



# **Animal Care and Protection Act 2001**

**Current as at 1 December 2006**

# Information about this reprint

This Act is reprinted as at 1 December 2006. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

# Animal Care and Protection Act 2001

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# **Animal Care and Protection Act 2001**

[as amended by all amendments that commenced on or before 1 December 2006]

**An Act to promote the responsible care and use of animals and to protect animals from cruelty, and for other purposes**

## **Chapter 1 Preliminary**

### **Part 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Animal Care and Protection Act 2001*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **Part 2 Purposes and application of Act**

#### **Division 1 Purposes**

#### **3 Purposes of Act**

The purposes of this Act are to do the following—

- (a) promote the responsible care and use of animals;
- (b) provide standards for the care and use of animals that—
  - (i) achieve a reasonable balance between the welfare of animals and the interests of persons whose livelihood is dependent on animals; and
  - (ii) allow for the effect of advancements in scientific knowledge about animal biology and changes in community expectations about practices involving animals;
- (c) protect animals from unjustifiable, unnecessary or unreasonable pain;
- (d) ensure the use of animals for scientific purposes is accountable, open and responsible.

#### **4 How purposes are to be primarily achieved**

The purposes are to be primarily achieved by the following—

- (a) providing for regulations about codes of practice for animal welfare;
- (b) allowing regulations to require compliance with codes of practice;
- (c) imposing a duty of care on persons in charge of animals;
- (d) prohibiting certain conduct in relation to animals;
- (e) requiring a person using an animal for scientific purposes to comply with the scientific use code;
- (f) providing for the registration of certain users of animals for scientific purposes;
- (g) providing for the appointment of authorised officers to monitor compliance with compulsory code requirements and the scientific use code;
- (h) providing for the appointment of inspectors to investigate and enforce this Act;
- (i) allowing the Minister to establish an animal welfare advisory committee or another body to advise the Minister on animal welfare issues.

## **Division 2                      Application**

### **5            Act binds all persons**

- (1) Subject to sections 6 to 8, this Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

### **6            Application of Act to State for protected or wild animals**

This Act does not apply to the State for an animal only because it is—

- (a) a protected animal or an animal in the wild under the *Nature Conservation Act 1992*; and
- (b) the property of the State under that Act, another Act or the common law.<sup>1</sup>

### **7            Relationship with certain other Acts**

- (1) This Act does not affect the application of—
  - (a) the *Fisheries Act 1994*; or
  - (b) the *Nature Conservation Act 1992*; or
  - (c) the *Racing Act 2002*.
- (2) A person who lawfully does an act, or makes an omission, authorised under an Act mentioned in subsection (1) that would, but for this subsection, constitute an offence under this Act, is taken not to commit the offence by reason only of doing the act or making the omission.
- (3) However, subsection (2) does not apply if the act is the use of an animal for a scientific purpose.

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<sup>1</sup> See the *Nature Conservation Act 1992*, section 83 (Property in protected animals).

**8 Aboriginal tradition and Island custom**

- (1) This Act does not apply to or affect an act done, or omission made, by—
  - (a) an Aborigine under Aboriginal tradition; or
  - (b) a Torres Strait Islander under Island custom.
- (2) However, if a regulation prescribes conditions for the doing the act, or making the omission, subsection (1) only applies if the conditions have been complied with.
- (3) For the *Statutory Instruments Act 1992*, section 43,<sup>2</sup> a proposed regulation under subsection (2) is taken to be likely to impose appreciable costs on the community or part of the community.

**9 Act does not affect other rights or remedies**

- (1) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.
- (3) In addition, a breach of the duty of care imposed under this Act does not, of itself, give rise to an action for breach of statutory duty or another civil right or remedy.
- (4) This Act does not limit a court's powers under the *Penalties and Sentences Act 1992* or another law.

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<sup>2</sup> *Statutory Instruments Act 1992*, section 43 (Preparation of regulatory impact statement)



## Part 3 Interpretation

### Division 1 Dictionary

#### 10 Definitions

The dictionary in the schedule defines particular words used in this Act.

### Division 2 Key definitions

#### 11 What is an *animal*

- (1) An *animal* is any of the following—
- (a) a live member of a vertebrate animal taxon;  
*Examples—*
    - an amphibian
    - a bird
    - a fish
    - a mammal, other than a human being
    - a reptile
  - (b) a live pre-natal or pre-hatched creature as follows if it is in the last half of gestation or development—
    - (i) a mammalian or reptilian foetus;
    - (ii) an avian, mammalian or reptilian pre-hatched young;
  - (c) a live marsupial young;
  - (d) a live invertebrate creature of a species, or a stage of the life cycle of a species, from the class Cephalopoda or Malacostraca prescribed under a regulation for this paragraph.

*Examples of creatures of the class Cephalopoda—*

- octopi
- squid

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*Examples of creatures of the class Malacostraca—*

- crabs
- crayfish
- lobsters
- prawns

- (2) However, a human being or human foetus is not an animal.
- (3) To remove any doubt, it is declared that the following are not animals—
  - (a) the eggs, spat or spawn of a fish;
  - (b) a pre-natal, larval or pre-hatched creature, other than a creature mentioned in subsection (1)(b) or (c);
  - (c) another immature form of a creature, other than a creature mentioned in subsection (1)(a) to (c).

**12 Meaning of a *person in charge of an animal***

- (1) A person is a *person in charge* of an animal if the person—
  - (a) owns or has a lease, licence or other proprietary interest in the animal; or
  - (b) has the custody of the animal; or
  - (c) 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.
- (2) Despite subsection (1)(a), a person who holds a mortgage or other security interest in an animal only becomes a person in charge of the animal if the person takes a step to enforce the mortgage or other security.

## Chapter 2      Codes of practice

### 13      Making codes of practice

- (1) A regulation may make codes of practice about animal welfare.<sup>3</sup>
- (2) Without limiting subsection (1), a code of practice may be made about any of the following—
  - (a) the care and handling of animals;
  - (b) the use of animals—
    - (i) as companions; or
    - (ii) for commercial, entertainment, recreational, scientific or other purposes; or
    - (iii) in any of the following—
      - aquaria
      - boarding kennels
      - pet shops
      - theme parks
      - zoos;
  - (c) the performance of medical or surgical procedures on animals;
  - (d) the use of electric devices on animals;
  - (e) the transportation of livestock and other animals;
  - (f) animal slaughtering establishments and the preparation or treatment of animals for human consumption;
  - (g) the snaring or trapping of animals;

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<sup>3</sup> See the *Statutory Instruments Act 1992*, section 23 (Statutory instrument may make provision by applying another document) for the power by regulation to make provision for a matter, including, for example, a code of practice, by reference to another document.

- (h) the control of animals that, under section 42, are feral or pest animals;
- (i) aquaculture or livestock production.

#### **14 Tabling and inspection of documents adopted in codes of practice**

- (1) This section applies if—
  - (a) a regulation that makes a code of practice adopts, applies or incorporates the whole or a stated part of another document (the *adopted provisions*); and
  - (b) the adopted provisions are not part of, or attached to, the regulation.
- (2) The Minister must, within 14 sitting days after the regulation is gazetted, table a copy of the adopted provisions in the Legislative Assembly.
- (3) If the adopted provisions are amended, the Minister must, within 14 sitting days after the amendment is made, table a copy of the provisions as amended in the Legislative Assembly.
- (4) The chief executive must keep a copy of the adopted provisions, as in force from time to time, open for inspection, free of charge, by members of the public during office hours on business days at—
  - (a) the department's head office; and
  - (b) other places the chief executive considers appropriate.
- (5) A failure to comply with this section does not invalidate or otherwise affect the regulation.

#### **15 Regulation may require compliance with code of practice**

- (1) A regulation may require a person to comply with the whole or a stated part of a code of practice.
- (2) A requirement under subsection (1) is called a *compulsory code requirement*.

- (3) A person to whom a compulsory code requirement applies must comply with the requirement.

Maximum penalty for subsection (3)—300 penalty units.

## **16 Use of code of practice in proceeding**

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

# **Chapter 3 General animal offences**

## **Part 1 Breach of duty of care**

### **17 Breach of duty of care prohibited**

- (1) A person in charge of an animal owes a duty of care to it.  
(2) The person must not breach the duty of care.<sup>4</sup>

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (3) For subsection (2), a person breaches the duty only if the person does not take reasonable steps to—
- (a) provide the animal's needs for the following in a way that is appropriate—
    - (i) food and water;
    - (ii) accommodation or living conditions for the animal;
    - (iii) to display normal patterns of behaviour;
    - (iv) the treatment of disease or injury; or

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<sup>4</sup> See also section 9 (Act does not affect other rights or remedies).

- (b) ensure any handling of the animal by the person, or caused by the person, is appropriate.
- (4) In deciding what is appropriate, regard must be had to—
- (a) the species, environment and circumstances of the animal; and
- (b) the steps a reasonable person in the circumstances of the person would reasonably be expected to have taken.

*Examples of things that may be a circumstance for subsection (4)(b)—*

- a bushfire or another natural disaster
- a flood or another climatic condition

## **Part 2                      Cruelty offences**

### **18      Animal cruelty prohibited**

- (1) A person must not be cruel to an animal.
- Maximum penalty—1000 penalty units or 2 years imprisonment.
- (2) Without limiting subsection (1), a person is taken to be cruel to an animal if the person does any of the following to the animal—
- (a) causes it pain that, in the circumstances, is unjustifiable, unnecessary or unreasonable;
- (b) beats it so as to cause the animal pain;
- (c) abuses, terrifies, torments or worries it;
- (d) overdrives, overrides or overworks it;
- (e) uses on the animal an electrical device prescribed under a regulation;
- (f) confines or transports it—
- (i) without appropriate preparation, including, for example, appropriate food, rest, shelter or water; or

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- (ii) when it is unfit for the confinement or transport; or
- (iii) in a way that is inappropriate for the animal's welfare; or

*Examples for subparagraph (iii)—*

- placing the animal, during the confinement or transport, with too few or too many other animals or with a species of animal with which it is incompatible
- not providing the animal with appropriate spells

- (iv) in an unsuitable container or vehicle;
- (g) kills it in a way that—
  - (i) is inhumane; or
  - (ii) causes it not to die quickly; or
  - (iii) causes it to die in unreasonable pain;
- (h) unjustifiably, unnecessarily or unreasonably—
  - (i) injures or wounds it; or
  - (ii) overcrowds or overloads it.

## 19 Unreasonable abandonment or release

- (1) A person in charge of an animal must not abandon or release an animal unless the person has a reasonable excuse or the abandonment or release is authorised by law.

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (2) A person must not, unless the person has a reasonable excuse, release an animal from the custody of the person in charge of it.

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (3) In this section—

*abandon*, an animal, includes leaving it for an unreasonable period.

## Part 3 Prohibited events

### Division 1 Preliminary

#### 20 Meaning of *prohibited event*

- (1) A *prohibited event* means any of the following events—
- (a) a bullfight or organised event held for public entertainment in which a person provokes a bull in a way that is likely to cause it to charge;
  - (b) a cockfight or dogfight or other event in which an animal fights, or is encouraged to fight, with another animal;
  - (c) coursing or another event in which an animal is released from captivity to be hunted, injured or killed by another animal;
  - (d) an event in which an animal is released from captivity to be hunted, or shot at by, a person without an appropriate acclimatisation period between the release and the hunting to reduce stress to the animal;
  - (e) an event prescribed under a regulation held for public enjoyment or entertainment, with or without charge to anyone present, at which anyone participating in the event causes an animal pain.

*Example of causing an animal pain for paragraph (e)—*

someone does, or attempts to, catch, fight or throw the animal

- (2) However, conducting a rodeo is not a prohibited event merely because of action taken in the rodeo to protect a competitor or other person from an animal being used in the rodeo.

*Example for subsection (2)—*

using a 'rodeo clown' to distract an animal being used in the rodeo from a competitor or other person



## **Division 2                    Prohibitions**

### **21            Participation in prohibited event**

- (1) A person must not—
- (a) organise a prohibited event; or
  - (b) knowingly—
    - (i) permit a prohibited event to be organised; or
    - (ii) supply an animal for use in a prohibited event; or
    - (iii) supply premises for use for a prohibited event.

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (2) In this section—

*organise* a prohibited event includes taking part in organising the event.

### **22            Presence at prohibited event**

A person must not be present at a prohibited event unless the person has a reasonable excuse.

Maximum penalty—150 penalty units or 1 year's imprisonment.

## **Part 4                            Regulated surgical procedures**

### **Division 1                    Regulated procedures for dogs**

#### **23            Cropping dog's ear**

- (1) A person, other than a veterinary surgeon, must not crop a dog's ear.

Maximum penalty—100 penalty units.

- (2) A veterinary surgeon must not crop a dog's ear unless the surgeon reasonably considers the cropping is in the interests of the dog's welfare.

Maximum penalty—100 penalty units.

- (3) In this section—

**crop**, a dog's ear, means to remove part of the ear to make the ear stand erect.

## **24 Docking dog's tail**

- (1) A person, other than a veterinary surgeon, must not dock a dog's tail unless the docking is done in a way prescribed under a regulation.

Maximum penalty—100 penalty units.

- (2) A veterinary surgeon must not dock a dog's tail unless—

- (a) the surgeon reasonably considers the docking is in the interests of the dog's welfare; or
- (b) the docking is done in a way prescribed under a regulation.

Maximum penalty—100 penalty units.

## **25 Debarking operations**

- (1) A person, other than a veterinary surgeon, must not perform an operation on a dog to prevent it from being able to bark or to reduce the volume of its bark (a **debarking operation**).

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (2) A veterinary surgeon must not perform a debarking operation on a dog unless the surgeon—

- (a) reasonably considers the operation is in the interests of the dog's welfare; or
- (b) has been given a relevant nuisance abatement notice and the surgeon reasonably considers the operation is the only way to comply with the notice without destroying the dog; or

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- (c) has been given an appropriate notice and the surgeon reasonably considers the only way to stop the dog's barking from being a nuisance, without destroying the dog, is to perform the operation.

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (3) For subsection (2)(c), an appropriate notice means a notice signed by each owner of the dog asking the veterinary surgeon to perform the operation and stating each of the following—
- (a) that, in the opinion of each owner, the dog's barking is a nuisance;
  - (b) attempts have made to prevent the dog's barking from being a nuisance;
  - (c) for each attempt—
    - (i) the nature of the attempt; and
    - (ii) enough details of the attempt to allow the veterinary surgeon to form a view under subsection (2)(c);
  - (d) that each attempt has been unsuccessful.

*Example of an attempt—*

behavioural approaches taken in consultation with a veterinary surgeon or animal behaviour expert

- (4) In this section—

***bark*** includes cry, howl and yelp.

***nuisance***, for barking, means interference with the reasonable comfort, peace or privacy of anyone.

***relevant nuisance abatement notice*** means the original, or a copy, of a notice as follows relating to the dog—

- (a) a nuisance abatement notice under the *Environmental Protection Act 1994* (an ***EPA notice***);
- (b) a notice, however called, under a local law if the notice—
  - (i) complies, or substantially complies, with the requirements for an EPA notice; or

- (ii) has the same, or substantially the same, purpose as an EPA notice.<sup>5</sup>

## **Division 2                    Regulated procedures for other animals**

### **26            Removal of cat's claw**

- (1) A person, other than a veterinary surgeon, must not remove a cat's claw.

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (2) A veterinary surgeon must not remove a cat's claw unless the surgeon reasonably considers the removal is in the interests of the cat's welfare.

