



Animal Care and Protection Act 2001

Current as at 1 July 2016

© State of Queensland 2019



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

Animal Care and Protection Act 2001

Contents

		Page
Chapter 1	Preliminary	
Part 1	Introduction	
1	Short title	11
2	Commencement	11
Part 2	Purposes and application of Act	
Division 1	Purposes	
3	Purposes of Act	11
4	How purposes are to be primarily achieved	12
Division 2	Application	
5	Act binds all persons	13
6	Application of Act to State for protected or wild animals	13
6A	Relationship with Nature Conservation Act 1992	13
7	Relationship with certain other Acts	14
8	Relationship with native title	14
9	Act does not affect other rights or remedies	14
Part 3	Interpretation	
Division 1	Dictionary	
10	Definitions	15
Division 2	Key definitions	
11	What is an animal	15
12	Meaning of a person in charge of an animal	16
Chapter 2	Codes of practice	
13	Making codes of practice	17
14	Tabling and inspection of documents adopted in codes of practice	18
15	Regulation may require compliance with code of practice	19
16	Use of code of practice in proceeding	19
Chapter 3	General animal offences	

Contents

Part 1	Breach of duty of care	
17	Breach of duty of care prohibited	19
Part 2	Cruelty offences	
18	Animal cruelty prohibited	20
19	Unreasonable abandonment or release	22
Part 3	Prohibited events	
Division 1	Preliminary	
20	Meaning of prohibited event	22
Division 2	Prohibitions	
21	Participation in prohibited event	23
22	Presence at prohibited event	24
Part 4	Regulated surgical procedures	
Division 1	Regulated procedures for dogs	
23	Cropping dog's ear	24
24	Docking dog's tail	25
25	Debarking operations	25
Division 2	Regulated procedures for other animals	
26	Removal of cat's claw	27
27	Docking tail of cattle or horse	27
Division 3	Restriction on supplying animals that have undergone a regulated surgical procedure	
28	Restriction on supplying debarked dog	28
29	Other restrictions	28
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	29
31	Releasing animal for injury or killing by dog	29
32	Keeping or using kill or lure for blooding or coursing	29
33	Obligation to exercise closely confined dogs	30
Division 2	Possession or use of certain traps or spurs	
34	Possession of prohibited trap or spur unlawful	30
35	Use of prohibited trap or spur unlawful	31
Division 3	Baits or harmful substances	
36	Prohibitions	31
Division 4	Allowing animal to injure or kill another animal	
37	Unlawfully allowing an animal to injure or kill another animal . . .	32

Part 6	Exemptions	
Division 1	Preliminary	
38	Operation of pt 6	33
Division 2	Compliance with relevant code	
39	Offences excluded from div 2	34
40	Compliance with relevant code of practice or scientific use code	34
Division 3	Other offence exemptions	
41	Limits on application of offence exemptions under div 3	35
41A	Killing an animal under Aboriginal tradition, Island custom or native title	35
42	Feral or pest animals	36
43	Animals used to feed another animal	37
44	Fishing using certain live bait	38
45	Slaughter under religious faith	38
46	Use of fishing apparatus under shark fishing contract	38
47	Supplying animal	38
Chapter 4	Using animals for scientific purposes	
Part 1	Preliminary	
48	When an animal is used for scientific purposes	39
49	What is the scientific use code	40
50	Definitions for ch 4	40
Part 2	Registration of scientific users	
Division 1	Who must obtain registration	
51	Requirement for registration	42
Division 2	Obtaining registration	
Subdivision 1	Registration applications	
52	Applying for registration	42
53	Chief executive may seek further documents or information	43
Subdivision 2	Deciding registration application	
54	Deciding application	43
55	Criteria for decision	44
56	Registration conditions	44
Subdivision 3	Action after decision on registration application	
57	Grant of registration application	45
58	Term of registration	45
59	Notice of refusal of registration application	45

