in certain circumstances. In particular, a person who applies for a disability worker screening clearance must—if they have a charge or conviction for the offence committed or alleged to have been committed as an adult—be issued with an exclusion, unless they can demonstrate that exceptional circumstances exist. That person is prohibited from applying for a disability worker screening clearance, unless the exclusion is cancelled.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Recognition and equality

(a) the nature of the right

The rights to equality and freedom from discrimination in section 15 of the HR Act stand alone, and are also part of all of the other human rights in the Act.

Subsection 1 recognises that humanity means that every individual has a legal personality. It means that everyone has legal ability, for example, to enter into transactions to buy and sell, to operate a bank account, and to access government services.

Subsection 2 ensures that the human rights in the HR Act are enjoyed by everyone without discrimination. Discrimination of a person is defined in the Act as including discrimination that is unlawful under the *Anti-Discrimination Act 1991*.

Subsection 3 is known as the right to equality. It ensures that all laws and policies are applied equally, and do not have a discriminatory effect. Public entities, as well as courts and tribunals, are required to treat all people equally when applying the law. It also requires that the laws themselves provide equal protection for everyone. Sometimes it will be necessary for certain groups to be treated differently in order to have equal protection of the law. This is known as substantive equality.

Subsection 4 provides a right to equal and effective protection against discrimination. It gives people a separate and positive right to be effectively protected against discrimination.

Subsection 5 makes it clear that where measures are taken to assist people who have been disadvantaged because of discrimination, the measures are not taken to be discrimination. The purpose is to achieve substantive equality. This is known as the ‘special measures’ provision, and is consistent with the exemption for welfare measures in section 104 of the *Anti-Discrimination Act 1991*.

This right is based on Articles 16 and 26 of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The disqualifying offences framework under the DSA prescribes a number of offences as disqualifying and serious offences for the purposes of the disability worker screening system, in accordance with the nationally consistent categorisation of offences under the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme (the IGA)*. The core objective of nationally consistent worker screening is to protect people with a disability from the risk of harm and unsafe supports or services. This objective is supported by the disqualifying offences framework, which identifies

a nationally consistent set of offences which are considered so heinous or indicative of serious underlying risk that the offender may be automatically considered to constitute an unacceptable risk of harm to people with disability - this includes the categorisation and prescribing of animal cruelty offences (other than particularly serious animal cruelty offences, which are disqualifying offences) as serious offences.

The broad purpose of the amendments is therefore to protect people with a disability from an unacceptable risk of harm by preventing persons who have committed an aggravated breach of duty of care offence under the ACPA from becoming disability workers. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to recognition and equality before the law by restricting that person's ability to obtain a disability worker screening clearance on the basis of a charge or conviction for aggravated breach of duty of care directly achieves the amendments' purpose of protecting people with a disability from an unacceptable risk of harm posed by such persons undertaking disability work. The amendments achieve this intent by ensuring there are significant barriers to accessing disability work for people with charges or convictions for an offence which is considered so heinous or indicative of serious underlying risk that the offender may be automatically considered to constitute an unacceptable risk of harm to people with disability. Prescribing this offence as a serious offence will support a nationally consistent disqualifying offences framework.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The disqualifying offences framework under the DSA reflects substantial interjurisdictional consideration of the categories of offences which are of such heinousness or so indicative of serious underlying risk that a person with a charge or conviction is considered to pose an unacceptable risk of harm to people with disability. Having regard to its close similarity to animal cruelty, which all states and territories—through the IGA and subsequently through their parliaments—have accepted as an offence in this category, similarly prescribing the aggravated breach of duty offence as a serious offence is in accordance with the nationally agreed approach.

There are accordingly no less restrictive and reasonably available ways to achieve the purpose of the proposed amendment. Prescribing the new aggravated breach of duty offence as a serious offence for the disability worker screening system, and the consequent limitation on affected persons' right to access work arrangements on an equal basis, is necessary to maintain the nationally consistent approach which includes a mechanism by which persons can be permanently excluded from working with people with disability. Not prescribing the offence could lead to inconsistencies between jurisdictions, impacting the certainty of a nationally consistent approach for workers, providers and jurisdictions, and potentially undermining the critical protections afforded by this approach.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The addition of the new aggravated breach of duty offence under the ACPA as a serious offence for the disability worker screening system under the DSA limits the right to recognition and equality of persons who are excluded from certain types of disability work. However, this limitation is balanced against the necessity of maintaining national consistency through the prescribing of the offence, and by the direct contribution that prescribing the offence makes to ensuring people with disability are protected from unsafe supports and services. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

Fair hearing

- (a) the nature of the right

The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It provides a right for parties to be heard and to respond to allegations made against them, and requires courts be unbiased and independent. What constitutes a ‘fair’ hearing will depend on the facts of the case and will require a number of public interest factors to be weighed.