Maximum penalty—300 penalty units or 1 year's imprisonment.

### **27            Docking tail of cattle or horse**

- (1) This section applies for an animal as follows—

- (a) cattle;  
(b) a horse.

- (2) A person, other than a veterinary surgeon, must not dock the animal's tail.

Maximum penalty—300 penalty units or 1 year's imprisonment.

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<sup>5</sup> For EPA notices generally, see the *Environmental Protection Regulation 1998*, section 6O (Duty to investigate nuisance complaint) and part 2A, division 3 (Nuisance abatement notices).

For the requirements for EPA notices, see the *Environmental Protection Regulation 1998*, section 6U (Requirements). For the purpose of an EPA notice, see the *Environmental Protection Regulation 1998* sections 6B (Object of pt 2A) and 6C (How object is achieved).

- (3) A veterinary surgeon must not dock the animal's tail unless the surgeon reasonably considers the docking is in the interests of the animal's welfare.

Maximum penalty for subsection (3)—300 penalty units or 1 year's imprisonment.

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

#### **28            Restriction on supplying debarked dog**

A person (the *supplier*) must not supply someone else a dog that the supplier knows has had a debarking operation performed on it unless the supplier has given the other person a signed veterinary surgeon's certificate stating the operation was performed under section 25.

Maximum penalty—150 penalty units or 1 year's imprisonment.

#### **29            Other restrictions**

A person (the *supplier*) must not supply someone else an animal as follows unless the supplier has given the other person a signed veterinary surgeon's certificate stating the procedure was performed in the interests of the animal's welfare—

- (a) a dog that has had part of an ear removed to make the ear stand erect;<sup>6</sup>
- (b) a cat with a claw removed from it;
- (c) a horse that has had its tail docked.

Maximum penalty—150 penalty units or 1 year's imprisonment.

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6 See section 23 (Cropping dog's ear).

## **Part 5**                      **Other prohibited and regulated conduct**

### **Division 1**                **Other offences relating to dogs**

#### **30**      **Causing captive animal to be injured or killed by dog**

A person must not knowingly cause an animal in captivity to be injured or killed by a dog.

Maximum penalty—300 penalty units or 1 year's imprisonment.

#### **31**      **Releasing animal for injury or killing by dog**

A person must not release an animal if the release is—

- (a) to allow the animal to be injured or killed by a dog; or
- (b) in circumstances in which the animal is likely to be injured or killed by a dog unless the person took reasonable steps to prevent the injury or killing.

Maximum penalty—300 penalty units or 1 year's imprisonment.

#### **32**      **Keeping or using kill or lure for blooding or coursing**

A person must not keep or use an animal as a kill or lure—

- (a) for blooding a dog; or
- (b) to race or train a coursing dog.

Maximum penalty—300 penalty units or 1 year's imprisonment.

#### **33**      **Obligation to exercise closely confined dogs**

- (1) A person in charge of a dog that is closely confined for a continuous period of 24 hours must, unless the person has a reasonable excuse, ensure the dog is exercised or allowed to exercise itself for—

- (a) the next 2 hours; or
  - (b) the next hour and for another hour in the next 24 hours.
- Maximum penalty—20 penalty units.
- (2) In deciding whether a dog is closely confined for subsection (1), regard must be had to the dog's age, physical condition and size.

## **Division 2                      Possession or use of certain traps or spurs**

### **34            Possession of prohibited trap or spur unlawful**

- (1) A person must not possess any of the following (a *prohibited trap or spur*) unless the person has a reasonable excuse—
- (a) a trap prescribed under a regulation to be a prohibited trap;
  - (b) a spur with sharpened or fixed rowels;
  - (c) a cockfighting spur cap.
- Maximum penalty—100 penalty units.
- (2) It is a reasonable excuse to possess a prohibited trap or spur if—
- (a) it has been rendered inoperable for use as a prohibited trap or spur; and
  - (b) the possession is for display or part of a collection.
- (3) In this section—
- spur* includes any device similar to a spur.

### **35            Use of prohibited trap or spur unlawful**

A person must not use a prohibited trap or spur as a trap or spur.

Maximum penalty—300 penalty units or 1 year's imprisonment.

## **Division 3                    Baits or harmful substances**

### **36            Prohibitions**

- (1) A person, other than the following, must not, with the intention of injuring or killing an animal, administer to, or feed, the animal a substance that the person knows is harmful or poisonous to it—

- (a) an inspector;
- (b) a prescribed entity;
- (c) a veterinary surgeon.

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (2) A person must not, with the intention of injuring or killing any animal, lay a bait or a substance that is harmful or poisonous to any animal.

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (3) In this section—

*lay* includes deposit, distribute, leave and throw.

## **Division 4                    Allowing animal to injure or kill another animal**

### **37            Unlawfully allowing an animal to injure or kill another animal**

- (1) A person in control of an animal (the *first animal*) must not unlawfully allow it to injure or kill another animal (the *second animal*).

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (2) The person unlawfully allows the first animal to injure or kill the second animal if immediately before the injury or killing happens—



- (a) the first animal was under the person's immediate supervision; and

*Example of immediate supervision for paragraph (a)—*

The first animal is within the person's sight.

- (b) the person—
- (i) was aware of the second animal's presence; and
  - (ii) ought reasonably to have suspected that the second animal was immediately vulnerable to the first animal and was likely to be injured or killed by it; and
  - (iii) did not take reasonable steps to prevent the injury or killing.

*Examples of reasonable steps for subparagraph (iii)—*

- 1 If the first animal is a dog, putting the dog on a lead while the second animal is vulnerable to it.
- 2 If the first animal is a cat, caging the cat while the second animal is vulnerable to it.

## Part 6 Exemptions

### Division 1 Preliminary

#### 38 Operation of pt 6

- (1) Sections 40 and 42 to 47 each provide an exemption (an *offence exemption*) to the offences created under this chapter for a proceeding against a person for the offence.
- (2) If an offence exemption applies to a particular act or omission, the person does not commit the offence that would otherwise be committed by the act or omission.
- (3) The *Justices Act 1886*, section 76,<sup>7</sup> applies to each exemption.

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<sup>7</sup> *Justices Act 1886*, section 76 (Proof of negative etc.)

- (4) This part does not limit another provision of this Act that creates an exemption to which the *Justices Act 1886*, section 76, applies.

## **Division 2                      Compliance with relevant code**

### **39            Offences excluded from div 2**

This division does not apply to an offence—

- (a) against section 15;<sup>8</sup> or
- (b) to which division 3 applies.

### **40            Compliance with relevant code of practice or scientific use code**

- (1) It is an offence exemption for an offence if—
- (a) for an offence constituted by doing an act—
    - (i) a code of practice or the scientific use code states requirements for how the act may be carried out; and
    - (ii) the requirements, to the extent they are relevant to the act, have been complied with; or
  - (b) for an offence constituted by making an omission—
    - (i) a code of practice or the scientific use code states circumstances in which the omission may be made; and
    - (ii) the stated circumstances for making the omission have happened.
- (2) However, if the provisions of the code about how an act may be done or the circumstances in which the omission may be made are incomplete, it is only an offence exemption if, in doing the act or making the omission, the defendant complied with any duty of care the defendant owed to each animal to which the act or omission relates.

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8 Section 15 (Regulation may require compliance with code of practice)

## **Division 3                    Other offence exemptions**

### **41            Limits on application of offence exemptions under div 3**

- (1) This section applies if—
  - (a) an offence exemption under this division would, other than for this section, apply for an offence; and
  - (b) a code of practice states requirements for how the act that constitutes the offence may be carried out.
- (2) The offence exemption only applies if the provisions of the code, to the extent they are relevant to the act, have been complied with.
- (3) Also, if the provisions of the code about how an act may be done are incomplete, it is only an offence exemption if, in doing the act, the defendant complied with any duty of care the defendant owed to each animal to which the act relates.

### **42            Feral or pest animals**

- (1) This section applies for an offence if the act that constitutes the offence is—
  - (a) an act done by a person to control a feral animal or pest animal, including, for example, by killing it; and
  - (b) the act does not involve the use of a prohibited trap or spur.
- (2) It is an offence exemption for the offence—
  - (a) if the act is done in a way that causes the animal as little pain as is reasonable; and
  - (b) the control complies with any conditions prescribed under a regulation.
- (3) In this section—

***feral animal*** means an animal living in a wild state that is a member of a class of animals that usually live in a domestic state.

*Examples of classes of animals that usually live in a domestic state—*

buffalo, cats, dogs, donkeys, goats, horses and pigs

***pest animal*** means any of the following—

- (a) a non-indigenous animal generally regarded as being a pest;

*Examples—*

black rats, brown rats and cane toads

- (b) noxious fisheries resources under the *Fisheries Act 1994*;
- (c) an animal declared under a regulation made under this or another Act to be a pest;
- (d) an animal required to be controlled under an Act;
- (e) an animal the subject of a measure or program to control disease under the *Fisheries Act 1994*, *Stock Act 1915*, *Exotic Diseases in Animals Act 1981* or another Act.

#### **43 Animals used to feed another animal**

It is an offence exemption for an offence for a person if—

- (a) the act that constitutes the offence involves using an animal (the ***food animal***) as live food for another animal (the ***fed animal***); and
- (b) the food animal and the fed animal are both lawfully kept by the person; and
- (c) the fed animal will only eat the food animal if it is alive; and
- (d) feeding the food animal to the fed animal is essential for the fed animal's survival.

#### **44 Fishing using certain live bait**

It is an offence exemption for an offence if—

- (a) the act that constitutes the offence involves the use of a live creature as follows for bait or as a lure to take, or attempt to take, fish—
  - (i) a fish;
  - (ii) an invertebrate of a species from the class Cephalopoda or Malacostraca; and

- (b) the fishing or attempted fishing complies with any conditions prescribed under a regulation.

#### **45 Slaughter under religious faith**

It is an offence exemption for an offence if—

- (a) the act that constitutes the offence involves the slaughter, under a religious faith, of an animal; and
- (b) the slaughtered animal is to be used for human food; and
- (c) the person doing the slaughtering follows the religious faith.

#### **46 Use of fishing apparatus under shark fishing contract**

It is an offence exemption for an offence if—

- (a) the act that constitutes the offence is the use of fishing apparatus under the *Fisheries Act 1994*; and
- (b) the use is—
  - (i) to protect persons from attack by sharks; and
  - (ii) carried out under an agreement between any person and the State for the disposal, tagging or taking of sharks.

#### **47 Supplying animal**

It is an offence exemption for an offence if—

- (a) the act that constitutes the offence is supplying an animal;<sup>9</sup> and
- (b) the supply is—
  - (i) by or for a prescribed entity; or
  - (ii) by an inspector for the State.

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<sup>9</sup> See part 4, division 3 (Restriction on supplying animals that have undergone a regulated surgical procedure).

## Chapter 4      Using animals for scientific purposes

### Part 1            Preliminary

#### 48      **When an animal is used for *scientific purposes***

(1) An animal is used for *scientific purposes* if it is used—

- (a) in an activity performed to acquire, demonstrate or develop knowledge or a technique in a scientific discipline; or

*Examples of an activity for paragraph (a)—*

- diagnosis
- environmental studies
- field trials
- producing biological products
- product testing
- research
- teaching

(b) in connection with an activity mentioned in paragraph (a).

(2) However, despite subsection (1), banding a bird or tagging a fish is not use of the bird or fish for scientific purposes.

(3) The use of an animal for scientific purposes also includes using any of the remains of an animal that was killed for the purpose of carrying out an activity mentioned in subsection (1).

#### 49      **What is the *scientific use code***

(1) The *scientific use code* means the most recent edition or revision of the ‘Australian Code of Practice for the Care and Use of Animals for Scientific Purposes’, published by or for the National Health and Medical Research Council.

- (2) The chief executive must keep a copy of the most recent edition or revision of the code as in force from time to time, open for inspection, free of charge, by members of the public during office hours on business days at—
- (a) the department's head office; and
  - (b) other places the chief executive considers appropriate.
- (3) If a new edition or revision of the code is published, the Minister must, within 14 sitting days after publication, table a copy of the edition or revision in the Legislative Assembly.
- (4) In this section—

*published* includes publication on the internet website of the National Health and Medical Research Council.

## 50 Definitions for ch 4

In this chapter—

*animal ethics committee* means an animal ethics committee formed under the scientific use code.

*conviction*, for an animal welfare offence, means a conviction, other than a spent conviction, for—

- (a) an animal welfare offence; or
- (b) an offence against a law of the Commonwealth or another State if the act or omission that constitutes the offence would, if it happens in Queensland, be an animal welfare offence; or
- (c) an offence committed anywhere in Australia before this part commenced that, apart from the non-commencement of this part, would have been an offence mentioned in paragraph (a) or (b).

*disqualifying event* means—

- (a) a conviction for an animal welfare offence; or
- (b) the cancellation or suspension, under part 2, division 4, subdivision 2, of registration; or
- (c) 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.

*spent conviction* means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

## **Part 2                      Registration of scientific users**

### **Division 1                Who must obtain registration**

#### **51            Requirement for registration**

- (1) A person must not use an animal for a scientific purpose, or allow an animal to be used for a scientific purpose unless the person is—
  - (a) registered; or
  - (b) an individual retained by a registered person acting in the course of the individual's retainer; or
  - (c) a student at a college, institute, school, university or other institution that is registered and acting in the course of the person's studies with the institution.

Maximum penalty—300 penalty units or 1 year's imprisonment.

- (2) In this section—

*retained* means employed or engaged, whether or not for remuneration.



## **Division 2            Obtaining registration**

### **Subdivision 1        Registration applications**

#### **52        Applying for registration**

- (1) A person may apply to the chief executive for, or to renew, registration (a *registration application*).
- (2) A registration application must—
  - (a) be made in the approved form; and
  - (b) state each of the following—
    - (i) the applicant's name and address;
    - (ii) the name of each animal ethics committee proposed for the applicant;
    - (iii) terms of reference for each committee;
    - (iv) if the applicant is not an individual—the person or office holder to whom each proposed chairperson of each committee must report; and
  - (c) be supported by enough other information to enable the chief executive to decide the application; and
  - (d) be accompanied by the prescribed fee.

#### **53        Chief executive may seek further documents or information**

- (1) The chief executive may, after a registration application has been made, by notice, require the applicant to give the chief executive a stated document or information that is relevant to the application.
- (2) The notice may require the applicant to verify the correctness of the document or information by statutory declaration.

## **Subdivision 2      Deciding registration application**

### **54      Deciding application**

The chief executive must consider and either grant or refuse each registration application within 28 days after the last of the following events to happen—

- (a) the making of the application;
- (b) the chief executive's receipt of all necessary information to decide the application;
- (c) if, under section 53, the chief executive has required the applicant to give a document or information—the giving of the required document or information.

### **55      Criteria for decision**

- (1) The chief executive must not grant a registration application unless the chief executive is satisfied the applicant and each animal ethics committee proposed for the applicant is likely, if the applicant is registered, to comply with the scientific use code.
- (2) In considering the application, the chief executive must consider—
  - (a) whether a disqualifying event has happened in relation to the applicant or any proposed member of an animal ethics committee for the applicant; and
  - (b) if the applicant is a corporation, whether a disqualifying event has happened in relation to—
    - (i) any of its executive officers; or
    - (ii) another corporation of which any of its executive officers is, or has been, an executive officer; and
  - (c) another matter prescribed under a regulation.
- (3) Subsections (1) and (2) do not limit the matters the chief executive may consider.