Contents

Division 3	Register of scientific users	
Subdivision 1	The register	
60	Register	46
61	Registration details	46
62	Inspection of register	46
63	False representations about registration	47
Subdivision 2	Exemption from disclosure of registration details	
64	Who may apply	47
65	Requirements for application	47
66	Deciding application	48
67	Criteria for decision	48
68	Exemption may be limited	49
69	Notice of refusal of disclosure exemption application	49
70	Effects of disclosure exemption	49
Division 4	Amendment, cancellation or suspension	
Subdivision 1	Amendment of registration details	
71	Amendments for which proposed action notice not required	50
72	Amendments for which proposed action notice is required	50
Subdivision 2	Cancellation or suspension of registration	
73	Conditions for cancellation or suspension	51
Subdivision 3	Procedure for amendment, cancellation or suspension	
74	Application of sdiv 3	52
75	Notice of proposed action	52
76	Considering representations	53
77	Decision on proposed action	53
78	Notice and taking of effect of proposed action decision	53
Subdivision 4	Steps after amendment or suspension	
79	Replacement of registration certificate	54
80	Requirement to record suspension	54
Division 5	Investigation of applicants and registered persons	
81	Application of div 5	54
82	Animal welfare offence reports	55
83	Use of information in animal welfare offence report	55
84	Notice of use of information in animal welfare offence report	56
85	Confidentiality of animal welfare offence reports	56
86	Destruction of animal welfare offence reports	57

Division 6	Miscellaneous provisions	
87	Reporting obligations of registered persons	57
88	Replacement registration certificates	58
89	No transfer of registration	58
90	Surrender of registration	58
Part 3	Restrictions on scientific users	
91	Use for scientific purposes must comply with code	59
92	Use for certain scientific purposes unlawful	59
93	Obtaining approval to use for unlawful scientific purpose	60
Chapter 5	Code compliance monitoring	
Part 1	Preliminary	
94	Purposes of ch 5	61
Part 2	Monitoring programs	
95	Chief executive may make monitoring program	61
96	Publication of draft monitoring program	62
97	Comments to be considered before final program made	63
98	Final monitoring program	63
Part 3	Authorised officers	
Division 1	Appointment	
99	Appointment and qualifications	63
100	Functions	64
101	Appointment conditions and limit on powers	64
102	When authorised officer ceases to hold office	65
103	Resignation	65
Division 2	Identity cards	
104	Issue of identity card	66
105	Production or display of identity card	66
106	Return of identity card	67
Part 4	Powers of authorised officers	
Division 1	General	
107	General provisions about powers	67
Division 2	Entry powers	
Subdivision 1	Entry to places other than vehicles	
108	Power of entry	67
109	Procedure for entry with consent	68
110	Procedure for other entries	69

Contents

Subdivision 2	Entry to vehicles	
111	Power of entry	70
112	Procedure for entry without consent if person in control or occupier present	70
Division 3	Other powers	
113	Certain inspectors' powers apply for entry	71
Chapter 6	Investigation and enforcement	
Part 1	Inspectors	
Division 1	Appointment	
114	Appointment and qualifications	72
115	Functions	72
116	Appointment conditions and limit on powers	73
117	When inspector ceases to hold office	73
118	Resignation	74
Division 2	Identity cards	
119	Issue of identity card	74
120	Production or display of identity card	75
121	Return of identity card	75
Part 2	Powers of inspectors	
Division 1	Entry to places other than vehicles	
Subdivision 1	Entry powers	
122	Power of entry	75
123	Limited entry power to provide relief to animal	77
Subdivision 2	Procedure for entry without warrant	
124	Procedure for entry with consent	77
125	Procedure for other entries without warrant	78
Subdivision 3	Warrants	
126	Application for warrant	79
127	Issue of warrant	79
128	Special warrants	80
129	Warrants—procedure for entry	82
Division 2	Entry to vehicles	
Subdivision 1	Power to enter vehicles	
130	Power of entry	83
131	Procedure for entry without consent if person in control or occupier present	83

