



Brands Act 1915

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Queensland

Brands Act 1915

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Brands Act 1915

An Act to consolidate and amend the law relating to brands and marks on stock

Part 1 Preliminary

1 Short title

This Act may be cited as the *Brands Act 1915*.

3 Definitions

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

4 Officers

- (1) The chief executive may appoint a registrar of brands and deputy registrar of brands.
- (2) Every police officer shall, without any appointment whatsoever under this Act, be and be deemed to be *ex officio* an inspector duly appointed under this Act.

Part 2 Applications for, and other matters about, brands and earmarks

5 Application for brand or earmark

Any person who desires to become the owner of a registered brand or earmark of whatever kind under this Act shall deliver or transmit to the registrar an application therefor in the approved form, accompanied by the prescribed fee.

6 Registration of horse and cattle brands and cattle earmarks

- (1) The registrar, if satisfied that an application for a horse and cattle brand or cattle earmark is in conformity with this Act, shall allot to the applicant a horse and cattle brand or cattle earmark, as the case may be and shall register such brand or, as the case may be, earmark in the name of the applicant.
- (2) However, if, in the opinion of the registrar, any horse and cattle brand or cattle earmark applied for is similar to or easily convertible into any other horse and cattle brand or, as the case may be, cattle earmark registered in the name of a person who uses or is likely to use it in the same locality as the brand or earmark applied for is likely to be used the registrar shall make such modification in the brand or earmark applied for as renders it dissimilar to such other brand or earmark or, as the case may require, less easily convertible into such other brand or earmark.
- (3) A horse and cattle brand other than a symbol brand shall consist of letters, numerals, signs or characters or any combination thereof.
- (4) The shape, pattern and arrangement of the letters, numerals, signs or characters comprising a horse and cattle brand shall be as the Minister, subject to this Act, determines.

6A Symbol brands

- (1) The registrar, if satisfied that an application made by the owner of a horse and cattle brand (other than a symbol brand) for a symbol brand is in conformity with this Act, shall allot to the applicant a symbol brand and shall register the same in conjunction with such horse and cattle brand.
- (2) Such a symbol brand may be imprinted upon an animal in accordance with this Act either instead of or in addition to such horse and cattle brand.
- (5) A symbol brand shall not be registered nor shall any person use such a brand unless it includes a dot to the right of and on the line with the lower part of the symbol brand.
- (6) Such a dot upon any horse, camel or head of cattle shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that the symbol brand of which it forms a part was, at the time of the imprinting of such brand, registered in Queensland.

6B Size of brands

- (1) A letter, numeral, sign or character included in a horse and cattle brand (other than a symbol brand) shall have a face depth of not less than 30mm nor more than 65mm.
- (2) The face depth of any letter, numeral, sign or character which, when properly imprinted upon an animal would be in a position other than vertical, shall be measured with such letter, numeral, sign or, as the case may be, character in the vertical position.
- (3) A symbol brand shall have a face depth of not less than 30mm nor more than 80mm.

6C Cattle earmarks

- (1) The registrar shall register a cattle earmark only in conjunction with a horse and cattle brand and for use only within the district in which the applicant therefor indicates it is proposed to use such earmark.

- (2) A person shall not use a cattle earmark except—
 - (a) upon cattle and in conjunction with the horse and cattle brand in conjunction with which such earmark is, for the time being, registered; and
 - (b) in the district for use within which such earmark is, for the time being, registered.
- (3) Every registered cattle earmark shall consist of 1 or more cuts on either or both of the ears of cattle, and shall be arranged and placed in such positions as may be prescribed, and shall be made with pliers.
- (4) However, the cut or cuts when made on the ear shall not remove more than one-third of the ear.
- (5) The registrar may allot to any applicant for or owner of a horse and cattle brand and register in his or her name in conjunction with such brand more cattle earmarks than 1 for use in conjunction with such brand.
- (6) However—
 - (a) notwithstanding the provisions of section 6(1) and (2), the registrar shall not allot a second or third cattle earmark for use in conjunction with one and the same horse and cattle brand in one and the same district unless the registrar is satisfied that such allotment is justified; and
 - (b) a person shall not be allotted more than 3 cattle earmarks for use in conjunction with one and the same horse and cattle brand in one and the same district.
- (7) When any head of cattle has been earmarked, whether with a registered earmark or otherwise, it must not again be earmarked with a registered earmark.
- (8) A person shall not make upon an ear of any head of cattle a mark or cut except a registered cattle earmark.
- (9) However, this provision shall not be construed to prohibit the making of—

- (a) a spay mark upon the near ear of a cow or heifer which has been spayed; or
 - (b) a tattoo within either ear of any head of cattle; or
 - (c) a mark or cut upon either ear of any head of cattle necessary for the insertion in or the affixing to that ear of a tag; or
 - (d) a mark or cut wholly within the off ear of any head of cattle such mark or cut being of such a shape and size and made for such a purpose as the Minister approves; or
 - (e) a registered cattle earmark upon the ear of a head of cattle previously marked in accordance with paragraph (a) or (d); or
 - (f) a mark or cut on a head of cattle authorised under another Act.
- (10) The registrar shall—
- (a) as soon as possible after 31 December in every fourth year, cause to be compiled and published a brands directory containing all the horse and cattle brands and cattle earmarks registered up to that date;
 - (b) from time to time as the registrar thinks desirable cause to be published a statement indicating all transfers, alterations, additions and removals made in the brands directory during the period indicated in the statement and certified by the registrar to a date indicated in that statement;

and as soon as possible after publication shall cause copies of the directory or, as the case may be, statement to be transmitted to such keepers of public pounds, inspectors and clerks of the court in the State as the Minister approves.