**56 Registration conditions**

The chief executive may, in granting a registration application, impose conditions on the registration that are relevant and reasonable (*registration conditions*).

**Subdivision 3 Action after decision on registration application****57 Grant of registration application**

If a registration application is granted, the chief executive must as soon as practicable—

- (a) comply with section 61 in relation to the applicant; and
- (b) give the applicant a signed registration certificate in the approved form.

**58 Term of registration**

- (1) Registration is for a term that ends on the third anniversary of the day the registration certificate for the registration was signed.
- (2) The giving of a replacement registration certificate under section 79 or 88 does not affect or extend the term.

**59 Notice of refusal of registration application**

The chief executive must, as soon as practicable after making a decision as follows about a registration application, give the applicant an information notice about the decision—

- (a) a decision to refuse the application;
- (b) a decision to impose a registration condition.

## **Division 3                    Register of scientific users**

### **Subdivision 1            The register**

#### **60            Register**

- (1) The chief executive must keep a register of persons registered to use animals for scientific purposes.
- (2) The chief executive may keep the register in the way the chief executive considers appropriate, including, for example, in electronic form.

#### **61            Registration details**

- (1) The register must state the following for each registered person—
  - (a) the person's name, address and registered number;
  - (b) each of the following items of information from the person's registration application—
    - (i) each animal ethics committee for the person;
    - (ii) the terms of reference for each committee;
    - (iii) if the person is not an individual—the person or office holder to whom each proposed chairperson of each committee must report;
  - (c) other information prescribed under a regulation.
- (2) The register may include other information the chief executive considers appropriate.
- (3) The information recorded under subsections (1) and (2) in the register for a registered person is called the person's *registration details*.

**62 Inspection of register**

Subject to section 70,<sup>10</sup> the chief executive must—

- (a) keep the register open for inspection, free of charge, by members of the public during office hours on business days at the department's office dealing with the administration of this Act; and
- (b) allow a person to take extracts, free of charge, from the register; and
- (c) give a person a copy of the register, or a part of it, on payment of the fee prescribed under a regulation.

**63 False representations about registration**

A person must not, in connection with the use of an animal for a scientific purpose, intentionally or recklessly falsely represent that the person or someone else is a registered person.

Maximum penalty—150 penalty units.

**Subdivision 2 Exemption from disclosure of registration details****64 Who may apply**

- (1) A registered person or an applicant for registration may apply to the chief executive for an exemption (a *disclosure exemption*) for stated registration details or proposed registration details for the person.
- (2) However, a disclosure exemption can be given for the person's name only if the person is an individual.

**65 Requirements for application**

A disclosure exemption application must be in the approved form and state—

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<sup>10</sup> Section 70 (Effects of disclosure exemption)

- (a) that the registration details, or proposed registration details, the subject of the application are—
  - (i) not required to be disclosed under another law of the State; and
  - (ii) not publicly available; and
- (b) that disclosure of the registration details is likely to disadvantage the interests of the applicant or a stated member of an animal ethics committee or proposed animal ethics committee for the applicant; and
- (c) the nature of the disadvantage.

## **66 Deciding application**

The chief executive must consider each disclosure exemption application and either grant or refuse the disclosure exemption applied for within 28 days after the last of the following events to happen—

- (a) the making of the application;
- (b) if the applicant is not a registered person—the deciding of the registration application to which the disclosure exemption application relates.

## **67 Criteria for decision**

The chief executive may grant a disclosure exemption only if the chief executive is satisfied—

- (a) the registration details the subject of the exemption are—
  - (i) not required to be disclosed under another law of the State; and
  - (ii) not publicly available; and
- (b) disclosure of the details is likely to disadvantage the interests of the applicant or a member of an animal ethics committee or proposed animal ethics committee for the applicant for the exemption; and
- (c) the disadvantage outweighs the public interest in the details being disclosed.

**68 Exemption may be limited**

The chief executive may grant a disclosure exemption for the whole or part of the registration details the subject of the relevant application.

**69 Notice of refusal of disclosure exemption application**

The chief executive must, as soon as practicable after making a decision as follows about a disclosure exemption application, give the applicant an information notice about the decision—

- (a) a decision to refuse the application;
- (b) a decision to grant a disclosure exemption, but for only part of the registration details the subject of the relevant application.

**70 Effects of disclosure exemption**

- (1) The chief executive must not allow a person (the *first person*) to inspect, take extracts from or copy exempted material unless—
  - (a) the relevant registered person has agreed in writing; or
  - (b) the first person is performing functions under or in relation to the administration of this Act; or
  - (c) the disclosure is expressly permitted or required under another Act.
- (2) An official must not disclose exempted material acquired by the official in the official's capacity as an official to anyone else, unless the disclosure is made under subsection (1).

Maximum penalty—100 penalty units.

- (3) In this section—

*exempted material* means any of the following that the relevant registered person has not publicly disclosed—

- (a) the registration details the subject of a disclosure exemption;

- (b) a part of a document submitted, or proposed to be submitted, under this Act that contains the details.

*official* means—

- (a) a person who is, or has been, a public service employee; or
- (b) another person performing functions under or in relation to the administration of this Act.

## **Division 4                      Amendment, cancellation or suspension**

### **Subdivision 1                Amendment of registration details**

#### **71            Amendments for which proposed action notice not required**

The chief executive may amend a person's registration details at any time by giving the person notice of the amendment and recording particulars of the amendment in the register if the amendment—

- (a) is to correct a clerical or formal error; or
- (b) does not adversely affect the person's interests; or
- (c) is at the person's written request.

#### **72            Amendments for which proposed action notice is required**

The chief executive may amend a person's registration if—

- (a) the chief executive considers the amendment necessary or desirable; and
- (b) the procedure under subdivision 3 is followed.



## **Subdivision 2      Cancellation or suspension of registration**

### **73      Conditions for cancellation or suspension**

- (1) The chief executive may cancel or suspend a person's registration if—
  - (a) an event mentioned in subsection (2) has happened; and
  - (b) the procedure under subdivision 3 is followed.
- (2) For subsection (1), the event is any of the following—
  - (a) the registration was because of a materially false or misleading representation or declaration, made either orally or in writing;
  - (b) the person has not complied with a registration condition;
  - (c) the person has not paid a fee prescribed under this Act in relation to the registration;
  - (d) if the person is an individual—
    - (i) a disqualifying event happens in relation to the individual; or
    - (ii) the individual becomes an undischarged bankrupt or, as a debtor, takes advantage of any law about bankruptcy or insolvent debtors;
  - (e) if the person is a corporation—
    - (i) a disqualifying event happens in relation to any of its executive officers or another corporation of which any of its executive officers is, or has been, an executive officer; or
    - (ii) it becomes insolvent as defined under the Corporations Act, section 95A;<sup>11</sup>
  - (f) a disqualifying event happens in relation to a member of an animal ethics committee for the person;
  - (g) an animal ethics committee for the person has not—

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11 Corporations Act, section 95A (Solvency and insolvency)

- (i) performed any of its functions under the scientific use code; or
- (ii) complied with the code to the extent it is relevant to the committee.

### **Subdivision 3 Procedure for amendment, cancellation or suspension**

#### **74 Application of sdiv 3**

This subdivision applies if the chief executive proposes to—

- (a) amend, under section 72, a person's registration details; or
- (b) cancel or suspend a person's registration.

#### **75 Notice of proposed action**

- (1) The chief executive must give the person a notice stating each of the following—
  - (a) the action (the *proposed action*) the chief executive proposes to take under this subdivision;
  - (b) the grounds for the proposed action;
  - (c) the facts and circumstances that are the basis for the grounds;
  - (d) if the proposed action is to amend registration details—the proposed amendment;
  - (e) if the proposed action is to suspend the registration—the proposed suspension period;
  - (f) that the holder may make, within a stated period, written representations to show why the proposed action should not be taken.
- (2) The stated period must end at least 28 days after the holder is given the notice.

**76 Considering representations**

- (1) The chief executive must consider any written representation made under section 75 by the person within the period stated in the notice.
- (2) If the chief executive at any time decides not to take the proposed action, the chief executive must promptly give the person notice of the decision.

**77 Decision on proposed action**

If, after complying with section 76, the chief executive still believes a ground exists to take the proposed action, the chief executive may decide to—

- (a) if the proposed action was to amend registration details—make the amendment; or
- (b) if the proposed action was to suspend the registration for a stated period—suspend the registration for no longer than the proposed suspension period; or
- (c) if the proposed action was to cancel the registration—
  - (i) cancel the registration; or
  - (ii) suspend it for a fixed period.

**78 Notice and taking of effect of proposed action decision**

- (1) The chief executive must, as soon as practicable after making a decision under section 77, give the person an information notice about the decision.
- (2) The decision takes effect on the later of the following—
  - (a) the day the notice is given to the holder;
  - (b) a later day of effect stated in the notice.
- (3) However, if the decision was to cancel or suspend the registration because of a conviction, the cancellation or suspension—
  - (a) does not take effect until—
    - (i) the period to appeal against the conviction ends; and

- (ii) if an appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
- (b) has no effect if the conviction is quashed on appeal.

## **Subdivision 4      Steps after amendment or suspension**

### **79      Replacement of registration certificate**

If the chief executive amends a person's registration details, the chief executive must, as soon as practicable after making the amendment, give the person a replacement registration certificate that reflects the amendment.

### **80      Requirement to record suspension**

If a person's registration is suspended under this division, the chief executive must record in the register particulars of when the suspension period starts and ends.

## **Division 5              Investigation of applicants and registered persons**

### **81      Application of div 5**

This division applies if the chief executive is making a decision (the *registration decision*) about whether or not to—

- (a) grant a registration application; or
- (b) take proposed action in relation to a person's registration.

### **82      Animal welfare offence reports**

- (1) The commissioner of the police service must, if asked by the chief executive, give the chief executive a written report (an *animal welfare offence report*) about—

- (a) any convictions for animal welfare offences recorded against—
  - (i) the applicant; or
  - (ii) the registered person; or
  - (iii) any member or proposed member of an animal ethics committee for the applicant or registered person; and
- (b) if the applicant or registered person is a corporation, whether a disqualifying event has happened in relation to—
  - (i) any of its executive officers; and
  - (ii) another corporation of which any of its executive officers is, or has been, an executive officer.
- (2) The report must be prepared from—
  - (a) information in the commissioner's possession; and
  - (b) information the commissioner can reasonably obtain by asking officials administering police services in other Australian jurisdictions.
- (3) However, subsection (2) is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

### **83 Use of information in animal welfare offence report**

- (1) This section applies if the chief executive is considering information about a person contained in an animal welfare offence report.
- (2) The information must not be used for any purpose other than to make the registration decision.
- (3) When making the decision, the chief executive must have regard to the following matters relating to information about the commission of an offence by the person—
  - (a) when the offence was committed;
  - (b) the nature of the offence and its relevance to the decision.

**84 Notice of use of information in animal welfare offence report**

Before using information contained in an animal welfare offence report to make the registration decision, the chief executive must—

- (a) disclose the information to the person to whom the report relates; and
- (b) allow the person a reasonable opportunity to make representations to the chief executive about the information.

**85 Confidentiality of animal welfare offence reports**

- (1) This section applies to a person who—
  - (a) is, or has been, a public service employee; and
  - (b) has, in that capacity, acquired information or gained access to an animal welfare offence report about someone else (the *second person*).
- (2) The person must not disclose the information, or give access to the report, to anyone else.

Maximum penalty—100 penalty units.

- (3) However, subsection (2) does not apply if the disclosure or giving of access is—
  - (a) to an employee of the department for making the registration decision; or
  - (b) with the second person's consent; or
  - (c) expressly permitted or required under another Act.

**86 Destruction of animal welfare offence reports**

- (1) This section applies if the chief executive has obtained an animal welfare offence report and the registration decision has been made.
- (2) The chief executive must destroy the report as soon as practicable after the later of the following—
  - (a) if a conviction is mentioned in the report—

- (i) the end of the period to appeal against the conviction; or
- (ii) the deciding or the ending of any appeal against the conviction and any appeal from that appeal;
- (b) the end of any period under this Act to appeal against, or apply for a review of, the registration decision;
- (c) the deciding or other ending of an appeal or review mentioned in paragraph (b) and any appeal from that appeal or review.

## **Division 6                      Miscellaneous provisions**

### **87            Reporting obligations of registered persons**

- (1) Each registered person must, on or before 31 May in each year (the *reporting day*), give the chief executive a written report (an *annual report*) for the period from 1 January to 31 December immediately before the reporting day that complies with subsection (2).

Maximum penalty—150 penalty units.

- (2) For subsection (1), an annual report must state—
  - (a) information prescribed under a regulation about—
    - (i) animals the person has used, or allowed to be used, for scientific purposes; and
    - (ii) complaints, enquiries and grievances about the use of animals for scientific purposes; and
  - (b) another matter prescribed under a regulation about the scientific use of animals by the person.
- (3) The chief executive and the registered person may, by writing, agree to change the reporting day to another day (the *new reporting day*).
- (4) If the reporting day is changed—
  - (a) the period from when the last annual report was given to the new reporting day is taken to be a period for which an annual report must be given under subsection (1); and

- (b) subject to paragraph (a), the period mentioned in subsection (1) is taken to be changed to the equivalent period that corresponds with the change.

### **88 Replacement registration certificates**

- (1) A registered person may apply to the chief executive for a replacement registration certificate if the person's registration certificate has been damaged, destroyed or lost.
- (2) The application must be in the approved form and accompanied by the fee prescribed under a regulation.
- (3) The chief executive may give the replacement certificate only if the chief executive is satisfied the person's registration certificate has been damaged, destroyed or lost.

### **89 No transfer of registration**

A person's registration can not be transferred.

### **90 Surrender of registration**

- (1) A registered person may, by notice to the chief executive, surrender the registration.
- (2) The surrender takes effect on the later of the following—
  - (a) the day the notice is given;
  - (b) a day stated in the notice for the surrender.

## **Part 3 Restrictions on scientific users**

### **91 Use for scientific purposes must comply with code**

A person must not use an animal for a scientific purpose, or allow an animal to be used for a scientific purpose, unless—

- (a) the use is approved by an animal ethics committee whose registered terms of reference includes monitoring the use; and



- (b) any requirements of the committee made under the scientific use code in relation to the use have been complied with; and
- (c) the provisions of the code, to the extent they are relevant to the use, have been complied with.

Maximum penalty—300 penalty units or 1 year's imprisonment.

## **92 Use for certain scientific purposes unlawful**

A person must not, without the chief executive's written approval—

- (a) conduct the test commonly known as the Draize eye or skin irritancy test, or a similar test; or
- (b) conduct the test commonly known as the classical LD 50 test, or a similar test; or
- (c) use an animal for a scientific purpose if the use involves—
  - (i) a cosmetic; or
  - (ii) a sunscreen product; or
  - (iii) an ingredient of a cosmetic or sunscreen product.

Maximum penalty—300 penalty units or 1 year's imprisonment.

## **93 Obtaining approval to use for unlawful scientific purpose**

- (1) A registered person may apply to the chief executive for approval to conduct a test or use an animal in a way mentioned in section 92.
- (2) The application must be in the approved form and accompanied by the fee prescribed under a regulation.
- (3) The chief executive must consider and either grant or refuse the application within 28 days after the making of the application.
- (4) However, the chief executive may grant the application only if the chief executive is satisfied—

- (a) the test or use has been approved by the animal ethics committee whose registered terms of reference includes monitoring the test or use; and
  - (b) any requirements of the committee made under the scientific use code in relation to the test or use are likely to be complied with.
- (5) Subsection (4) does not limit the matters the chief executive may consider.
- (6) If the application is granted, the approval takes effect on the later of the following—
- (a) the day the applicant is given notice of the approval;
  - (b) a later day of effect stated in the notice.
- (7) If the chief executive decides to refuse the application, the chief executive must, after making the decision, as soon as practicable, give the applicant an information notice about the decision.