The right applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

The right to a fair hearing is based on Article 14 of the ICCPR.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the human rights limitation is discussed in “Recognition and equality”, above.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person’s right to a fair hearing by restricting that person’s ability to obtain a disability worker screening clearance on the basis of a charge or conviction for aggravated breach of duty of care directly achieves the amendment’s purpose of protecting people with a disability from an unacceptable risk of harm posed by such persons undertaking disability work. The amendments achieve this purpose by ensuring there are significant barriers to accessing disability work for people with charges or convictions for an offence which is considered so heinous or indicative of serious underlying risk that the offender may be automatically considered to constitute an unacceptable risk of harm to people with disability. Prescribing this offence as a serious offence will support a nationally consistent disqualifying offences framework.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The availability of less restrictive and reasonably available alternatives is discussed in “Recognition and equality”, above.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The addition of the new aggravated breach of duty offence under the ACPA as a serious offence for the disability worker screening system under the DSA limits the right to a fair hearing of persons who are excluded from certain types of disability work. However, this limitation is balanced against the necessity of maintaining national consistency through the prescribing of the offence, and the direct contribution that prescribing the offence makes to ensuring people with disability are protected from unsafe supports and services. As such, the limitation on human rights is reasonable and demonstrably justified in the circumstance.

Cross-reference within DSA

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human right engaged or limited by this aspect of the Bill is the right to privacy and reputation (HR Act, section 25).

Clause 42 amends section 48(1)(c) of the DSA to correct an error. This correction involves a minor and technical amendment to clarify that members of all Ministerial advisory committees established under section 222 of the DSA are required to hold a Queensland disability worker screening clearance. As currently drafted, that section is inadvertently limited in its application to committees established to advise on the disability services complaints management system under subsection 222(a) only, rather than to committees established to advise on disability issues under section 222 generally. This is of particular relevance to the Queensland Disability Advisory Council (QDAC), which is established under subsection 222(b) of the DSA.

This amendment will require all prospective Ministerial advisory committee members to be screened through the State disability worker screening system as a condition of their appointment. This means their criminal history and other assessable information may be obtained and risk-assessed by the department administering the DSA.

Under section 25(a) of the HR Act, a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Under section 25(b) of the HR Act, a person has the right not to have their reputation unlawfully attacked. Requiring a prospective member of a Ministerial advisory committee to undertake this screening infringes upon their right to privacy and reputation as highly sensitive information about that person and their conduct is being accessed and used.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the ICCPR.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to correct a minor error in section 222 of the DSA and through this clarify that members of all Ministerial advisory committees established under section 222 of the DSA are required to hold a Queensland disability worker screening clearance.

QDAC's purpose includes providing independent advice to the Minister for Disability Services on major policy, program, practice and systemic issues impacting people with disability and their families and carers, with a particular focus on lived experience, and supporting community and sectoral engagement. Having regard to QDAC's critical sectoral leadership role, its sectoral engagement functions and its ability to influence key decisions about disability services, requiring that its members obtain clearances (and the associated limitation on human rights) is consistent with the purpose of the disability worker screening system of protecting people with disability from the risk of harm and unsafe supports or services. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to privacy and reputation by requiring them to hold a Queensland disability worker screening clearance, and therefore undertake relevant screening, directly achieves the amendment's purpose of protecting people with a disability from the risk of harm and unsafe supports or services by preventing persons who are unsuitable from becoming a Ministerial advisory committee member. Suitability screening all prospective members will result in unsuitable persons being excluded from committee membership.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the amendment's purpose. Having regard to the significant level of leadership, trust and influence with which QDAC and other Ministerial advisory committee membership is invested, the criminal history and other relevant information which will be able to be accessed and considered as part of the risk assessment process goes directly to the suitability of potential appointees.

The extent of limitation is minimised by the safeguards in place under the disability worker screening system, including processes that incorporate natural justice, which entitle affected persons to have any mitigating circumstances taken appropriately into account in the risk assessment and decision-making process. These include a show cause process, access to internal and external review, and the right to have an adverse decision reconsidered either periodically or where there is an exceptional change in the person's circumstances.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Having regard to the importance of ensuring the suitability of potential appointees to QDAC and other Ministerial advisory committees, the limitation strikes an appropriate balance between ensuring a key protection for people with disability is in place and the ability for prospective appointees to ensure their criminal history and other relevant information is considered in its proper context.

Conclusion

In my opinion, the Animal Care and Protection Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

MARK FURNER MP
Minister for Agricultural Industry Development and Fisheries
and Minister for Rural Communities

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