7 Branding horses, camels and cattle

- (1) Subject to section 9(3), a person may only imprint a brand on a horse or camel in the following positions—

- (a) quarter;
 - (b) shoulder;
 - (c) thigh.
- (2) Subject to section 9(3), a person may only imprint a brand on a head of cattle in the following positions—
- (a) neck;
 - (b) rump;
 - (c) shoulder;
 - (d) thigh;
 - (e) twist.
- (3) Subject to subsection (4)(a)(i), a person may imprint a brand on an animal at any angle.
- (4) If a person imprints a brand in the same position as an existing brand, the person must—
- (a) imprint the brand—
 - (i) at the same angle as the existing brand; and
 - (ii) exactly beneath the existing brand; and
 - (b) ensure the topmost extremity of the brand is at least 35mm, and not more than 65mm, beneath the lowest extremity of the existing brand.
- (5) Every branded horse, camel and head of cattle shall be deemed to have been last branded with the brand which appears to be the brand last imprinted thereon in accordance with the provisions of this section.

7A Manner of imprinting horse and cattle brands and pig brands

- (1) A person shall so imprint the letters, numerals, signs and characters comprising a horse and cattle brand that—
- (a) they appear on the animal concerned consistent with the design of such brand;

- (b) the lateral extremity of one such letter, numeral, sign or character as it appears on the animal concerned is no more than 25mm from the nearest lateral extremity of the contiguous such letter, numeral, sign or character.

(2) **Design of certain branding instruments**

A person shall not use a branding instrument bearing a letter, numeral, sign or character which, consistently with the design of the horse and cattle brand or pig brand concerned is to be imprinted in a position other than the vertical unless such instrument also bears another letter, numeral, sign or character included in the horse and cattle brand or pig brand concerned.

8 Age numerals and stud and herd book references

- (1) Notwithstanding any other provision of this Act the person imprinting the first registered brand upon any horse, pig or head of cattle may, in addition, imprint upon such animal in accordance with the provisions of this section any numeral or numerals to denote the age of such animal or as a reference to a stud or herd book which contains a description of such animal or the particulars of its breeding.
- (2) A person may only imprint a numeral or numerals—
 - (a) for a horse or head of cattle—in a position stated for the brand under section 7; or
 - (b) for a pig—in a position stated for the brand under section 11A(5).
- (2A) A person who imprints a numeral or numerals in the same position as an existing brand must—
 - (a) imprint the numeral or numerals—
 - (i) at the same angle as the existing brand; and
 - (ii) exactly beneath the existing brand; and
 - (b) ensure the topmost extremity of the numeral or numerals is at least 35mm, and not more than 65mm, beneath the lowest extremity of the existing brand.

- (3) A numeral imprinted pursuant to this section shall have a face depth of not less than 30mm nor more than 65mm.
- (4) Subsections (2A)(b) and (3) do not apply to pigs.
- (5) In this section—
existing brand on an animal means—
 - (a) the registered brand imprinted on the animal; or
 - (b) a numeral imprinted exactly beneath the registered brand imprinted on the animal.

9 Distinctive brands

- (1) The registrar, if satisfied that an application for a distinctive brand is in conformity with this Act, shall allot to the applicant a distinctive brand and shall register such brand in the name of the applicant in conjunction with a horse and cattle brand for use in conjunction with such brand.
- (1A) The registrar shall not allot a distinctive brand to a person who is not the registered owner of a horse and cattle brand.
- (1B) A person shall not use a distinctive brand except in conjunction with the horse and cattle brand in conjunction with which it is registered.
- (1C) Where the registered person to whom a distinctive brand has been allotted transfers the horse and cattle brand allotted to the person to another person the registrar shall cancel the registration of the distinctive brand so allotted.
- (2) A distinctive brand shall be of such a character, design, shape and size as the Minister, subject to this Act, determines.
- (3) A person imprinting a distinctive brand upon any horse, camel or head of cattle shall imprint the same upon the twist of the animal concerned.

9A Special brands

- (1) The registrar, if satisfied that an application for a special brand is in conformity with this Act, shall allot to the association by

whom or on whose behalf such application is made, a special brand and shall register such brand in the name of such association or its nominee.

- (1A) In the case of registration in the name of a nominee the register shall show that such registered owner holds such special brand as nominee of the association concerned.
- (1B) Upon application by or on behalf of an association in that behalf the registrar may, from time to time, cancel the registration of the holder of such a special brand and register another nominee of such association as holder of such special brand in the holder's stead.
- (2) A person shall not apply for a special brand unless the person applies as or on behalf of an association of persons formed with a view to establishing, fostering or improving the breeding of a particular breed of stock or of stock generally of a particular type and which is approved by the Minister.
- (3) A special brand shall be of such character, design, shape and size as the Minister, subject to this Act, determines.

10 Registration and position of sheep brands and marks

- (1) The registrar, if satisfied that an application for a sheep brand or sheep earmark is in conformity with this Act, shall allot to such applicant a sheep brand or sheep earmark as the case may be and shall register such brand or, as the case may be, earmark in the name of the applicant.
- (1A) However, if, in the opinion of the registrar, any sheep brand or sheep earmark applied for is similar to or easily convertible into any other sheep brand or, as the case may be, sheep earmark registered in the name of a person who uses it or is likely to use it in the same locality as the brand or earmark applied for is likely to be used the registrar shall make such modification in the brand or earmark applied for as renders it dissimilar to such other brand or earmark or, as the case may require, less easily convertible into such other brand or earmark.

- (2) The registrar shall register a sheep brand or a sheep earmark for use only within a particular district to be specified by the registrar and notified by the registrar to the applicant.
- (2A) A person shall not use a sheep brand or sheep earmark elsewhere than in the district for use within which the same is registered except in the case of travelling sheep.
- (3) Every fire brand shall be imprinted upon the position on the horn specified in the prescribed certificate of registration of such fire brand, and every paint brand shall be imprinted—
 - (a) using the colour; and
 - (b) upon the position on the shoulder, ribs back or rump; specified in the prescribed certificate of registration of such paint brand.
- (3A) The letter ‘T’ in paint shall not be registered.
- (3B) All sheep brands and sheep earmarks shall be branded and made in such manner as may be prescribed.
- (3C) However—
 - (a) the cut or cuts when made on the ear shall not remove more than one-third of the ear;
 - (b) no mark shall be made on that ear which is already marked with a registered sheep earmark;
 - (c) all earmarks shall be made with pliers.
- (4) The registrar shall—
 - (a) as soon as possible after 31 December in every fourth year, cause to be compiled and published a sheep brands and earmarks directory containing all the sheep brands and sheep earmarks registered up to that date;
 - (b) from time to time as the registrar thinks desirable cause to be published a statement indicating all transfers, alterations, additions and removals made in the sheep brands and earmarks directory during the period indicated in the statement and certified by the registrar to a date indicated in that statement;

and as soon as possible after publication shall cause copies of the directory or, as the case may be, statement to be transmitted to such keepers of public pounds, inspectors and clerks of the court in the State as the Minister approves.