## **Chapter 5      Code compliance                                  monitoring**

### **Part 1                      Preliminary**

#### **94      Purposes of ch 5**

- (1) The purposes of this chapter are to—
- (a) ensure compliance with compulsory code requirements and the scientific use code; and
  - (b) prevent animal suffering; and
  - (c) promote standards of animal care provided for under codes of practice.
- (2) The purposes are achieved by providing for—



- (i) where copies of the draft program may be inspected;
  - (ii) that any entity may comment about the draft program;
  - (iii) the period during which comments may be made.
- (3) The notice may identify a compulsory code requirement by reference to the regulation under which the requirement is a compulsory code requirement.
- (4) The stated period must be at least 28 days after the publication of the notice.
- (5) A copy of the draft program must be available free, or on payment of a reasonable price, at the place, or each of the places, stated in the notice.

## **97 Comments to be considered before final program made**

The chief executive must, before making a final monitoring program, consider all comments received by the chief executive within the period under section 96(2)(b)(iii) for making comments about the draft monitoring program.

## **98 Final monitoring program**

- (1) The chief executive may make a final monitoring program only by gazette notice.
- (2) The chief executive must, as soon as practicable after making the program, publish a notice of it in a newspaper likely to be read by people in the State particularly affected by the relevant code provisions.
- (3) The chief executive must keep copies of the program open for public inspection during office hours on business days at—
  - (a) the department's head office; and
  - (b) other places the chief executive considers appropriate.

## **Part 3                      Authorised officers**

### **Division 1                Appointment**

#### **99      Appointment and qualifications**

- (1) The chief executive may appoint an individual as an authorised officer.
- (2) However, an individual may be appointed as an authorised officer only if—
  - (a) the individual is—
    - (i) a public service officer or employee; or
    - (ii) included in a class of individuals declared under a regulation to be an approved class of persons for this section; and
  - (b) the chief executive is satisfied the individual has—
    - (i) the necessary expertise or experience to be an authorised officer; and
    - (ii) satisfactorily finished training approved by the chief executive.
- (3) Subsection (2) does not limit the issues the chief executive may consider when deciding whether to appoint an individual as an authorised officer.

#### **100     Functions**

The functions of an authorised officer are to—

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

#### **101     Appointment conditions and limit on powers**

- (1) An authorised officer holds office on any conditions stated in—

- (a) the officer's instrument of appointment; or
  - (b) a signed notice given to the officer; or
  - (c) a regulation.
- (2) Without limiting subsection (1), the instrument of appointment, a signed notice given to the officer or a regulation may—
- (a) limit the officer's functions or powers under this or another Act; or

*Example for paragraph (a)—*

The instrument of appointment, notice or regulation may limit the officer's functions or powers to stated functions or powers in relation to a compulsory code requirement or the scientific use code.

- (b) require the officer to give the chief executive stated information or a report about the performance of the officer's functions or the exercise of the officer's powers.
- (3) In this section—
- signed notice* means a notice signed by the chief executive.

## **102 When authorised officer ceases to hold office**

- (1) An authorised officer ceases to hold office if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the officer ceases to hold office;
  - (c) the officer's resignation under section 103 takes effect.
- (2) Subsection (1) does not limit the ways an officer may cease to hold office.
- (3) In this section—
- condition of office* means a condition on which the officer holds office.

**103 Resignation**

- (1) An authorised officer may resign by signed notice given to the chief executive.
- (2) However, if holding office as an authorised officer is a condition of the authorised officer holding another office, the authorised officer may not resign as an authorised officer without resigning from the other office.

**Division 2 Identity cards****104 Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised officer.
- (2) The identity card must—
  - (a) contain a recent photo of the officer; and
  - (b) contain a copy of the officer's signature; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the giving of a single identity card to a person for this Act and other purposes.

**105 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an authorised officer must—
  - (a) produce the officer's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the person's inspection at the first reasonable opportunity.

- (3) For subsection (1), an officer does not exercise a power in relation to a person only because the officer has entered a place as mentioned in section 108(1)(b) or (2).

## **106 Return of identity card**

A person who ceases to be an authorised officer must return the person's identity card to the chief executive within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

# **Part 4 Powers of authorised officers**

## **Division 1 General**

### **107 General provisions about powers**

- (1) An authorised officer has the powers given under divisions 2 and 3.
- (2) However, an authorised officer may exercise a power only for the purpose of a monitoring program.
- (3) A person may hold appointment as an authorised officer and an inspector.
- (4) However, the person may only exercise the person's powers as an inspector by complying with chapter 6, part 2.



## Division 2            Entry powers

### Subdivision 1        Entry to places other than vehicles

#### 108    Power of entry

- (1) An authorised officer may enter and stay at a place, other than a vehicle, if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) an authorised officer has given the occupier of the place at least 48 hours notice of the proposed entry; or
  - (d) its occupier has been given an animal welfare direction and the entry is made at a time or interval stated in the direction to check compliance with the direction.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) A notice under subsection (1)(c) must state—
  - (a) the purpose of the entry; and
  - (b) that an authorised officer is permitted under this Act to enter the place without the person's consent.
- (4) In this section—

*place* does not include a part of the place where a person resides.

**109 Procedure for entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another authorised officer entering the place under section 108(1)(a).
- (2) Before asking for the consent, the officer must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent; and
  - (c) that the officer may, under section 108(1)(c), enter the place by giving at least 48 hours notice of the proposed entry.
- (3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the officer or another authorised officer consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the officer must promptly give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

**110 Procedure for other entries**

- (1) This section applies if—
  - (a) an authorised officer is intending to enter a place under section 108(1)(b), (c) or (d); and
  - (b) the occupier of the place is present at the place.
- (2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—
  - (a) comply with section 105<sup>12</sup> for the occupier;
  - (b) tell the occupier the purpose of the entry;
  - (c) tell the occupier the officer is permitted under this Act to enter the place without the occupier's consent.

**Subdivision 2 Entry to vehicles****111 Power of entry**

An authorised officer may enter and stay in a vehicle if—

- (a) the person in control of the vehicle consents to the entry;  
or
- (b) the vehicle is stationary and—
  - (i) the officer reasonably suspects the vehicle is being, or has recently been, used to transport an animal in connection with the carrying out of a business; or
  - (ii) the person in control of the vehicle has been given an animal welfare direction and the entry is made at a time or interval stated in the direction to check compliance with the direction.

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

- (1) This section applies if—

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12 Section 105 (Production or display of identity card)

- (a) an authorised officer is intending to enter a vehicle under section 111(b); and
  - (b) a person who is a person in control, or an occupier of, the vehicle is present at the vehicle.
- (2) Before entering the vehicle, the officer must do, or make a reasonable attempt to do, each of the following things—
- (a) comply with section 105<sup>13</sup> for the person;
  - (b) tell the person the purpose of the entry;
  - (c) seek the consent of the person to the entry;
  - (d) tell the person the officer is permitted under this Act to enter the vehicle without the person's consent.
- (3) If the person in control of the vehicle is not present at the vehicle, the officer must take reasonable steps to advise the person or any registered operator of the vehicle of the officer's intention to enter the vehicle.
- (4) Subsection (3) does not require the officer to take a step the officer reasonably believes may frustrate or otherwise hinder the performance of the officer's functions or the purpose of the intended entry.

## **Division 3                      Other powers**

### **113      Certain inspectors' powers apply for entry**

- (1) This section applies if an authorised officer is entering, or has entered, a place under division 2.
- (2) However, if under section 108(2)<sup>14</sup> an authorised officer enters a place to ask the occupier's consent to enter premises, this section applies to the officer only if the consent is given or the entry is otherwise authorised.
- (3) The following provisions apply, with necessary changes, as if the officer were an inspector, had entered the place under chapter 6 and were exercising a power under that chapter—

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13    Section 105 (Production or display of identity card)

14    Section 108 (Power of entry)

- (a) sections 134, 135, 168 and 169;
- (b) chapter 6, part 2, division 3, other than section 137(d);
- (c) chapter 6, part 2, division 5;
- (d) chapter 6, part 3.<sup>15</sup>

## **Chapter 6            Investigation and                                  enforcement**

### **Part 1                    Inspectors**

#### **Division 1              Appointment**

##### **114    Appointment and qualifications**

- (1) The chief executive may appoint an individual as an inspector.
- (2) However, an individual may be appointed as an inspector only if—
  - (a) the individual is—
    - (i) a public service officer or employee; or
    - (ii) employed by the Royal Society for the Prevention of Cruelty to Animals Queensland Incorporated; or

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15 Sections 134 (Power to require help to enter from person in control), 135 (Failure to comply with entry requirement), 137 (General powers), 168 (Power to require production of documents) and 169 (Failure to comply with document production requirement)

Chapter 6, part 2, divisions 3 (Powers for entry to all places) and 5 (Animal welfare directions)

Chapter 6, part 3 (Notice of damage because of exercise of powers)

- (iii) included in a class of individuals declared under a regulation to be an approved class of persons for this section; and
- (b) the chief executive is satisfied the individual has—
  - (i) the necessary expertise or experience to be an inspector; or
  - (ii) satisfactorily finished training approved by the chief executive.
- (3) Subsection (2) does not limit the issues the chief executive may consider when deciding whether to appoint an individual as an inspector.

## **115 Functions**

The functions of an inspector are to investigate and enforce compliance with this Act.

## **116 Appointment conditions and limit on powers**

- (1) An inspector holds office on any conditions stated in—
  - (a) the inspector's instrument of appointment; or
  - (b) a signed notice given to the inspector; or
  - (c) a regulation.
- (2) Without limiting subsection (1), the instrument of appointment, a signed notice given to the inspector or a regulation may—
  - (a) limit the inspector's functions or powers under this or another Act; or
  - (b) require the inspector to give the chief executive stated information or a report about the performance of the inspector's functions or the exercise of the inspector's powers.
- (3) In this section—

*signed notice* means a notice signed by the chief executive.

**117 When inspector ceases to hold office**

- (1) An inspector ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the inspector ceases to hold office;
  - (c) the inspector's resignation under section 118 takes effect.
- (2) Subsection (1) does not limit the ways an inspector may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the inspector holds office.

**118 Resignation**

- (1) An inspector may resign by signed notice given to the chief executive.
- (2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

**Division 2 Identity cards****119 Issue of identity card**

- (1) The chief executive must issue an identity card to each inspector.
- (2) The identity card must—
  - (a) contain a recent photo of the inspector; and
  - (b) contain a copy of the inspector's signature; and
  - (c) identify the person as an inspector under this Act; and
  - (d) state an expiry date for the card.

- (3) This section does not prevent the issuing of a single identity card to a person for this Act and other purposes.

## **120 Production or display of identity card**

- (1) An inspector may exercise a power under this Act in relation to a person only if the inspector—
  - (a) first produces the inspector's identity card for the person's inspection; or
  - (b) has the card displayed so that it is clearly visible to the person.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 122 (1)(b) or (2).

## **121 Return of identity card**

A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days after ceasing to be an inspector unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.



## **Part 2                      Powers of inspectors**

### **Division 1                Entry to places other than vehicles**

#### **Subdivision 1        Entry powers**

##### **122    Power of entry**

- (1) An inspector may enter and stay at a place, other than a vehicle, if—
- (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) its occupier has been given an animal welfare direction and the entry is made at a time or interval stated in the direction to check compliance with the direction; or
  - (e) the inspector reasonably suspects—
    - (i) an animal at the place has just sustained a severe injury; and
    - (ii) the injury is likely to remain untreated, or untreated for an unreasonable period; or
  - (f) the inspector reasonably suspects there is an imminent risk of death or injury to an animal at the place because of an accident or from an animal welfare offence; or

*Examples of imminent risk of death or injury to an animal—*

- 1 a dogfight involving, or apparently involving, an imminent risk of death or injury to the dogs
  - 2 the beating or torture of an animal at the place
- (g) the inspector reasonably suspects any delay in entering the place will result in the concealment, death, or destruction of anything at the place that is—
- (i) evidence of an animal welfare offence against this Act; or

- (ii) being used to commit, continue or repeat, an offence.
- (2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—
- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

### **123 Limited entry power to provide relief to animal**

- (1) This section applies if—
- (a) an inspector reasonably suspects—
    - (i) an animal at a place, other than a vehicle, is suffering from lack of food or water or is entangled; and
    - (ii) the person in charge of the animal is not, or is apparently not, present at the place; and
  - (b) the animal is not at a part of the place at which a person resides, or apparently resides.
- (2) The inspector may enter and stay at the place while it is reasonably necessary to provide the food or water or to disentangle the animal.
- (3) Before leaving the place, the inspector must leave a notice in a conspicuous position and in a reasonably secure way stating the following—
- (a) the inspector's name and business address or telephone number;
  - (b) the action taken by the inspector under subsection (2);
  - (c) when the action was taken.
- (4) This section does not limit section 122.

## **Subdivision 2 Procedure for entry without warrant**

### **124 Procedure for entry with consent**

- (1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 122(1)(a).
- (2) Before asking for the consent, the inspector must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the inspector or another inspector consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the inspector must promptly give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

**125 Procedure for other entries without warrant**

- (1) This section applies if—
  - (a) an inspector is intending to enter, under section 122(1)(d), (e), (f) or (g) or 148(2),<sup>16</sup> a place; and
  - (b) the occupier of the place is present at the place.
- (2) Before entering the place, the inspector must do, or make a reasonable attempt to do, the following things—
  - (a) comply with section 120<sup>17</sup> for the occupier;
  - (b) tell the occupier the purpose of the entry;
  - (c) tell the occupier the inspector is permitted under this Act to enter the place without the occupier's consent or a warrant.

**Subdivision 3 Warrants****126 Application for warrant**

- (1) An inspector may apply to a magistrate or a justice of the peace (qualified) for a warrant for a place.
- (2) However, an application can not be made to a justice who—
  - (a) if the inspector is employed by the department—is employed by the department; or
  - (b) if the inspector is not employed by the department—is employed by the same person as the inspector.
- (3) The application must be sworn and state the grounds on which the warrant is sought.
- (4) The magistrate or justice may refuse to consider the application until the inspector gives the magistrate or justice all the information the magistrate or justice requires about the application in the way the magistrate or justice requires.

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16 Section 122 (Power of entry) or 148 (Powers for seized things)

17 Section 120 (Production or display of identity card)

*Example—*

The magistrate or justice may require additional information supporting the application to be given by statutory declaration.

**127 Issue of warrant**

- (1) A magistrate or justice of the peace (qualified) may issue a warrant only if the magistrate or justice is satisfied there are reasonable grounds for suspecting there is—
  - (a) a need to enter the place for which the warrant is sought to relieve an animal in pain at the place; or
  - (b) there is a particular animal or other thing or activity (the *evidence*) that may provide evidence of an offence against this Act and the evidence is at the place, or, within the next 7 days, may be at the place.
- (2) The warrant must state—
  - (a) that a stated inspector may—
    - (i) enter the place and any other place necessary for entry; and
    - (ii) exercise the inspector's powers under this part; and
  - (b) either—
    - (i) if the warrant is issued under subsection (1)(a)—the animal or type of animal for which the warrant is given; or
    - (ii) if the warrant is issued under subsection (1)(b)—the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 7 days after the warrant's issue, the warrant ends.