11 Distinctive marks may be used

- (1) Any owner of a registered sheep mark or sheep brand may use any number of distinctive marks to denote the age or class of the owner's sheep, or goats, but such distinctive marks shall not be made on the same ear as the registered sheep earmark and shall not be such as, in the opinion of the registrar or an inspector, is similar to or readily convertible into any sheep earmark registered and used in the same locality.
- (2) Such distinctive marks may upon application be registered.

11A Registration of pig brands

- (1) The registrar, if satisfied that an application for a pig brand is in conformity with this Act, shall allot to the applicant a pig brand and register the brand in the name of the applicant.
- (2) The registrar shall register a pig brand for use only—
 - (a) at 1 or more properties; or
 - (b) in the district;to be specified by the registrar and notified by the registrar to the applicant.
- (2A) Upon application by the owner, the registrar may alter or vary the registration of a pig brand by—
 - (c) deleting any property or district specified; or
 - (d) specifying any property or district in substitution therefor; or
 - (e) specifying any additional property;and shall notify the owner whereupon the brand shall be deemed to be registered for use at the property or properties or in the district as so altered or varied.

- (2B) A person shall not use a pig brand elsewhere than at a property or in a district for the time being specified by the registrar.
- (3) A pig brand shall consist of letters, numerals, signs or characters or any combination thereof.
- (3A) The shape, pattern and arrangement of the letters, numerals, signs or characters comprising a pig brand shall be as the Minister, subject to this Act, determines.
- (4) The face depth of any letter, numeral, sign or character included in a pig brand shall be not less than 12mm and not more than 25mm.
- (4A) The face depth of any letter, numeral, sign or character which, when properly imprinted upon an animal would be in a position other than vertical, shall be measured with such letter, numeral, sign or, as the case may be, character in the vertical position.
- (5) A pig brand shall be imprinted upon each side of a pig by way of tattoo with a branding instrument of an approved type or make and an approved fluid or paste.
- (5A) The chief executive administering the *Biosecurity Act 2014* may from time to time approve—
- (a) any type or make of branding instrument; and
 - (b) any fluid or paste;
- for use in imprinting pig brands by way of tattoo upon pigs for the purposes of this Act.
- (6) A person shall not imprint a pig brand upon any pig otherwise than in accordance with this Act.
- (7) The registrar shall from time to time as the registrar thinks desirable cause to be published a list of makes or types of branding instruments and fluids and pastes approved by the chief executive administering the *Biosecurity Act 2014* for the purposes of this section.
- (8) The registrar shall—

- (a) as soon as possible after 31 December in every fourth year, cause to be compiled and published a pig brands directory containing all the pig brands registered up to that date;
- (b) from time to time as the registrar thinks desirable cause to be published a statement indicating all transfers, alterations, additions and removals made in the pig brands directory during the period indicated in the statement and certified by the registrar to a date indicated in that statement;

and as soon as possible after publication shall cause copies of the directory or, as the case may be, statement to be transmitted to such keepers of public pounds, inspectors and clerks of the court in the State as the Minister approves.

12 Certificate of registration

Upon the registration of any brand or earmark of whatever kind under this Act, the registrar shall deliver or transmit to the person to whom it is allotted a certificate of registration in the approved form.

13 Register

The registrar shall keep registers, in the approved form, of all brands and earmarks of whatever kind allotted and registered under this Act.

14 Distinguishing brand to be used by each public pound

- (1) The registrar may allot to a local government a special brand to be used in connection with a public pound conducted by such local government and shall register such brand in the name of such local government.
- (2) The keeper of such pound shall, on the sale of any horses or cattle impounded in such pound, brand the same with such brand.

Maximum penalty for subsection (2)—8 penalty units.

14A Special brands etc. to public instrumentalities

- (1) Upon application therefor by or on behalf of a department of the Government of the State or a statutory body established for public purposes by or under legislation of the State or such other body performing functions of a public nature as the Minister approves the registrar, if the registrar is satisfied that such application is in conformity with this Act, shall allot to the department, statutory body or, as the case may be, body by or on whose behalf such application is made 1 or more special brands or special earmarks and shall register every such brand or, as the case may be, earmark in the name of such department, statutory body or body or a nominee of any of the same.
- (2) A nominee in whose name registration of a special brand or special earmark is effected under this section may be designated by name or by reference to an office which the nominee holds or as the holder for the time being of a particular office.
- (3) A special brand shall be of such character, design, shape, size and (in the case of a paint brand) colour as the Minister, subject to this Act, determines.

14B Special brands to the commissioner of the police service

- (1) The registrar may upon application and with the approval of the Minister allot to the commissioner of the police service a special brand or special brands and shall register every special brand so allotted in the name of the commissioner of the police service.
- (1A) A special brand so allotted and registered shall be of such character, design, shape, size and (in the case of a paint brand) colour as the Minister, subject to this Act, determines.
- (2) A police officer who lawfully has possession of horses, cattle or sheep in connection with the commission of an offence

may, solely for the purpose of identification, brand those horses, cattle or sheep with a special brand registered pursuant to this section.

- (3) The branding of horses, cattle and sheep with a special brand pursuant to this section—
 - (a) is lawful notwithstanding any other Act;
 - (b) does not affect the right of ownership of those horses, cattle and sheep had by any person.

15 Duty as to brands and earmarks directories

Every poundkeeper, inspector and clerk of the court shall keep at his or her respective office a copy of—

- (a) the latest edition of the brands directory, the sheep brands and earmarks directory and the pig brands directory; and
- (b) in respect of each such directory, each statement of transfers, alterations, additions and removals made in that directory published by the registrar subsequent to that edition;

and shall make those directories and statements available for inspection by any person at all reasonable times.

16 Transfers

- (1) Any person wishing to transfer the right to any registered horse and cattle brand, and the person to whom such right is intended to be transferred, shall make and sign, in the presence of a justice of the peace or barrister or solicitor or legal practitioner or commissioner of the Supreme Court, a memorandum in the approved form, and shall deliver or transmit the same to the registrar together with the prescribed fee.
- (1A) The registrar shall, upon the receipt of such memorandum and fees, cancel the original registration of such brand standing in the name of the transferor, and shall re-register such brand in

the name of the transferee, and shall deliver or transmit to the transferee a notification of transfer in the approved form.

- (1B) Such transferee shall thereafter be deemed to be the person having the exclusive right to use such brand.
- (1C) Any cattle earmark or symbol brand registered in conjunction with such brand shall, unless otherwise specified by the transferor, be transferred at the same time to the same person.
- (1D) However, in the case of any cattle earmark it shall not be transferred unless the registered horse and cattle brand is to be used in the district for which the cattle earmark was originally registered.
- (2) The right to use any sheep brand or sheep earmark may be transferred in like manner; but such sheep brand or sheep earmark shall not, except in the case of travelling sheep, be used by the transferee in any district other than that for which it was originally registered.
- (2A) The right to use a pig brand may be transferred in a like manner prescribed in subsection (1).
- (2B) However, a pig brand shall not be used by the transferee otherwise than—
 - (a) at a property specified by the registrar; or
 - (b) if no property is so specified, in the district specified by the registrar;for use thereat or therein.
- (3) The registrar shall keep a register in the approved form, in which all such transfers shall be recorded.

17 Surrender and cancellation of brand or mark

- (1) The owner of any registered brand or earmark of whatever kind may surrender the same.
- (2) The registrar shall, upon receipt of notice of such surrender, cancel the registration of the same, and, subject to this Act, it may then be registered in the name of another person.

17A Power of refusal of Minister

- (1) The Minister in the Minister's discretion shall have power and authority—
 - (a) to refuse to register any brand or mark in the name of an applicant; or
 - (b) to refuse to transfer any brand or mark to any person; or
 - (c) to refuse to alter the registration of any brand or mark registered in any owner's name;on a certificate furnished to the Minister by the registrar setting forth such facts as appear to the registrar warranting any such refusal and recommending to the Minister any such refusal aforesaid accordingly.
- (2) The registrar may require any inspector to furnish to the registrar particulars as to the fitness of any applicant for or registered owner of any brand or mark to be allotted or, as the case may be, to be registered as owner of such brand or mark.
- (3) An inspector who furnishes to the registrar a report on the fitness of any person to be allotted or to be registered as owner of any brand or mark (whether or not such inspector was required by the registrar so to do) shall not incur any liability in respect of such report.

18 Returns of registered brands and earmarks

- (1) A person who is the owner of a registered brand or registered earmark on 1 January of any year shall, before 31 January of that year, furnish to the registrar a return in the approved form of all such brands or earmarks.
- (1A) Where 2 or more persons are the owner of a registered brand or registered earmark it shall be sufficient compliance with the provisions of subsection (1) if 1 of such persons furnishes the return as prescribed by the subsection.
- (2) If a person required by subsection (1) to furnish a return fails to furnish such return at any time during 3 consecutive years the registrar may give to such person a notice calling upon the

person to show cause why the registration of the brand or earmark in question should not be cancelled.

- (3) If such cause is not shown to the satisfaction of the registrar within 3 months of the giving of such notice the registrar may cancel the registration of such brand or earmark.
- (4) Where 2 or more persons are registered as the owner of a registered brand or registered earmark the registrar, if the registrar gives a notice prescribed by subsection (2), shall give such a notice to each such person.

18A Cancellation of brand or mark for similarity

- (1) When in the opinion of the registrar any registered brand or earmark which is used or is likely to be used in a locality is similar to or easily convertible into another registered brand or earmark which is used or is likely to be used in the same locality the registrar shall certify accordingly to the Minister.
- (1A) Upon a certification by the registrar, the Minister may cause the registration of the brand or earmark which last became a brand or, as the case may be, earmark used or likely to be used in the locality in question to be cancelled and the registered owner thereof to be notified forthwith.
- (2) The registered owner of a brand or earmark which has been cancelled pursuant to this section may apply for a brand or, as the case may be, earmark in lieu of the 1 so cancelled and the registrar shall, if the registrar receives such application within 90 days of such cancellation, without payment of any fee, but subject to the provisions of section 6(1) and (2) and section 10(1) to (2) where those provisions respectively apply, allot to the applicant another brand or, as the case may be, earmark in lieu of the brand or earmark so cancelled and shall register such brand or earmark in the name of the applicant.

19 Cancellation of brand or earmark not in use

- (1) If at any time it appears to the registrar that a registered brand or earmark is not in use, the registrar may, by signed notice

given to the registered owner thereof, call upon the registered owner to show cause why the brand or earmark specified in the notice should not be cancelled.

- (2) The registrar may in the notice or in a further notice nominate a place, date (being not less than 3 months from the date of the notice) and time at which cause is to be shown.
- (3) If cause is not shown to the satisfaction of the registrar within the time specified in the notice, the registrar may cancel the brand or earmark in respect of which the notice was given.

19A Cancellation and reallocation by Minister of certain brands and marks

- (1) When a change in the ownership of a holding has occurred the Minister may in the Minister's discretion, upon the application of the current owner of such holding made in conformity with this Act and upon the recommendation of the registrar—
 - (a) cancel the allotment and registration of any pig brand, horse and cattle brand, sheep brand or sheep earmark used in respect of such holding prior to such change in ownership and continued to be so used after such change; and
 - (b) cause to be forthwith allotted to the current owner of such holding and registered in his or her name such a brand or earmark, where—
 - (i) a transfer of the same by or on behalf of the last registered owner of such brand or earmark in favour of the current owner of such holding can not be produced; and
 - (ii) such a transfer signed as aforesaid can not be obtained; and
 - (iii) the Minister is satisfied that such last registered owner is not lawfully using such brand or mark.
- (1A) When the Minister exercises the powers conferred upon the Minister by subsection (1) in relation to a horse and cattle

brand the Minister shall cause to be cancelled and reallocated to the current owner of the holding concerned (if such owner applies therefor in conformity with this Act) any and every cattle earmark and symbol brand registered for use in conjunction with such brand.