**128 Special warrants**

- (1) An inspector may apply for a warrant (a *special warrant*) by electronic communication, fax, phone, radio or another form of communication if the inspector considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the special warrant, the magistrate or justice of the peace (qualified) must immediately electronically communicate or fax a copy to the inspector if it is reasonably practicable to do so.
- (5) If it is not reasonably practicable to electronically communicate or fax a copy to the inspector—
  - (a) the magistrate or justice must tell the inspector—
    - (i) what the terms of the warrant are; and
    - (ii) the date and time the warrant was issued; and
  - (b) the inspector must complete a form of warrant (a *warrant form*) and write on it—
    - (i) the magistrate's or justice's name; and
    - (ii) the date and time the magistrate or justice issued the warrant; and
    - (iii) the terms of the special warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate or justice.
- (7) The inspector must, at the first reasonable opportunity, send the magistrate or justice—

- (a) the sworn application; and
  - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate or justice must attach them to the warrant.
- (9) If—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
  - (b) the warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

## **129 Warrants—procedure for entry**

- (1) This section applies if—
- (a) an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant; and
  - (b) the occupier of the place is present at the place.
- (2) Before entering the place, the inspector must do, or make a reasonable attempt to do, the following things—
- (a) comply with section 120<sup>18</sup> for the occupier;
  - (b) give the occupier a copy of—
    - (i) the warrant; or
    - (ii) if the entry is authorised by a facsimile warrant or warrant form mentioned in section 128(6)—the facsimile warrant or warrant form;
  - (c) tell the occupier the inspector is permitted by the warrant to enter the place;

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18 Section 120 (Production or display of identity card)

- (d) give the occupier an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes the inspector must immediately enter the place to ensure the effective execution of the warrant is not frustrated.

## **Division 2            Entry to vehicles**

### **Subdivision 1        Power to enter vehicles**

#### **130    Power of entry**

An inspector may enter and stay in a vehicle if—

- (a) the person in control of the vehicle consents to the entry; or
- (b) the person in control of the vehicle has been given an animal welfare direction and the entry is made at a time or interval stated in the direction to check compliance with the direction; or
- (c) the inspector reasonably suspects—
  - (i) the vehicle is being, has been, or is about to be used in the commission of an animal welfare offence; or
  - (ii) the vehicle, or an animal or other thing in the vehicle, may provide evidence of an animal welfare offence; or
  - (iii) there is an imminent risk of death or injury to an animal in or from the vehicle or because of an animal welfare offence involving the vehicle; or

*Example of an imminent risk of death or injury to an animal—*

A dog is locked in a car and the dog is suffering, or apparently suffering, from heat exhaustion.



- (iv) there is a need to enter the vehicle to relieve an animal in pain in the vehicle or prevent an animal in the vehicle from suffering pain.

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

- (1) This section applies if—
  - (a) an inspector is intending to enter a vehicle under section 130(b) or (c); and
  - (b) a person who is a person in control, or an occupier of, the vehicle is present at the vehicle.
- (2) Before entering the vehicle, the inspector must do, or make a reasonable attempt to do, the following things—
  - (a) comply with section 120<sup>19</sup> for the person;
  - (b) tell the person the purpose of the entry;
  - (c) seek the consent of the person to the entry;
  - (d) tell the person the inspector is permitted under this Act to enter the vehicle without the person's consent.
- (3) If the person in control of the vehicle is not present at the vehicle, the inspector must take reasonable steps to advise the person or any registered operator of the vehicle of the inspector's intention to enter the vehicle.
- (4) Subsection (3) does not require the inspector to take a step that the inspector reasonably believes may frustrate or otherwise hinder an investigation under this Act or the purpose of the intended entry.

## **Subdivision 2 Powers to support entry**

### **132 Power to stop vehicle that may be entered**

- (1) If a vehicle, that an inspector may enter under this part other than an aircraft or train, is moving or about to move, the

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<sup>19</sup> Section 120 (Production or display of identity card)

inspector may signal (a *stop signal*) the person in control of the vehicle—

- (a) to stop the vehicle; or
- (b) not to move the vehicle.

(2) In this section—

*stop*, a vehicle, includes requiring it to remain stationary for the time reasonably necessary to enable a function or power under this or another Act to be performed or exercised.

### **133 Failure to comply with stop signal**

(1) A person in control of a vehicle to whom a stop signal has been given must obey the stop signal unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is a reasonable excuse for the person not to obey the signal if—

- (a) to immediately obey the signal would have endangered the person or someone else; and
- (b) the person obeys the signal as soon as it is practicable to obey it.

### **134 Power to require help to enter from person in control**

(1) If an inspector may, under this part, enter a vehicle, the inspector may require (an *entry requirement*) the person in control of the vehicle to give the inspector reasonable help to enter the vehicle.

*Example of an entry requirement—*

The vehicle is locked. Its driver is present at the vehicle and has a key to unlock it. An entry requirement may be given to the driver to unlock the vehicle.

(2) When making the entry requirement, the inspector must give the person an offence warning.

**135 Failure to comply with entry requirement**

A person of whom an entry requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

**Division 3 Powers for entry to all places****136 Application of div 3**

- (1) This division applies if, under a provision of this part other than section 123 or 148(2),<sup>20</sup> an inspector may enter, or has entered, a place.
- (2) However, if an inspector, under section 122(2)<sup>21</sup> enters a place to ask the occupier's consent to enter premises, this division applies to the inspector only if the consent is given or the entry is otherwise authorised.

**137 General powers**

The inspector may do any of the following<sup>22</sup>—

- (a) enter the place using reasonable force;
- (b) search any part of the place;
- (c) open, using reasonable force, a cage, container, pen, yard or other structure confining or containing an animal or other thing to examine the structure, animal or other thing;
- (d) take reasonable measures to relieve the pain of an animal at the place;

*Examples of measures—*

feeding, untethering or watering the animal

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20 Section 123 (Limited entry power to provide relief to animal) or 148 (Powers for seized things)

21 Section 122 (Power of entry)

22 See also section 162 (Power of destruction).

- (e) examine or inspect or film, photograph, videotape or otherwise record an image of, an animal, document or other thing at the place;
- (f) take a sample of or from an animal or other thing at the place for analysis or testing;
- (g) copy a document at the place;
- (h) take into the place the equipment, materials or persons the inspector reasonably requires for exercising a power under this part;
- (i) brand, mark, tag or otherwise identify an animal at the place;
- (j) take a necessary step to allow a power under paragraphs (a) to (i) to be exercised.

*Example of a step for paragraph (j)—*

mustering, unloading or yarding cattle at the place to allow them to be examined

### **138 Power to require reasonable help**

- (1) The inspector may require (a *help requirement*) a person at the place to give the inspector reasonable help to exercise a power under this part, including, for example to produce a document or give information.
- (2) When making the help requirement, the inspector must give the person an offence warning.

### **139 Failure to comply with help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying with the requirement might tend to incriminate the person.

- (3) However, subsection (2) does not apply if the requirement is to produce a document required to be held or kept by the person under—
- (a) this Act; or
  - (b) another Act or a law of the Commonwealth or another State if the document relates to the transportation of live animals.

**140 Power to require person in control of vehicle to take action**

- (1) This section applies if a place to which this division applies is a vehicle.
- (2) The inspector may require (an *action requirement*) the person in control of the vehicle to do any of the following to allow the inspector to exercise a power under this part—
- (a) bring the vehicle, or an animal or other thing in it, to a stated reasonable place;
  - (b) remain in control of the vehicle, animal or other thing at the place for a stated reasonable period.
- (3) When making the action requirement, the inspector must give the person an offence warning.

**141 Failure to comply with action requirement**

A person of whom an action requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Division 4            Seizure and forfeiture**

### **Subdivision 1        Powers of seizure**

#### **142    General power to seize evidence**

- (1) An inspector who has, under this part, entered a place may seize an animal or other thing at the place if the inspector—
  - (a) reasonably suspects it is evidence of an offence against this Act; or
  - (b) reasonably believes the seizure is necessary to prevent it being—
    - (i) destroyed, hidden or lost; or
    - (ii) used to commit, continue or repeat, an offence.
- (2) Also, an inspector may seize an animal or other thing at the place—
  - (a) if the inspector reasonably believes it has just been used in committing, or is the subject of, an animal welfare offence; or
  - (b) with the written consent of a person as follows or a person the inspector reasonably believes is a person as follows—
    - (i) for an animal—a person in charge of the animal;
    - (ii) for another thing—the owner or person in possession of the thing.
- (3) A consent under subsection (2)(b) given by an owner may also include the owner's agreement to transfer ownership of the animal or other thing to the State or a prescribed entity.
- (4) Despite subsections (1) and (2), if an entry to a place was made after obtaining the necessary consent of a person, the inspector may seize a thing at the place only if the seizure is

consistent with the purpose of entry as told to the person when asking for the consent.<sup>23</sup>

- (5) This section does not limit a power to seize under section 144 or 145.

### **143 Seizing evidence under warrant**

An inspector who, under this part, enters a place with a warrant may seize the evidence for which the warrant was issued.

### **144 Seizure for welfare of animal**

- (1) An inspector who has, under this part, entered a place may seize an animal at the place if the inspector reasonably believes—

(a) the animal—

(i) is under an imminent risk of death or injury; or

*Examples of imminent risk of death or injury—*

1 A prohibited event is being conducted at the place.

2 The animal is being beaten or tortured.

(ii) requires veterinary treatment; or

(iii) is experiencing undue pain; and

(b) the interests of the welfare of the animal require its immediate seizure.

- (2) The inspector may also seize the animal if the person in charge of the animal has contravened, or is contravening, an animal welfare direction or a court order about the animal.

### **145 Seizure of property subject to security**

- (1) An inspector may seize an animal or other thing under this subdivision or exercise powers under subdivision 2 in relation

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<sup>23</sup> For necessary consent and purpose of entry for places other than vehicles, see sections 122 and 124 and for vehicles see sections 130 and 131.

to it despite a lien or other security over it claimed by another person.

- (2) However, the seizure does not affect the person's claim to the lien or other security against a person other than the inspector or a person acting for the inspector.

## **Subdivision 2 Powers to support seizure**

### **146 Direction to person in charge**

- (1) To enable an animal or other thing to be seized, an inspector may direct (a *seizure direction*) the person in charge, or owner or person in possession, of it—
  - (a) to take it to a stated reasonable place or places by a stated reasonable time or times; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) A seizure direction—
  - (a) must be made by notice in the approved form; or
  - (b) if for any reason it is not practicable to give notice in the approved form—may be made orally and confirmed by notice in the approved form as soon as practicable.

### **147 Failure to comply with seizure direction**

A person of whom a seizure direction has been made must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

### **148 Powers for seized things**

- (1) Having seized an animal or other thing, an inspector may do 1 or more of the following—
  - (a) move it from the place where it was seized (the *place of seizure*);



*Animal Care and Protection Act 2001*

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- (b) leave it at the place of seizure but take reasonable action to restrict access to it;

*Examples of restricting access to a thing—*

- 1 brand, mark, seal, tag or otherwise identify it to show access to it is restricted
- 2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

- (c) for equipment—make it inoperable;

*Example of making equipment inoperable—*

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

- (d) for an animal—

- (i) take it to a place the inspector considers appropriate; or
- (ii) give it accommodation, food, rest, water or other living conditions; or
- (iii) if the inspector reasonably believes that, in the interests of its welfare, the animal requires veterinary treatment—arrange for the treatment; or
- (iv) if an animal welfare direction has been given in relation to the animal and the direction has not been complied with—take other action to ensure the direction is complied with.

- (2) While an animal seized under this part is at its place of seizure, an inspector may enter the place—

- (a) to give the animal food, water or veterinary treatment if the inspector reasonably believes the animal needs the food, water or treatment; or
- (b) to take the animal to another place the inspector considers appropriate.

- (3) An inspector may enter a place under subsection (2) only for a purpose mentioned in the subsection.

**149 Offence to tamper with seized thing**

- (1) This section applies in relation to an animal or other thing seized under this part.
- (2) A person, other than an inspector or a person authorised by an inspector for the purpose, must not do, or attempt to do, any of the following unless the person has a reasonable excuse—
  - (a) tamper with—
    - (i) the animal or other thing; or
    - (ii) something done under section 148(1)(b) to restrict access to it;
  - (b) enter, or be at, the place where the animal or other thing is being kept;
  - (c) move the animal or other thing from the place where it is being kept;
  - (d) have the animal or other thing in the person's possession.

Maximum penalty—100 penalty units.

**Subdivision 3 Safeguards for seized property****150 Information notice and receipt for seized property**

- (1) This section applies if, under this part or a warrant, an inspector seizes an animal or another thing, unless—
  - (a) the seizure was with the written consent of a person mentioned in section 142(2)(b);<sup>24</sup> or
  - (b) the inspector reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or
  - (c) the seized thing is not an animal and it would be impracticable or unreasonable to expect the inspector to account for the thing given its condition, nature and value.

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24 Section 142 (General power to seize evidence)

*Animal Care and Protection Act 2001*

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*Example for paragraph (c)—*

animal droppings of no inherent value

- (2) The inspector must, as soon as practicable after the seizure, give the person from whom the thing was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) an information notice about the decision to make the seizure.
- (3) However, if a person as follows is not present at the place at which the seizure happened, the receipt and information notice may be given by leaving them at the place in a conspicuous position and in a reasonably secure way—
  - (a) for an animal—a person in charge of the animal;
  - (b) for another thing—the owner or person in possession of the thing.
- (4) The information notice and receipt may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The inspector may delay in giving the receipt and information notice if the inspector reasonably suspects doing so may frustrate or otherwise hinder an investigation under this Act.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place to keep it under observation.

## **151 Access to seized property**

- (1) This section applies to an inspector who has, under this part or a warrant, seized anything until the thing is forfeited or returned under this part.
- (2) The inspector must allow any owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.

- (3) Subsection (2) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (4) The inspection or copying must be provided free of charge.

## **152 Return of seized animal**

- (1) This section applies if an inspector has, under this part or a warrant, seized an animal.
- (2) The inspector must, within 28 days after the seizure, return the animal to its owner unless—
  - (a) the owner has, under this part, agreed in writing to transfer ownership of it to the State or a prescribed entity; or
  - (b) the animal has been forfeited to the State under this part; or
  - (c) an application has been made for a disposal or prohibition order in relation to the animal; or
  - (d) continued retention of the animal is needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; or
  - (e) an animal welfare direction given in relation to the animal has not been complied with and the inspector is taking, or proposes to take, action to ensure the direction is complied with; or
  - (f) the inspector reasonably believes the animal's condition may require its destruction under section 162.<sup>25</sup>
- (3) If subsection (2)(c) applies, the inspector must promptly return the animal to its owner if the application for the disposal or prohibition order—
  - (a) is withdrawn; or
  - (b) has been finally decided or otherwise ended and a disposal or prohibition order has not been made in relation to the animal.

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25 Section 162 (Power of destruction)

- (4) If subsection (2)(d) applies, the inspector must promptly return the animal to its owner if its continued retention as evidence is no longer required.
- (5) If subsection (2)(e) applies, the inspector must promptly return the animal to its owner if—
  - (a) the animal welfare direction is complied with; or
  - (b) the inspector ceases to take, or propose to take, action to ensure the direction is complied with.
- (6) If subsection (2)(f) applies, the inspector must promptly return the animal to its owner if the inspector no longer believes the animal's condition may require its destruction under section 162.
- (7) Nothing in this section affects a lien or other security over the animal.

### **153 Return of other seized property**

- (1) This section applies if—
  - (a) an inspector has, under this part or a warrant, seized a thing other than an animal; and
  - (b) the thing has some intrinsic value; and
  - (c) the owner of the thing has not, under this part, agreed in writing to transfer ownership of it to the State or a prescribed entity; and
  - (d) the thing has not been forfeited under this part; and
  - (e) a disposal order has not been made in relation to the thing.
- (2) If no application has been made for a disposal order in relation to the thing, the inspector must, return the thing to its owner—
  - (a) generally—at the end of 6 months after the seizure; or
  - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.

- (3) Despite subsection (2), the inspector must promptly return a thing seized as evidence to its owner if the inspector is satisfied—
  - (a) its continued retention as evidence is no longer required; and
  - (b) its continued retention is not necessary to prevent the thing being used to continue, or repeat, the offence; and
  - (c) it is lawful for the person to possess the thing.
- (4) If, at the time mentioned in subsection (2), an application has been made for a disposal order in relation to the thing the inspector must promptly return the thing to its owner if the application—
  - (a) is withdrawn; or
  - (b) has been finally decided or otherwise ended and a disposal order has not been made in relation to the thing.
- (5) Nothing in this section affects a lien or other security over the thing.

## **Subdivision 4      Forfeiture**

### **154      Power to forfeit**

- (1) This section applies if an animal or other thing has been seized under this Act or the *Police Powers and Responsibilities Act 2000*, section 146(2)(d).<sup>26</sup>
- (2) The chief executive may decide to forfeit the animal or thing to the State if an inspector or police officer—
  - (a) after making reasonable efforts, can not return it to its owner; or
  - (b) after making reasonable inquiries, can not find its owner or, for an animal, any other person in charge of it; or

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<sup>26</sup> *Police Powers and Responsibilities Act 2000*, section 146 (Power in relation to offences involving animals)

- (c) reasonably believes it is necessary to keep the animal or other thing to prevent it from being used in committing, or becoming the subject of, an animal welfare offence.
- (3) For subsection (2)—
  - (a) the period over which the efforts or inquiries are made must be at least 4 days; and
  - (b) the inspector or police officer is not required to—
    - (i) make efforts if it would be unreasonable to make efforts to return the animal or other thing to its owner; or  
*Example for subparagraph (i)—*  

The owner of the thing has migrated to another country.
    - (ii) make inquiries if it would be unreasonable to make inquiries to find the owner.
- (4) Regard must be had to an animal or other thing's condition, nature and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

## 155 Information notice about forfeiture

- (1) If the chief executive decides, under section 154(2), to forfeit an animal or other thing, other than a seized thing mentioned in section 150(1)(c),<sup>27</sup> the chief executive must promptly give the person who owned it immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) However, subsection (1) does not apply if—
  - (a) the decision was made under section 154(2)(a) or (b); and
  - (b) the place where the animal or other thing was seized is—

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<sup>27</sup> Section 150 (Information notice and receipt for seized property)

- (i) a public place; or
  - (ii) a place at which the notice is unlikely to be read by the former owner.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.
- (4) If the decision was made under section 154(2)(a) or (b) the information notice may be given by leaving it at the place where the animal or other thing was seized, in a conspicuous position and in a reasonably secure way.

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

### **156      When transfer takes effect**

- (1) An animal or other thing becomes the State's property if, under section 154(2), it is forfeited to the State.
- (2) If, under section 142(3), the owner of an animal or other thing agrees in writing to transfer ownership of it to the State or a prescribed entity, it becomes the property of the State or entity when the chief executive or entity agrees in writing to the transfer.

### **157      How property may be dealt with**

- (1) This section applies if, under section 156 an animal or other thing becomes the property of the State or a prescribed entity.
- (2) The State or entity may deal with the thing as it considers appropriate, including, for example, by destroying it or giving it away.
- (3) However, the State or entity must not deal with the thing in a way that could prejudice the outcome of an appeal under this Act of which it is aware.
- (4) Subsection (3) does not limit an inspector's power under section 162 to destroy the animal.



- (5) If the State or entity sells the thing, it may, after deducting the following, return the proceeds of the sale to the former owner of the thing—
- (a) the costs of the sale;
  - (b) any costs it may recover from the person under section 189.<sup>28</sup>
- (6) The chief executive may deal with the thing for the State.
- (7) This section is subject to a decision, direction or order under chapter 7, part 2 or 4<sup>29</sup> about the animal or other thing.

## **Division 5                    Animal welfare directions**

### **158    Application of div 5**

- (1) This division applies if an inspector reasonably believes—
- (a) a person has committed, is committing, or is about to commit, an animal welfare offence; or
  - (b) an animal—
    - (i) is not being cared for properly; or
    - (ii) is experiencing undue pain; or
    - (iii) requires veterinary treatment; or
    - (iv) should not be used for work.

*Example for subparagraph (iv)—*

A horse with ‘saddle sore’ should not be used by a riding school.

- (2) This division also applies if an animal has been seized under division 4, subdivision 1.

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28 Section 189 (Recovery of seizure, compliance or destruction costs)

29 Chapter 7, part 2 (Orders relating to animal welfare offences) or 4 (Reviews and appeals)

**159 Power to give animal welfare direction**

- (1) The inspector may give a written direction (an *animal welfare direction*) requiring stated action about the animal or its environment.
- (2) The direction may be given to—
  - (a) a person in charge of the animal; or
  - (b) a person whom the inspector reasonably believes is in charge of the animal; or
  - (c) if the animal has been seized under division 4, subdivision 1—
    - (i) a person who, immediately before the seizure, was a person in charge of the animal; or
    - (ii) a person whom the inspector reasonably believes was, immediately before the seizure, a person in charge of the animal.
- (3) Without limiting subsection (1), the direction may require any of the following action to be taken—
  - (a) care for, or treat, the animal in stated way;
  - (b) provide the animal with stated accommodation, food, rest, water or other living conditions;
  - (c) consult a veterinary surgeon about the animal's condition before a stated time;
  - (d) move the animal from the place where it is situated when the direction is given to another stated place for a purpose mentioned in paragraph (a), (b) or (c);
  - (e) not to move the animal from the place where it is situated when the direction is given.
- (4) However, action may be required only if the inspector considers it to be necessary and reasonable in the interests of the animal's welfare.
- (5) The direction may state how the person given the direction may show that the stated action has been taken.

**160 Requirements for giving animal welfare direction**

- (1) An animal welfare direction must—
  - (a) be in the approved form; and
  - (b) describe—
    - (i) the animal in a way that reasonably allows the person given the direction to identify it; or
    - (ii) if the direction is given because the inspector reasonably believes a person has committed, is committing or is about to commit, an animal welfare offence—the type of animal to which the offence relates; and
  - (c) state—
    - (i) each requirement; and
    - (ii) a time for the person to comply with each requirement; and
  - (d) include an information notice about the decision to give the direction.
- (2) Despite subsection (1)(a), an animal welfare direction may be given orally if—
  - (a) the inspector considers it to be in the interests of the animal's welfare to give the direction immediately; and
  - (b) for any reason it is not practicable to immediately give the direction in the approved form; and
  - (c) the inspector gives the person an offence warning.
- (3) If the direction is given orally, the inspector must confirm the direction by also giving it in the approved form as soon as practicable after giving it orally.
- (4) An animal welfare direction may state that an inspector proposes, at a stated time or at stated intervals, to enter the following where an animal the subject of the direction is kept at to check compliance with the direction—
  - (a) a vehicle of which the person is the person in control;
  - (b) another place of which the person is the occupier.

**161 Failure to comply with animal welfare direction**

A person to whom an animal welfare direction has been given must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—100 penalty units or 1 year's imprisonment.

**Division 6 Inspector's power to destroy animals****162 Power of destruction**

An inspector may destroy an animal, or cause it to be destroyed, if—

- (a) an inspector has seized the animal under this part or the person in charge of the animal has given written consent to the destruction; and
- (b) the inspector reasonably believes that the animal is in pain to the extent that it is cruel to keep it alive.

**Division 7 Other powers****163 Power to require name and address**

- (1) An inspector may require a person to state the person's name and residential or business address if the inspector—
  - (a) finds the person committing, or about to commit, an offence against this Act; or
  - (b) finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act; or
  - (c) reasonably believes the person is the person in charge of an animal and the inspector proposes to give the person an animal welfare direction.

- (2) When making the requirement, the inspector must give the person an offence warning.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or required address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) A requirement under this section is called a *personal details requirement*.

#### **164 Failure to comply with personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse if—
  - (a) the requirement was given because the inspector giving it suspected the person has committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

#### **165 Power to require information**

- (1) This section applies if—
  - (a) an inspector reasonably suspects—
    - (i) this Act has been contravened; and
    - (ii) a person may be able to give information about the contravention; or
  - (b) an animal welfare direction has been given and an inspector reasonably believes a veterinary surgeon or other person may be able to give information about whether the direction has been complied with.

- (2) The inspector may require (an *information requirement*) the person to give information in the person's knowledge about the contravention or about whether the direction has been complied with in a stated reasonable time and in a stated reasonable way.
- (3) When making the requirement, the inspector must give the person an offence warning.

### **166 Failure to comply with information requirement**

- (1) A person of whom an information requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse—
  - (a) for an individual not to give information if giving the information might tend to incriminate the person; or
  - (b) if the information sought by the requirement is not in fact relevant to—
    - (i) for a requirement about a suspected contravention of this Act—the suspected contravention; or
    - (ii) for a requirement about whether an animal welfare direction has been complied with—the compliance or non-compliance with the direction.

### **167 False or misleading statements**

- (1) A person must not state anything to an inspector that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) applies even if the statement was not made in response to, or in purported compliance with, a personal details requirement or an information requirement or another specific requirement under a specific power.

**168 Power to require production of documents**

- (1) An inspector may require (a *document production requirement*) a person to make available for inspection by an inspector, or produce to the inspector for inspection, at a stated reasonable time and place a document—
  - (a) required to be held or kept by the person under—
    - (i) this Act; or
    - (ii) another Act or a law of the Commonwealth or another State if the document relates to the transportation of live animals; or
  - (b) in the person's possession about a stated matter relating to this Act.
- (2) The inspector may keep the document to copy it.
- (3) The inspector must return the document to the person as soon as practicable after copying it.

**169 Failure to comply with document production requirement**

- (1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a document production requirement if complying with the requirement might tend to incriminate the person.
- (3) However, subsection (2) does not apply if the document is required to be held or kept by the person under—
  - (a) this Act; or
  - (b) another Act or a law of the Commonwealth or another State if the document relates to the transportation of live animals.

**170 False or misleading documents**

- (1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) applies even if the document was not given in response to, or in purported compliance with, a document production, information or personal details requirement or another specific requirement under another specific power.

**Part 3 Notice of damage because of exercise of powers****171 Application of pt 3**

- (1) This part applies if—
  - (a) an inspector damages something when exercising, or purporting to exercise, a power; or
  - (b) a person helping an inspector to exercise the inspector's powers damages something.
- (2) However, this part does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.

**172 Requirement to give notice**

- (1) The inspector must promptly give notice of the damage to the person who appears to the inspector to be the owner or person in possession of the thing.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must—



- (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (3) The inspector may delay complying with subsection (1) or (2) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the inspector.
- (4) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.

### **173 Content of notice**

- (1) A notice of damage under section 172 must state—
- (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 191.<sup>30</sup>
- (2) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the control of the inspector or a person helping the inspector, the inspector may state the belief in the notice.

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30 Section 191 (Compensation because of exercise of powers)

## **Chapter 7      Evidence and legal proceedings**

### **Part 1            Evidence**

#### **Division 1        General evidentiary aids**

##### **174      Application of div 1**

This division applies to a proceeding under or in relation to this Act.

##### **175      Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of an authorised officer or inspector;
- (b) the power of the chief executive, an authorised officer or inspector to do anything under this Act.

##### **176      Signatures**

A signature purporting to be the signature of the chief executive, an authorised officer or inspector is evidence of the signature it purports to be.

##### **177      Other evidentiary aids**

A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) a stated document is a thing as follows given, issued, kept or made under this Act—
  - (i) an appointment, approval or decision;
  - (ii) an animal welfare direction;
  - (iii) a code of practice;

- (iv) a direction, notice or requirement;
- (v) a licence or permit;
- (vi) a record;
- (vii) the register;
- (b) a stated document is another document kept under this Act;
- (c) a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
- (d) that, on a stated day—
  - (i) a stated person was given a stated decision, direction or notice under this Act; or
  - (ii) a stated requirement under this Act was made of a stated person;
- (e) on a stated day, or during a stated period, a stated person was or was not registered or the person's registration was suspended;
- (f) a person's registration details on a stated day or during a stated period;
- (g) a stated amount is payable under this Act by a stated person.

## **Division 2                      Offence proceedings**

### **178      Offences under Act are summary**

- (1) An offence against this Act is a summary offence.
- (2) A proceeding for the offence must start within the later of the following periods to end—
  - (a) 1 year after the commission of the offence;
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

**179 Statement of complainant's knowledge**

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

**180 False or misleading statements**

- (1) This section applies to a proceeding for an offence against this Act defined as involving—
  - (a) false or misleading information; or
  - (b) a false or misleading document or statement.
- (2) It is enough for the complaint starting the proceeding to state the document, information or statement was 'false or misleading' to the defendant's knowledge, without specifying which.
- (3) In the proceeding, evidence that the document, information or statement was given or made recklessly is evidence that it was given or made so as to be false or misleading.

**181 Conduct of representatives**

- (1) This section applies to a proceeding for an offence against this Act if it is relevant to prove a person's state of mind about particular conduct.
- (2) It is enough to show—
  - (a) the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) Conduct engaged in for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been engaged in also by the person unless the person proves—
  - (a) if the person was in a position to influence the representative in relation to the conduct—the person took reasonable steps to prevent the conduct; or



**183 Prohibition order**

- (1) The court may order (a *prohibition order*) that a person convicted of an animal welfare offence must not purchase or otherwise acquire or take possession of—
  - (a) any animal; or
  - (b) a stated type of animal; or
  - (c) any animal, or a stated type of animal, for trade or commerce or another stated purpose.
- (2) A prohibition order may be made permanently or for a stated period.<sup>31</sup>

**184 Order against owner in certain cases**

- (1) This section applies if—
  - (a) a person has been convicted of an animal welfare offence; and
  - (b) someone else (the *owner*) owns the animal the subject of the offence.
- (2) The court may make a disposal or prohibition order against the owner as if the owner had been convicted of the offence if the court considers—
  - (a) an act done, or omission made, by the owner contributed to, or allowed, the commission of the offence; and
  - (b) the owner is, and will continue to be, incapable of exercising the owner's duty of care to the animal.

**185 Criteria for making disposal or prohibition order**

- (1) The court may make a disposal or prohibition order against a person only if the court is satisfied, on the balance of probabilities, it is just to make the order in the circumstances.
- (2) In considering whether it is just to make the order, the court must consider the following—

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31 See section 188 (Review of certain prohibition orders).