(2) **Cancellation and reallocation of cattle earmarks**

When a change in the ownership of a holding has occurred and the current owner of such holding is the registered owner of a horse and cattle brand the registrar may, in the registrar's discretion—

- (a) upon the application of such current owner made in conformity with this Act; and
- (b) upon the written authority of the last registered owner of the cattle earmark concerned being furnished to the registrar;

cancel the allotment and registration of any and every cattle earmark registered for use in conjunction with a horse and cattle brand used in respect of such holding prior to such change of ownership and forthwith reallocate the same to such current owner for use in conjunction with his or her horse and cattle brand in respect of such holding and shall register the same in the name of such current owner accordingly.

20 Manner of dealing with cancelled brands and marks

- (1) Upon the application of the last registered owner of a brand or earmark the allotment and registration of which has been cancelled and upon the payment of the prescribed fee the registrar, if satisfied that such application is in conformity with this Act, shall, subject to this Act, reallocate such brand or, as the case may be, earmark to the applicant and register the same in the applicant's name unless, in the meantime, such brand or, as the case may be, earmark, has been allocated to another person and registered in the person's name.
- (2) Save as is provided in section 19A and in subsection (1), the registrar shall not allocate a horse and cattle brand or cattle

earmark which is cancelled to any person unless the registrar is satisfied—

- (a) that a period of 5 years has elapsed since such brand or, as the case may be, earmark was in regular use by the registered owner thereof; or
- (b) in the case of an earmark—that the registered owner thereof has consented in writing to such cancellation and allotment.

20A Cancellation of conjoint brands and marks

Whenever the allotment and registration of a horse and cattle brand has been cancelled pursuant to this Act the allotment and registration of every cattle earmark and symbol brand registered for use in conjunction with such brand shall also be cancelled.

21 Inspectors of slaughterhouses to furnish weekly list of brands of cattle slaughtered

All inspectors of slaughterhouses shall furnish the inspector of brands for the district in which such slaughterhouses are situated with a weekly list of the brands of the cattle about to be slaughtered, or which have been slaughtered at such slaughterhouses during the preceding week.

22 Stock on which brand has been altered or blotched to be deemed unbranded

- (1) Any horse or cattle bearing a brand which has been altered, defaced, rendered illegible, or blotched shall be held to be unbranded, and any cattle, or sheep, or goats upon which the ear has been cut or cropped contrary to this Act shall be held to be not earmarked, and any inspector who is of the opinion that any horse or cattle bears a brand which has been altered, defaced, rendered illegible, or blotched, or that the ear upon any cattle or sheep has been cut or cropped contrary to this Act, may seize such horse, cattle or sheep and detain same for

the purposes of inquiring into such branding or earmarking or of any prosecution; and if in the case of any prosecution the defendant shall be found guilty of the offence of which the defendant is charged, any such stock so seized and detained for the purposes of such prosecution may be forfeited to Her Majesty by the order of the adjudicating court and thence become the property of Her Majesty and may be disposed of by the Minister in such manner as the Minister thinks fit.

- (1A) However, the conviction of any person proceeded against upon any such prosecution shall not render the stock the subject matter of the prosecution liable to forfeiture as against the owner thereof if such owner proves to the satisfaction of the court that the owner did not know and had no means of knowing—
- (a) that the brand borne by any horse or cattle comprising such stock had been altered, defaced, rendered illegible, or blotched; or
 - (b) that the ear of any cattle, or sheep, or goat comprising such stock had been cut or cropped contrary to this Act.
- (2) Both the owner and the person in charge thereof at the time of their seizure shall be liable for the payment of all expenses incurred by an inspector in seizing and detaining any stock under this section.
- (2A) In the event of the sale price of any such stock (whether sold after their forfeiture to the Crown or sold under subsection (3)) not being sufficient to defray in full such expenses as aforesaid, both the aforesaid persons shall also be liable for the amount of the insufficiency.
- (2B) If any person fails to pay any moneys payable by the person hereunder upon demand made by an inspector the amount thereof may be recovered from the person in a summary way under the *Justices Act 1886* or by action as for a debt due to the Crown in a court of competent jurisdiction.
- (3) If no prosecution is instituted in relation to any stock seized and detained hereunder or, if upon such prosecution the adjudicating court does not order such stock to be forfeited to the Crown, the inspector may, upon the completion of the

inquiry for the purposes of which such stock were seized and detained, or (as the case may be) of the prosecution, publish in some newspaper circulating in the locality where such stock were seized a notice that such stock will be sold to defray the expenses of their seizure and detention.

- (3A) Such notice shall specify the place, date, and time of sale, and such date shall be not less than 7 days after the date of publication of the notice.
- (3B) The stock concerned shall be sold by public auction upon the date and at the place and time specified in the notice unless such expenses as aforesaid are sooner paid in full.
- (3C) All costs incurred by an inspector in carrying out the provisions of subsections (3) to (3B) in relation to any stock shall be and be deemed to be included in and shall form part of the expenses incurred in seizing and detaining such stock.
- (4) The sale price of any stock sold under subsection (3B) shall be paid to the chief executive, who, after defraying thereout all expenses incurred by any inspector in seizing and detaining such stock, shall pay the balance (if any) to the owner of such stock.
- (5) No person shall have any claim for any loss or damages sustained or alleged to have been sustained by the person, whether directly or indirectly, or, except as hereinafter provided, any other right or remedy whatsoever against the Crown or the Minister or any inspector or any other person whomsoever by reason or in respect of the seizure or detention or sale of any stock under this section.
- (6) However, subsection (5) shall not prejudice the right of an owner of stock which, having been seized and detained hereunder, have not been forfeited to the Crown as herein provided, to recover possession thereof upon paying in full all expenses incurred by the inspector concerned in relation to such seizure and detention before such stock have been sold pursuant to subsection (3B).

Part 3 Inspectors

Division 1 Appointment and related provisions

22A Appointment and qualifications

- (1) The chief executive may appoint any of the following persons as an inspector—
 - (a) a public service officer or employee;
 - (b) an employee of the Commonwealth or another State;
 - (c) an employee of a local government;
 - (d) a veterinary surgeon under the *Veterinary Surgeons Act 1936*;
 - (e) an individual included in a class of persons declared under a regulation to be an approved class of persons for this section.
- (2) However, the chief executive may appoint a person as an inspector only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

22B Appointment conditions and limit on powers

- (1) An inspector holds office on any conditions stated in—
 - (a) for an appointed inspector—the inspector’s instrument of appointment; or
 - (b) a signed notice given to the inspector; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector’s powers under this Act.
- (3) In this section—

signed notice means a notice signed by the chief executive.

22C Issue of identity card

- (1) The chief executive must issue an identity card to each appointed 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 issue of a single identity card to a person for this Act and other purposes.

22D Identity card for particular inspectors

The identity card for a person who is an inspector under section 4(2) is the person's identity card as a police officer.

22E Production or display of identity card

- (1) In exercising a power under this Act in relation to another person, an inspector must—
 - (a) produce the inspector's identity card for the other person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to another person only because the inspector—
 - (a) has entered a place that is a public place and entry is made when it is open to the public; or

- (b) for the purpose of asking the occupier of a place for consent to enter—
 - (i) enters land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (ii) enters part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

22F When appointed inspector ceases to hold office

- (1) An appointed 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 22G takes effect.
- (2) Subsection (1) does not limit the ways an appointed inspector may cease to hold office.
- (3) In this section—

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

22G Resignation

An appointed inspector may resign by signed notice given to the chief executive.

22H Return of identity card

A person who ceases to be an appointed 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.

Division 2 Powers

23 Powers of inspector

- (1) For the purposes of this Act an inspector may, with such assistants, animals, vehicles and equipment as the inspector considers necessary for the proper discharge of the inspector's duties—
 - (a) enter upon and leave as often as the inspector considers necessary any holding;
 - (b) search for and inspect any stock, brand, mark, branding instrument or pliers and, in the case of travelling stock, stop such stock and, for the purpose of exercising any of the powers by this paragraph conferred, stop any vehicle or vessel;
 - (c) muster, yard, detain, clip and otherwise deal with any stock when the inspector considers it necessary in the proper discharge of the inspector's duties so to do;
 - (d) seize and detain any stock in respect of which the inspector suspects on reasonable grounds that the owner or person in charge has committed or is committing an offence against this Act;
 - (e) seize and detain anything in respect of which the inspector suspects on reasonable grounds that an offence against this Act has been committed or is being committed by any person, whether known to the inspector or not;
 - (f) use such force as is reasonably necessary to exercise any of the aforesaid powers;
 - (g) require the owner or person in charge or apparently in charge of any holding or stock or any person found in or on any holding or any person who, within the preceding 12 months, has been employed in or on any holding to

answer such questions as the inspector puts to the person with respect to matters within the purview of this Act to ascertain whether any provision of this Act has been or is being contravened or has not been or is not being complied with and require any such person to sign a declaration as to the truth of the person's answers;

- (h) with the authority in writing of the Minister, require the owner, occupier or person apparently in charge of a holding to cause stock on such holding to be mustered and held until the inspector approves to the contrary.

(2) A person who—

- (a) hinders or obstructs an inspector or any of the inspector's assistants in the execution of his or her duty under this Act or attempts so to do; or
- (b) upon being required by an inspector in that behalf, fails to produce a branding instrument or pliers for the purpose of inspection; or
- (c) does not permit any stock, branding instrument or pliers to be inspected by an inspector; or
- (d) fails to comply with a requisition of an inspector lawfully made upon the person pursuant to this Act;

commits an offence against this Act.

(3) No provision of this section shall be construed—

- (a) to oblige any person to answer any question or make any statement which answer or statement would or would tend to incriminate the person; or
- (b) to render any person liable to a penalty for failing to make such an answer or statement.

Part 4 Particular offences

24 Penalties for breaches as to branding or marking of stock

(1) Every person who is guilty of any of the following acts relating to the branding or marking of any stock commits an offence—

- (a) —
- (i) using or attempting to use or knowingly permitting to be used; or
 - (ii) without lawful excuse (the proof of which shall be upon the person) having in possession or at the person's residence or premises;

any branding instrument or pliers other than a branding instrument or pliers relating to any brand or earmark which under this Act the person is entitled to use;

- (b) branding or marking, or directing, aiding, or assisting to brand or mark without lawful excuse (the proof whereof shall lie upon the person), any stock on any portion thereof with a brand or earmark of any kind whatever which is not registered in the person's name or the name of any person whom the person is directing, aiding or assisting;
- (c) marking any cattle, sheep, or goat by removing more than one-third of the ear;
- (d) marking any cattle, sheep, or goat by means of any instrument other than pliers;
- (e) marking with a spay mark any cattle other than a cow or heifer which has been spayed;
- (f) making or cutting any mark other than a mark which the person is authorised or permitted by this Act to make or cut;
- (g) failing at the time when the person spays a cow or heifer to mark such cow or heifer with a spay mark;

- (h) having in the person's possession or suffering to be on or in a holding of which the person is the owner or the person apparently in charge any branding instrument bearing a letter, numeral, sign, character, symbol, or mark which does not comply with the provisions of this Act applicable thereto or, as the case may require, a determination of the Minister made in relation thereto;
- (i) in any other way offending against any of the provisions of this Act connected with the branding or marking of stock.

Maximum penalty—8 penalty units.

- (2) However, a person is not liable under this section for anything done or omitted to be done by the person—
 - (a) in compliance with the direction and with the consent of the owner of a brand or earmark; and
 - (b) which could lawfully be done or omitted to be done by that owner.

24A Prohibition on sale of unbranded cattle

- (1) A person shall not sell any cattle of a live weight in excess of 100kg unless those cattle are branded.

Maximum penalty—8 penalty units or imprisonment for 6 months.

- (2) For the purposes of subsection (1), cattle shall be taken to be branded if and only if—
 - (a) they are branded with a horse and cattle brand; or
 - (b) they are branded with a brand registered pursuant to the law of any other State or a Territory and recognised therein as evidence of ownership of those cattle; or
 - (c) they are branded with a brand impressed or otherwise applied in a State or Territory, the law whereof does not require the registration of such a brand, and accepted therein as evidence of ownership of those cattle.