- (a) the nature of the animal welfare offence to which the hearing relates;
  - (b) the effect of the offence on any animal that was the subject of, or used to commit, the offence;
  - (c) the welfare of the animal and any other animal owned by the person;
  - (d) the likelihood of the person committing another animal welfare offence.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) The court may make the order, to the extent it relates to an animal, whether or not it considers another animal welfare offence is likely to be committed in relation to the animal.<sup>32</sup>

## **186 Procedure and powers for making disposal or prohibition order**

- (1) A disposal or prohibition order may be made only—
- (a) at the court's initiative; or
  - (b) on an application by the prosecution, which may be made at any time.
- (2) The court must not make an order under section 184 unless the owner under that section has been given an opportunity to be heard about whether the order should be made.
- (3) In deciding whether to make another disposal or prohibition order, the court—
- (a) may require notice to be given to anyone the court considers appropriate, including, for example, the animal's owner if the person against whom the order is sought is not the owner; and
  - (b) must not refuse to hear a person to whom the notice is given.
- (4) The court may make a disposal order and a prohibition order against the same person in relation to the same offence.

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<sup>32</sup> See also section 9(4) (Act does not affect other rights or remedies).

**187 Contravention of prohibition order unlawful**

A person against whom a prohibition order has been made must not unlawfully contravene the order.

Maximum penalty—300 penalty units or 1 year's imprisonment.

**188 Review of certain prohibition orders**

- (1) This section applies if a prohibition order has been made against a person permanently or for a stated period of 5 years or more.
- (2) The court that made the prohibition order (whether or not constituted by the same judicial officer) may, on the application of the person, amend or cancel the order (a *review order*).
- (3) However—
  - (a) the person can not apply for a review order if the person has within 12 months applied for a review order in relation to the prohibition order; and
  - (b) the court must not make a review order within 5 years after the prohibition order was made.
- (4) The applicant must give the chief executive notice of the application.
- (5) In deciding the application, the court must—
  - (a) give the chief executive and anyone else it considers appropriate an opportunity to be heard; and
  - (b) consider the matters mentioned in section 185(2) in relation to the prohibition order and any change relevant to the matters since the order was made.



## Part 3 Remedies

### 189 Recovery of seizure, compliance or destruction costs

- (1) This section applies if the State or a prescribed entity has incurred a cost for an inspector employed or engaged by it to do 1 or more of the following acts in relation to an animal—
  - (a) if the animal has, under chapter 6, part 2, been seized—
    - (i) taking possession of, or moving, the animal; or  
*Example for subparagraph (i)—*  
the costs of mustering, unloading or yarding cattle
    - (ii) taking action to restrict access to the animal; or
    - (iii) providing it with accommodation, food, rest, water or other living conditions; or
    - (iv) arranging for it to receive veterinary or other treatment;
  - (b) if an animal welfare direction given in relation to the animal has not been complied with—taking action to ensure the direction is complied with;
  - (c) if the animal has been destroyed under section 162—destroying it.
- (2) The State or entity may recover the cost from the animal's owner or former owner if the incurring of the cost was necessary and reasonable—
  - (a) in the interests of the animal's welfare or to destroy it; or
  - (b) if the animal has been destroyed under section 162—for the destruction.

- (3) However, if a cost mentioned in subsection (1)(a)(iii) or (iv) was for a period during which the animal was kept under section 152(2)(d),<sup>33</sup> it may be recovered only if the animal's retention was reasonably required as evidence.

## **190 Compensation because of animal welfare offence**

- (1) A court may order a person convicted of an animal welfare offence to—
- (a) pay compensation to a person who, because of the commission of the offence, has—
    - (i) suffered damage or loss to property; or
    - (ii) incurred costs in avoiding or minimising, or attempting to avoid or minimise, damage or loss to property; or
  - (b) pay a person an amount for costs incurred by the person in—
    - (i) taking possession of, or moving, the animal; or  
*Example for subparagraph (i)—*  
     the costs of mustering, unloading or yarding cattle
    - (ii) providing it with accommodation, food, rest, water or other living conditions; or
    - (iii) arranging for it to receive veterinary or other treatment.
- (2) However, an order under subsection (1) can not be made in favour of the State or a prescribed entity.

## **191 Compensation because of exercise of powers**

- (1) A person may claim compensation from the State if the person incurs a cost, damage or loss because of the exercise, or purported exercise, of a power under chapter 5 or 6, other than because of a lawful seizure.

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<sup>33</sup> Section 152 (Return of seized animal)

- (2) Without limiting subsection (1), compensation may be claimed for a cost, damage or loss incurred in complying with an action, document production, help, information or personal details requirement made of the person.

## **192 General provisions for orders under pt 3**

- (1) Compensation or costs that may be recovered under this part may be claimed and ordered in a proceeding—
- (a) brought in a court of competent jurisdiction; or
  - (b) for an offence against this Act to which the claim relates.
- (2) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (3) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (4) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.<sup>34</sup>

## **Part 4 Reviews and appeals**

### **Division 1 Review of decisions**

#### **193 Appeal process starts with review**

Every appeal against an original decision must be, in the first instance, by way of an application for a review.

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<sup>34</sup> See also sections 9 (Act does not affect other rights or remedies) and 204(3) (Further powers for appeal about seizure or forfeiture).

**194 Who may apply for review**

An interested person for an original decision may apply to the chief executive for a review of the decision (a *review application*).

**195 Requirements for making application**

- (1) A review application must be—
  - (a) in the approved form; and
  - (b) supported by enough information to enable the chief executive to decide the application; and
  - (c) made within 14 days after the applicant is given the information notice about the original decision the subject of the application.
- (2) However, the chief executive may, at any time, extend the time for making a review application.

**196 Stay of operation of original decision**

- (1) A review application does not stay the original decision the subject of the application.
- (2) However, the applicant may immediately apply for a stay of the original decision to the Magistrates Court.
- (3) The court may stay the original decision to secure the effectiveness of the review and a later appeal to the court.
- (4) The stay—
  - (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (5) The period of the stay must not extend past the time when the chief executive makes a review decision about the original decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.
- (6) A review application affects the original decision, or carrying out of the decision, only if the decision is stayed.

**197 Review decision**

- (1) The chief executive must, within 20 days after receiving a review application made under section 195—
  - (a) conduct a review of the original decision the subject of the application; and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision.
- (2) The application must not be dealt with by—
  - (a) the person who made the original decision; or
  - (b) a person in a less senior office than the person who made the original decision.
- (3) Subsection (2)—
  - (a) applies despite the *Acts Interpretation Act 1954*, section 27A;<sup>35</sup> and
  - (b) does not apply to an original decision made by the chief executive personally.
- (4) If the review decision confirms the original decision, for the purpose of an appeal, the original decision is taken to be the review decision.
- (5) If the review decision amends the original decision, for the purpose of an appeal, the original decision as amended is taken to be the review decision.

**198 Notice of review decision**

- (1) The chief executive must, within 10 days after making a review decision, give the applicant notice (the *review notice*) of the review decision.
- (2) If the review decision is not the decision sought by the applicant, the review notice must also state the following—

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35 *Acts Interpretation Act 1954*, section 27A (Delegation of functions or powers)

- (a) the reasons for the decision;
  - (b) that the applicant may, within 28 days after the review notice is given, appeal against the decision to the Magistrates Court;
  - (c) how to appeal;
  - (d) that the applicant may apply to the court for a stay of the decision.
- (3) If the chief executive does not give the review notice within the 10 days, the chief executive is taken to have made a review decision confirming the original decision.

## **Division 2                      Appeals**

### **199      Who may appeal**

If an interested person has applied for a review of an original decision, any interested person for the decision may appeal against the review decision to the Magistrates Court.

### **200      Starting appeal**

- (1) An appeal is started by—
  - (a) filing notice of appeal with the clerk of the Magistrates Court; and
  - (b) serving a copy of the notice on the chief executive; and
  - (c) complying with rules of court applicable to the appeal.
- (2) The notice of appeal must be filed within 28 days after the appellant receives notice of the review decision appealed against.
- (3) However, the court may, at any time, extend the time for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

**201 Stay of operation of review decision**

- (1) The Magistrates Court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be granted on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

**202 Hearing procedures**

- (1) In deciding an appeal, the Magistrates Court—
  - (a) has the same powers as the chief executive in making the review decision appealed against; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing, unaffected by the review decision.

**203 Court's powers on appeal—general**

- (1) In deciding an appeal, the Magistrates Court may—
  - (a) confirm the review decision appealed against; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the matter to the chief executive with directions the court considers appropriate.
- (2) If the court substitutes another decision, the substituted decision is taken, for the purposes of this Act, other than this part, taken to be the review decision.

**204 Further powers for appeal about seizure or forfeiture**

- (1) This section applies if an appeal is about a review decision to seize or forfeit an animal or other thing.
- (2) If the Magistrates Court confirms the forfeiture, it may also give directions about the sale or disposal of the animal or other thing.
- (3) If the court sets aside the seizure or forfeiture, it may also—
  - (a) order the return of the animal or other thing; or
  - (b) make another order it considers appropriate for its disposal; or
  - (c) make an order under section 191.<sup>36</sup>
- (4) However, the court must not order the return to a person of any of the following seized things—
  - (a) an animal or other thing that may be evidence in a proceeding started in relation to the thing seized;
  - (b) a thing that has been destroyed because it has no intrinsic value;
  - (c) a thing that has been disposed of because it was perishable;
  - (d) a thing the person may not lawfully possess.

**205 Appeal to District Court**

An appeal lies to a District Court from a decision of the Magistrates Court, but only on a question of law.

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36 Section 191 (Compensation because of exercise of powers)



## Chapter 8      General provisions

### Part 1            Other offences

#### 206      Obstruction of authorised officer or inspector

- (1) A person must not obstruct an authorised officer or inspector in the exercise of a power unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

- (2) If a person has obstructed an authorised officer or inspector and the officer or inspector decides to proceed with the exercise of the power, the officer or inspector must warn the person that—

- (a) it is an offence to obstruct the officer or inspector unless the person has a reasonable excuse; and
- (b) the officer or inspector considers the person's conduct an obstruction.

- (3) In this section—

*obstruct* includes assault, hinder, resist and attempt or threaten to obstruct.

#### 207      Impersonation of authorised officer or inspector

A person must not pretend to be an authorised officer or inspector.

Maximum penalty—250 penalty units.

#### 208      False or misleading entry in document kept under Act

A person must not make an entry in a document permitted or required to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—50 penalty units.

**209 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of its executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of its executive officers committed the offence of failing to ensure that the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove that—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) It is also a defence in a proceeding against an executive officer for the officer to prove information that tended to incriminate the corporation was obtained under a help requirement or document production requirement.

**210 Attempts to commit offences**

- (1) A person who attempts to commit an offence against this Act commits an offence.

Maximum penalty for an attempt—half the maximum penalty for the completed offence.

- (2) The Criminal Code, section 4<sup>37</sup> applies to subsection (1).

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37 The Criminal Code, section 4 (Attempts to commit offences)

## Part 2                      Miscellaneous provisions

### 211      Minister may establish advisory bodies

The Minister may establish an animal welfare advisory committee or another body to advise the Minister on animal welfare issues.

### 212      Delegations

- (1) The Minister may delegate the Minister's powers under this Act to the chief executive or an appropriately qualified officer of the department.
- (2) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified person as follows—
  - (a) an authorised officer or inspector;
  - (b) a public service officer or employee;
  - (c) a local government officer or employee;
  - (d) a prescribed entity.
- (3) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of standing—*

a person's classification level in the public service

### 213      Electronic applications

- (1) This section applies if—
  - (a) this Act requires an application to be made in an approved form; and
  - (b) the form provides that the application may be made at a stated e-mail address.

- (2) The application may be made by electronically communicating the information required by the approved form in a format substantially similar to the approved form.

## **214 Electronic notices about applications**

- (1) This section applies if an application under this Act has been made in an approved form, whether or not it has been made under section 213.
- (2) A notice from the applicant to the chief executive about the application may be given by electronically communicating it to an e-mail address for service for the chief executive stated in the approved form.
- (3) A notice from the chief executive to the applicant about the application may be given by communicating it to an e-mail address for service for the applicant stated in the application.

## **214A Transferring ownership of animal in particular circumstances**

- (1) This section applies if—
  - (a) an inspector has entered a place under chapter 6, part 2; and
  - (b) the owner of an animal at the place agrees to transfer ownership of the animal to the State or a prescribed entity, other than under section 142(3);<sup>38</sup> and
  - (c) the inspector is satisfied the transfer of ownership is to ensure the animal's welfare.
- (2) The animal becomes the property of the State or the prescribed entity when the chief executive or entity agrees in writing to the transfer.

## **215 Protection from liability**

- (1) This section applies to each of the following persons (a *relevant person*)—

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38 Chapter 6 (Investigation and enforcement), part 2 (Powers of inspectors) and section 142 (General power to seize evidence)

- (a) the chief executive;
  - (b) an authorised officer;
  - (c) an inspector;
  - (d) if an authorised officer or inspector has asked someone else to help the officer or inspector to exercise a power under this Act and the other person is giving the help—the other person;
  - (e) a person who, under this Act, is required to comply with a direction, order or requirement as follows and is complying with the direction, order or requirement—
    - (i) an action requirement;
    - (ii) a disposal order;
    - (iii) a document production requirement;
    - (iv) a help requirement;
    - (v) an information requirement;
    - (vi) a seizure direction.
- (2) A relevant person is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.
- (3) If subsection (2) prevents a civil liability attaching to a relevant person, the liability attaches instead to the State.
- (4) In this section—  
*civil liability* includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.

## **216 Approved forms**

The chief executive may approve forms for use under this Act.

## **217 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about any of the following—

*Animal Care and Protection Act 2001*

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- (a) animal accommodation;
  - (b) the confinement of animals;
  - (c) animal transportation;
  - (d) using animals as follows—
    - (i) for advertisements, films, photographs or television programs;
    - (ii) as companion animals;
    - (iii) for commercial, recreational or scientific purposes;
    - (iv) in entertainment;
    - (v) for medical or surgical procedures;
    - (vi) in pet shops;
  - (e) licences or permits for regulating a use of animals mentioned in paragraph (d) and the conditions of a licence or permit;
  - (f) medical or surgical procedures for animals;
  - (g) record keeping by—
    - (i) a licence or permit holder; or
    - (ii) a registered person;
  - (h) electrical devices that may, or must not, be used on any animal or a stated species of animal;
  - (i) charges payable, costs or fees under this Act and the following—
    - (i) the matters in relation to which the fees are payable;
    - (ii) the amounts of the fees;
    - (iii) the persons who are liable to pay the fees;
    - (iv) when the fees are payable;
    - (v) the recovery of an amount of the fees not paid.
- (3) A regulation may impose a penalty of no more than 20 penalty units for contravention of a regulation.

## Chapter 9      **Transitional provision for Primary Industries Legislation Amendment Act 2006**

### **218      Reporting obligation of registered person**

- (1) This section applies to a registered person if, under section 87 as in force before the commencement, the person has given the chief executive an annual report for the period ending on 30 April 2006 or a new reporting day for that period.
- (2) For the registered person's first annual report after the report mentioned in subsection (1), section 87 as in force after the commencement applies to the person as if a reference in section 87(1) to the period from 1 January to 31 December were a reference to—
  - (a) if the person's annual report mentioned in subsection (1) was for the period ending on 30 April 2006—the period from 1 May to 31 December; or
  - (b) if the person's annual report mentioned in subsection (1) was for the period ending on a new reporting day—the period from the day after the new reporting day to 31 December.
- (3) In this section—

***annual report*** means a written report required to be given to the chief executive under section 87.

***commencement*** means the day this section commences.

***new reporting day*** means a new reporting day under section 87(3).

**Schedule                      Dictionary**

## section 10

***action requirement*** see section 140(2).

***animal*** see section 11.

***animal ethics committee***, for chapter 4, see section 50.

***animal welfare direction*** means an animal welfare direction under—

- (a) section 159; or
- (b) the *Police Powers and Responsibilities Act 2000*.