- (3) This section applies subject to section 24B.

24B Power of Minister to exempt

- (1) The Minister may from time to time by writing under the Minister's hand—
- (a) exempt any person or any class of person from the prohibition contained in section 24A;
 - (b) make an exemption from the prohibition contained in section 24A in relation to any cattle or any class of cattle;

either absolutely or subject to such conditions as the Minister specifies in the writing.

- (2) The Minister may by signed writing revoke or vary an exemption given or made by the Minister under this section and may revoke or vary a condition subject to which an exemption is given or made.
- (2A) In the case of any such variation, the exemption or condition shall apply as so varied.
- (3) An exemption and a revocation or variation of an exemption may be published in the gazette and upon such publication shall be judicially noticed.
- (4) A person shall not contravene or fail to comply with a condition applicable to the person subject to which an exemption is given or made under this section.

Maximum penalty for subsection (4)—8 penalty units or imprisonment for 6 months.

24C Prohibition on sale of unbranded pigs

- (1) Subject to subsection (3), a person shall not sell or offer for sale any pig of a live weight in excess of 30kg unless that pig has been branded with the pig brand registered in the name of its owner.

- (2) For the purposes of subsection (1), a pig shall be taken to be branded if and only if—
 - (a) it is branded with a pig brand; or
 - (b) it is branded with a brand registered pursuant to the law of any other State or a Territory and recognised therein as evidence of ownership of that pig; or
 - (c) it is branded with a brand impressed or otherwise applied in a State or Territory, the law whereof does not require the registration of such a brand, and accepted therein as evidence of ownership of that pig.
- (3) The provisions of subsection (1) do not apply to a person who—
 - (a) at the time of the sale of or offer to sell a pig, is not the owner of more than 2 pigs (including the pig sold or offered for sale); or
 - (b) sells or offers for sale a pig purchased within a period of 7 days prior to the sale of or offer to sell that pig which pig had been branded with a pig brand registered in the name of the person from whom it was so purchased.

Part 5 Evidence

25 Evidentiary provisions

- (1) In any proceeding—
 - (a) proof that a brand or earmark is registered in the name of a person shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that that person is the owner of that brand or, as the case may be, earmark;
 - (b) a certificate, purporting to be signed by the registrar, that at a specified time or during a specified period a brand or earmark described therein is or was registered in the

name of a person named therein shall upon its production in that proceeding be conclusive evidence that that brand or, as the case may be, earmark is or was at that time or during that period registered in the name of that person;

- (c) a document purporting to be signed by the registrar and purporting to be a copy of a certificate of registration of, or of a notification of transfer or cancellation of, a brand or earmark shall be conclusive evidence of the fact and the date of such registration, transfer or, as the case may be, cancellation;
- (d) the existence on any head of stock of a registered brand (other than a special brand allotted under section 9A, 14 or 14B and a distinctive brand) or a registered earmark shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that the animal concerned is the property of the registered owner of such brand or earmark and, where there are more than 1 such brand on such animal, of the registered owner of the brand which appears to be the last imprinted in accordance with the provisions of this Act:

For the purposes of this paragraph, the existence of a registered earmark on a sheep shall be evidence and, in the absence of evidence to the contrary, conclusive evidence that the sheep is the property of the registered owner of the earmark but the existence of a registered earmark on a head of cattle shall not be such evidence unless that earmark exists thereon in conjunction with a registered horse and cattle brand with which such earmark is at the material time registered;

- (e) the fact that any stock bearing any brand or earmark (whether registered or not) has been claimed or dealt with by any person as the person's property shall be prima facie evidence that such person imprinted or made such brand or earmark;
- (f) a spay mark upon any cow or heifer shall be prima facie evidence that such cow or heifer has been spayed;

- (g) a mark or cut wholly within the off ear of any head of cattle, being a mark or cut of a shape and size approved by the Minister for a particular purpose, shall be prima facie evidence that such purpose has been carried out.
- (2) No provision of this section shall be construed to prejudice the operation of or to derogate from any provision of the Criminal Code.

Part 6 Miscellaneous

26 Fees

- (1) Fees at the prescribed rate shall be payable upon the registration or transfer of any brand or earmark of any kind whatever under this Act.
- (2) In every case the prescribed fee shall accompany the application for the registration or transfer but if the registration or transfer is not effected the whole or part of such fee may be refunded by the registrar.

27 Costs of administering Act

- (1) The costs, charges, and expenses of administering this Act shall be paid out of the consolidated fund which is hereby to the necessary extent appropriated accordingly.
- (2) All fees paid and penalties recovered under this Act shall be paid into the consolidated fund.

28 Not to affect mortgages on stock

Nothing herein contained shall affect any mortgage or other security under the *Mercantile Act 1867* or any Act relating to the mortgage of stock or holdings.

30 Notice, how given

Where by any of the provisions of this Act it is necessary to give any notice or send any document to any person, such notice or document may be communicated or sent to such person by letter through the post office or may be delivered to the person personally or left at the person's usual or last known residence.

31 Recovery of penalties

- (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.
- (2) An offence against this Act may be prosecuted in a summary way under the *Justices Act 1886* upon the complaint of an inspector.
- (3) Such a proceeding may be instituted within the time limited therefor by those Acts or within 6 months after the offence in question comes to the knowledge of the complainant whichever period is the later to expire.
- (4) Unless some other penalty is specifically prescribed by this Act a person convicted of an offence against this Act is liable to a penalty of 4 penalty units.

31A Recovery of fees

Unless some other method of recovery is specifically prescribed by this Act any fee payable under this Act shall be recovered by way of summary proceeding under the *Justices Act 1886* upon complaint by an inspector or by way of action as for a debt due to the Crown in a court of competent jurisdiction.

31B Disposal of branding instruments etc.

- (1) A court which hears a charge of an offence against any provision of this Act may order that anything (other than

stock) seized by or on behalf of an inspector in the course of an investigation into such offence be forfeited to the Crown.