***animal welfare offence***—

- 1 An ***animal welfare offence*** means an offence against—
  - (a) this Act, other than chapter 6, part 2, divisions 2, 3, 4 and 7 and chapter 8, part 1; or
  - (b) the Criminal Code, section 468.<sup>39</sup>
- 2 However, an offence by an executive officer of a corporation against section 209(2) is only an animal welfare offence if the relevant offence by the corporation is an animal welfare offence.

***animal welfare offence report***, for chapter 4, part 2, division 5, see section 82(1).

***approved form*** means a form approved by the chief executive under section 216.

***at***, a place, includes in or on the place.

***authorised officer*** means a person who holds appointment as an authorised officer under this Act.

***code of practice*** means a code of practice made under section 13(1).

***compulsory code requirement*** see section 15(2).

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<sup>39</sup> Criminal Code, section 468 (Injuring animals)



**Schedule (continued)**

**confine** an animal includes doing any of the following to it—

- (a) caging or keeping it in captivity in some other way;
- (b) maiming, mutilating or pinioning it or subjecting it to a device to hinder or prevent its free movement;
- (c) tethering it.

**conviction** means—

- (a) generally—a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded; and
- (b) for chapter 4—see also section 50.

**custody**, of an animal, includes care and control of the animal.

**debarking operation** see section 25(1).

**destroy** an animal includes disposing of it after it has been killed.

**disclosure exemption** see section 64(1).

**disposal order** see section 182(1).

**disqualifying event**, for chapter 4, see section 50.

**document production requirement** see section 168(1).

**duty of care**, for a person in charge of an animal, means the duty imposed on the person under section 17(1).

**enter** includes—

- (a) generally for a place—re-enter the place; and
- (b) also for a vehicle—board or re-board the vehicle.

**entry requirement** see section 134(1).

**event** includes competition, display and race.

**executive officer**, of a corporation, means a person who is concerned with, or takes part in, its management, whether or not the person is a director or the person's position is given the name of executive officer.

## Schedule (continued)

***exercise a power***, under this Act, includes exercise a power under an order, warrant or another authority issued under this Act.

***help requirement*** see section 138(1).

***identity card*** of—

- (a) an authorised officer—means the identity card given to the officer under section 104(1); or
- (b) an inspector—means the identity card given to the inspector under section 119(1).

***in***, a place, includes at or on the place.

***information notice***, for a decision of the chief executive or an authorised officer or inspector, means a notice stating the following—

- (a) the decision;
- (b) the reasons for it;
- (c) that the person to whom the notice is given may apply to the chief executive for a review of the decision within 14 days after the person receives the notice;
- (d) how to apply for a review.

***information requirement*** see section 165(2).

***inspector*** means a person who holds appointment as an inspector under this Act.

***interested person***, for an original decision, means—

- (a) a person who has been given, or is entitled to be given, an information notice; and
- (b) if the decision relates to an animal—the person in charge of the animal.

***justice of the peace (qualified)*** means a justice of the peace (qualified) under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

***monitoring program*** see section 95(1).

***notice*** means a written notice.

**Schedule (continued)**

***offence exemption***, for chapter 3, part 6, see section 38(1).

***offence warning***, for a direction or requirement under this Act, means a warning that, without reasonable excuse, it is an offence for the person to whom the direction or requirement is given, or of whom it is made, not to comply with it.

***original decision*** means the decision to do any of the following—

- (a) refuse a registration application;
- (b) impose a registration condition;
- (c) refuse a disclosure exemption application;
- (d) grant a disclosure exemption application for only part of the registration details the subject of the application;
- (e) amend registration details;
- (f) cancel or suspend registration;
- (g) refuse an application under section 93;
- (h) seize, under this Act or a warrant, an animal or other thing, unless the seizure was in a circumstance mentioned in section 150(1)(a) to (c);
- (i) forfeit, under section 154(2), an animal or other thing;
- (j) give an animal welfare direction.

***owner***, for a thing that has been seized under this Act, includes a person who would be entitled to possession of the thing had it not been seized.

***pain*** includes distress and mental or physical suffering.

***personal details requirement*** see section 163(4).

***person in charge***, of an animal, see section 12.

***person in control***, of a vehicle, includes—

- (a) the vehicle's driver or rider; and
- (b) anyone who reasonably appears to be, claims to be or acts as if he or she is, the vehicle's driver or rider or the person in control of the vehicle.

**Schedule (continued)**

***place*** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a vehicle;
- (d) a place in Queensland waters;
- (e) a place held under 2 or more titles or owners;
- (f) the land or water where a building or structure, or a group of buildings or structures, is situated.

***possession*** includes control and custody.

***premises*** includes the following—

- (a) a building or structure, or part of a building or structure, of any type;
- (b) a group of buildings or structures, or part of a group of buildings or structures, of any type;
- (c) a caravan or vehicle;
- (d) a cave or tent;
- (e) premises held under 2 or more titles or owners.

***prescribed entity*** means—

- (a) the Royal Society for the Prevention of Cruelty to Animals Queensland Incorporated; or
- (b) another entity prescribed under a regulation whose objects include animal welfare or the provision of facilities to care for animals.

***prohibited event*** see section 20.

***prohibited trap or spur*** see section 34(1).

***prohibition order*** see section 183(1).

***proposed action***, for chapter 4, part 2, division 4, see section 75(1)(a).

***public place*** means—

- (a) a place, or part of the place—

**Schedule (continued)**

- (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under subparagraph (i)—*

- 1 a beach
- 2 a park
- 3 a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

*Examples of a place that may be a public place under subparagraph (ii)—*

- 1 a saleyard
- 2 a showground

- (b) a place that is a public place under another Act.<sup>40</sup>

***reasonable*** means reasonable in the circumstances.

***reasonably believes*** means to believe on grounds that are reasonable in the circumstances.

***reasonably suspects*** means to suspect on grounds that are reasonable in the circumstances.

***register***, when used as a noun, means the register of scientific users the chief executive keeps under section 60.

***registered*** means—

- (a) for a person—registration under chapter 4, part 2, that has not been cancelled or suspended; or
- (b) for registration details—included in the register.

***registered operator***, of a vehicle, means—

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<sup>40</sup> See, for example, the *Police Powers and Responsibilities Act 2000*, schedule 6, definition *public place*.

**Schedule (continued)**

- (a) if it is registered in Queensland—the person in whose name the vehicle is registered under the *Transport Operations (Road Use Management) Act 1995*; or
- (b) if it is registered in another State—the person in whose name the vehicle is registered under the Act of the State that corresponds to the *Transport Operations (Road Use Management) Act 1995*.

**registration application** see section 52.

**registration conditions** see section 56.

**registration decision**, for chapter 4, part 2, division 5, see section 81.

**registration details** see section 61(3).

**release** includes cause or permit to be released.

**relevant code provisions**, for a draft monitoring program, see section 96(1).

**review application** see section 194.

**review decision** see section 197(1)(b).

**scientific purposes** see section 48.

**scientific use code** see section 49.

**seize** includes keep.

**seizure direction** see section 146(1).

**slaughter**, an animal, includes preparing it for slaughter.

**stop signal** see section 132(1).

**supply** includes the following—

- (a) give or sell;
- (b) possess for supply;
- (c) offer or agree to give, sell or otherwise supply;
- (d) cause or permit to be given, sold or otherwise supplied.

## Schedule (continued)

**transport** includes—

- (a) contain and load, or cause or permit to be contained or loaded, for transport; and
- (b) cause or permit to be transported.

**trap** includes net.

**use** includes—

- (a) generally—cause or permit to be used; and
- (b) for an animal—
  - (i) acquiring, breeding with, caring for, disposing of or identifying the animal; and
  - (ii) drive, load, ride, transport and work; and
  - (iii) accommodating or providing other living conditions for the animal; and
- (c) for premises—keep, manage and occupy; and
- (d) for a trap—set.

**vehicle** includes an aircraft, boat, trailer, train and tram.

**veterinary surgeon** means a person registered as a veterinary surgeon under the *Veterinary Surgeons Act 1936*.

**veterinary treatment**, of an animal, means—

- (a) consulting with a veterinary surgeon about the animal's condition; or
- (b) a medical or surgical procedure performed on the animal by a veterinary surgeon;
- (c) a medical procedure of a curative or preventive nature performed on the animal by someone other than a veterinary surgeon if the procedure is performed under a veterinary surgeon's directions.

**welfare**, of an animal, means issues about the health, safety or wellbeing of the animal.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 December 2006. Future amendments of the Animal Care and Protection Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered



## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	1 March 2002	27 March 2002

  

Reprint No.	Amendments included	Effective	Notes
1A	2002 Act No. 49	24 September 2002	
1B	—	2 March 2003	provs exp 1 March 2003
1C	2002 Act No. 58	1 July 2003	
2	—	26 October 2003	s 24 commenced
2A	2003 Act No. 82	6 November 2003	
2B 2rv	2005 Act No. 4	21 March 2005	
2C 2rv	2000 Act No. 5 (amd 2006 Act No. 26)	21 July 2006	
2D rv	2006 Act No. 48	1 December 2006	R2D withdrawn, see R3
3	—	1 December 2006	

## 5 List of legislation

### **Animal Care and Protection Act 2001 No. 64**

date of assent 25 October 2001

ss 1–2 commenced on date of assent

s 24 commenced 26 October 2003 (automatic commencement under AIA s 15DA(2) (2002 SL No. 276 s 2))

remaining provisions commenced 1 March 2002 (2002 SL No. 33)

amending legislation—

### **Primary Industries Legislation Amendment Act 2002 No. 49 s 1, pt 2, s 3(2) sch**

date of assent 24 September 2002

commenced on date of assent

### **Racing Act 2002 No. 58 ss 1–2(1), 398(1) sch 2 pt 1**

date of assent 14 November 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2003 SL No. 141)

### **Primary Industries and Other Legislation Amendment Act 2003 No. 82 ss 1–2(1)(a), pt 2**

date of assent 6 November 2003

commenced on date of assent (see s 2(1)(a))

**Summary Offences Act 2005 No. 4 ss 1–2, 30 sch 1**

date of assent 3 March 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 21 March 2005 (2005 SL No. 34)

**Police Powers and Responsibilities Act 2000 No. 5 s 810 sch 4 (prev s 459A sch 3A)  
(this Act is amended, see amending legislation below)**

amending legislation—

**Police Powers and Responsibilities and Other Acts Amendment Act 2006  
No. 26 ss 1–2, 84, 86 (amends 2000 No. 5 above)**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 21 July 2006 (2006 SL No. 185)

**Primary Industries Legislation Amendment Act 2006 No. 48 pts 1, 3, s 6 sch**

date of assent 10 November 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2006 (2006 SL No. 292)

## **6 List of annotations**

**Relationship with certain other Acts**

s 7 amd 2002 No. 58 s 398(1) sch 2 pt 1

**Animal cruelty prohibited**

s 18 amd 2002 No. 49 s 37 sch

**Reporting obligations of registered persons**

s 87 amd 2006 No. 48 s 7

**Procedure for other entries without warrant**

s 125 amd 2006 No. 48 s 8

**Application of div 3**

s 136 amd 2006 No. 48 s 9

**Powers for seized things**

s 148 amd 2006 No. 48 s 10

**Offence to tamper with seized thing**

s 149 amd 2006 No. 48 s 6 sch

**Return of seized animal**

s 152 amd 2002 No. 49 s 37 sch

**Power to forfeit**

s 154 amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 36 s 86); 2006 No. 48 s 11

**Information notice about forfeiture**

s 155 amd 2002 No. 49 s 4; 2006 No. 48 s 6 sch

**When transfer takes effect**

s 156 amd 2006 No. 48 s 12

**Power to require information****prov hdg** amd 2002 No. 49 s 5(1)**s 165** amd 2002 No. 49 s 5(2)**Failure to comply with information requirement****s 166** amd 2003 No. 82 s 4**Transferring ownership of animal in particular circumstances****s 214A** ins 2006 No. 48 s 13**CHAPTER 9—TRANSITIONAL PROVISION FOR PRIMARY INDUSTRIES  
LEGISLATION AMENDMENT ACT 2006****ch hdg** ins 2006 No. 48 s 14**Reporting obligation of registered person****s 218** prev s 218 exp 1 March 2003 (see ss 218, def “commencing day” and 224)

pres s 218 ins 2006 No. 48 s 14

**PART 3—REPEALS SAVINGS AND TRANSITIONAL PROVISIONS****pt hdg** orig ch 8 pt 3 hdg exp 1 March 2003 (see ss 218, def “commencing day” and 224)**Division 1—Preliminary****div hdg** orig ch 8 pt 3 div 1 hdg exp 1 March 2003 (see ss 218, def “commencing day” and 224)**Division 2—Repeal of Animals Protection Act 1925****div 2 (ss 219–220)** orig ch 8 pt 3 div 2 exp 1 March 2003 (see ss 218, def “commencing day” and 224)**Division 3—Savings and transitional provisions****div 3 (ss 221–223)** orig ch 8 pt 3 div 3 exp 1 March 2003 (see ss 218, def “commencing day” and 224)**Division 4—Expiry of pt 3****div 4 (s 224)** orig ch 8 pt 3 div 4 exp 1 March 2003 (see ss 218, def “commencing day” and 224)**PART 4—AMENDMENTS****pt 4 (ss 225–231)** om R1 (see RA s 40)**SCHEDULE—DICTIONARY**def “**public place**” amd 2005 No. 4 s 30 sch 1**7 List of forms notified or published in the  
gazette**

(The following information about forms is taken from the gazette. Because failure to notify or publish a form in the gazette does not invalidate the form, it may be necessary to check with the relevant government department for the latest information about forms (see SIA s 58(8)).)

**Form FDU 1163—Acknowledgement of Consent to Entry**

pubd gaz 1 March 2002 p 846

**Form FDU 1164—Notice of Entry**

pubd gaz 1 March 2002 p 846

**Form FDU 1165 Version 01/07—Animal Welfare Direction**

pubd gaz 25 January 2006 p 386

**Form FDU 1166—Written Consent to Destruction of Animal(s)**

pubd gaz 1 March 2002 p 846

**Form FDU 1167 Version 01/07—Receipt for Seized Property**

pubd gaz 25 January 2006 p 386

**Form FDU 1168—Seizure Direction**

pubd gaz 1 March 2002 p 846

**Form FDU 1169 Version 01/07—Schedule to Animal Welfare Direction**

pubd gaz 25 January 2006 p 386

**Form FDU 1170—Review Application**

pubd gaz 1 March 2002 p 846

**Form FDU 1171—Written Consent to Seizure**

pubd gaz 1 March 2002 p 846

**Form FDU 1172—Notice of Damage**

pubd gaz 1 March 2002 p 846

**Form FDU 1186—Acknowledgement of Return of Seized Animal(s) or Other Property**

pubd gaz 1 March 2002 p 846

**Form FDU 1232—Scientific Use Registration Certificate**

pubd gaz 17 January 2003 p 164

**Form FDU 1426 Version 01/07—Information Notice—Seized Property**

pubd gaz 25 January 2006 p 386

**Form FDU 1429 Version 01/07—Information Notice—Animal Welfare Direction**

pubd gaz 25 January 2006 p 386