(2) Anything ordered to be forfeited to the Crown under subsection (1) or any other thing (other than stock) which, either before or after the date of commencement of the *Brands Acts Amendment Act 1965*—

- (a) has been seized by or on behalf of an inspector and which does not conform with the provisions of this Act or with a determination made under this Act; or
- (b) has been surrendered to an inspector, the registrar, or the chief executive;

may be disposed of in such manner as that chief executive determines.

33 Approval of forms

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

34 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may make provision about—
 - (a) the shape or pattern of the letters, signs, characters, numerals, symbols, and marks to be used for brands and earmarks of any kind whatever, under this Act, and the arrangement and position thereof;
 - (b) the shape, size, or pattern of branding instruments or pliers used under this Act;
 - (c) the conditions under which brands and earmarks of any kind whatever may be transferred, surrendered, cancelled, or re-allotted and authorising such cancellation upon conviction of certain offences to be specified in such regulations;

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- (d) the branding, on a prescribed portion, of stock that have been tested for a prescribed disease with a brand of such design as is prescribed for that disease;
 - (e) the branding of horses or cattle with a departmental distinctive brand set apart by the registrar for a specific purpose, and, where deemed necessary, making such branding by the owners compulsory;
 - (f) grades for hides of horses or cattle or skins of sheep or goats, and the matters and things to be considered in determining the grade of any such hide or skin;
 - (g) the fees payable under this Act;
 - (i) the giving of notice by owners of intention to muster, shear, brand, mark, or travel stock.
- (3) Also, a regulation may appoint any part of the State to be a district for the purposes of this Act.

Part 7 **Transitional provision for Primary Industries Legislation Amendment Act 2006**

35 Particular inspectors continue in office

- (1) This section applies to a person who, immediately before the commencement, was an inspector appointed under section 4(1) as in force before the commencement.
- (2) On the commencement, the person is taken to be an appointed inspector.
- (3) In this section—

commencement means the day this section commences.

Schedule Dictionary

section 3

appointed inspector means a person appointed under section 22A as an inspector.

approved form see section 33.

branding instrument means an instrument or contrivance used for branding stock.

brands directory means the list of horse and cattle brands, and of cattle earmarks, compiled and published by the registrar.

cattle means any bull, cow, ox, heifer, steer, or calf.

cattle earmark means any mark or cut upon the ear of cattle registered for use in conjunction with an owner's horse and cattle brand.

cow includes a spayed cow.

distinctive brand means any registered brand other than a horse and cattle brand which is set apart by the registrar for a specific purpose or which the owner is empowered to brand upon the twist of any horses, cattle, or camels to denote—

- (a) the ownership of the individual members of a family or partnership where a horse and cattle brand is registered conjointly in the names of members of a family or partnership; or
- (b) the class, age, or description of horses, cattle, or camels, or any other fact which the owner desires to denote.

distinctive mark means any mark or cut, which an owner is empowered to make upon the ear of sheep, or goats to denote their age or class, and whether registered or unregistered.

district means a district constituted under this Act.

goat means any male or female goat or any kid.

heifer includes a spayed heifer.

holding means any run, station, farm, freehold, or leasehold, or place where stock are kept or depastured and any premises or saleyard.

horse means any horse, mare, gelding, colt, filly, ass, or mule.

horse and cattle brand means the permanent impression of any letter, numeral, sign, or character branded upon any horses, cattle, or camels, and registered, and includes a symbol brand but not a distinctive brand.

inspector means—

- (a) an appointed inspector; or
- (b) a person who is an inspector under section 4(2).

near side means the left side of stock.

off side means the right side of stock.

owner, used with reference to any brand or earmark of whatever kind, or any stock, or any holding, means the owner jointly or in severalty, or the authorised agent of or superintendent or manager for such owner and, in relation to stock or any holding, includes a lessee of such stock or, as the case may be, holding.

pig means a boar, sow, barrow or pig of any age, sex or breed.

pig brand means any tattoo brand permanently imprinted on the side of pigs and registered.

pig brands directory means the list of registered pig brands compiled and published by the registrar.

pliers means an instrument or contrivance approved by the registrar or any inspector, and used for earmarking stock.

register means any register kept in pursuance of this Act.

registered means registered under this Act.

registrar means the registrar of brands or any deputy registrar of brands appointed under this Act.

requisition means any order, request or requisition whether given orally or in writing.

residence means the residence, house, homestead, or head station of any owner.

saleyard means any yard, premises, or place where stock are sold or offered or exposed for sale, or where stock are held or kept for the purpose of being sold or offered or exposed for sale, or where stock are kept or held on sale.

sell includes auction, barter, exchange or supply, or cause, permit or attempt any of those acts, offer or attempt to sell, supply or receive for sale, have in possession for sale, expose for sale, send forward or deliver for or on sale, cause, suffer or allow to be sold or offered for sale, dispose or offer for disposal under a lease or hire purchase agreement.

sheep means any ram, ewe, wether, or lamb.

sheep brand means—

- (a) a registered fire brand permanently impressed on the horn of a sheep or goat; or
- (b) a registered paint brand imprinted on the wool on any part of a sheep or goat.

sheep brands and earmarks directory means the list of registered sheep brands and sheep earmarks compiled and published by the registrar.

sheep earmark means any registered mark or cut upon the ear of sheep or upon any goats.

spay mark means a circular mark not less than 15mm nor more than 40mm in diameter made or cut wholly within the near ear of any head of cattle.

stock means any horse, cattle, or camel, and any sheep, pig or goat.

symbol brand means any horse or cattle brand consisting of a device or symbol registered as a symbol brand, and of such shape and pattern as the registrar approves, and which can be briefly described in writing.

travelling sheep means sheep which—

- (a) are being travelled, driven or carried elsewhere than in a holding; or

- (b) although in a holding at the time a sheep brand or sheep earmark is imprinted or made thereon, are at that time intended by their owner to be travelled, driven or carried elsewhere than in such holding within 7 days after such branding or marking and are so travelled, driven or carried within that period or, if not within that period on account of reasonable cause, then as soon as is reasonably practicable after such branding or, as the case may be, marking.

twist, of an animal, means the upper rear portion of the animal's hind leg between the pin bone and the hock.