Subdivision 2	Powers to support entry	
132	Power to stop vehicle that may be entered	84
133	Failure to comply with stop signal	85
134	Power to require help to enter from person in control	85
135	Failure to comply with entry requirement	85
Division 3	Powers for entry to all places	
136	Application of div 3	86
137	General powers	86
138	Power to require reasonable help	87
139	Failure to comply with help requirement	87
140	Power to require person in control of vehicle to take action	88
141	Failure to comply with action requirement	88
Division 4	Seizure and forfeiture	
Subdivision 1	Powers of seizure	
142	General power to seize evidence	88
143	Seizing evidence under warrant	90
144	Seizure for welfare of animal	90
145	Seizure of property subject to security	90
Subdivision 2	Powers to support seizure	
146	Direction to person in charge	91
147	Failure to comply with seizure direction	91
148	Powers for seized things	91
149	Offence to tamper with seized thing	92
Subdivision 3	Safeguards for seized property	
150	Information notice and receipt for seized property	93
151	Access to seized property	94
152	Return of seized animal	95
153	Return of other seized property	96
Subdivision 4	Forfeiture	
154	Power to forfeit	97
155	Information notice about forfeiture	98
Subdivision 5	Dealing with property forfeited or transferred to State or prescribed entity	
156	When transfer takes effect	99
157	How property may be dealt with	99
Division 5	Animal welfare directions	

Contents

158	Application of div 5	100
159	Power to give animal welfare direction	101
160	Requirements for giving animal welfare direction	102
161	Failure to comply with animal welfare direction	103
Division 6	Inspector’s power to destroy animals	
162	Power of destruction	103
Division 7	Other powers	
163	Power to require name and address	103
164	Failure to comply with personal details requirement	104
165	Power to require information	105
166	Failure to comply with information requirement	105
167	False or misleading statements	106
168	Power to require production of documents	106
169	Failure to comply with document production requirement	107
170	False or misleading documents	107
Part 3	Notice of damage because of exercise of powers	
171	Application of pt 3	107
172	Requirement to give notice	108
173	Content of notice	108
Chapter 7	Evidence and legal proceedings	
Part 1	Evidence	
Division 1	General evidentiary aids	
174	Application of div 1	109
175	Appointments and authority	109
176	Signatures	109
177	Other evidentiary aids	110
Division 2	Offence proceedings	
178	Offences under Act are summary	111
179	Statement of complainant’s knowledge	111
180	False or misleading statements	111
181	Conduct of representatives	112
181A	Interim prohibition order	112
Part 2	Orders relating to animal welfare offences	
182	Disposal order	114
183	Prohibition order	114
184	Order against owner in certain cases	115

185	Criteria for making disposal or prohibition order	115
186	Procedure and powers for making disposal or prohibition order	116
187	Contravention of prohibition order unlawful	117
187A	Amendment or revocation of interim prohibition order	117
188	Review of certain prohibition orders	118
Part 3	Remedies	
189	Recovery of seizure, compliance or destruction costs	119
190	Compensation because of animal welfare offence	120
191	Compensation because of exercise of powers	120
192	General provisions for orders under pt 3	121
Part 4	Reviews and appeals	
Division 1	Internal reviews	
193	Internal review process	121
194	Who may apply for internal review	122
195	Requirements for making application	122
196	Stay of operation of original decision	122
197	Internal review	123
198	Notice of internal review decision	124
Division 1A	External reviews by QCAT	
198A	Who may apply for external review	125
Division 2	Appeals	
199	Who may appeal	125
200	Starting appeal	125
201	Stay of operation of internal review decision	126
202	Hearing procedures	126
203	Court's powers on appeal—general	126
204	Particular powers about seizure or forfeiture	127
205	Appeal to District Court	127
Chapter 8	General provisions	
Part 1	Other offences	
206	Obstruction of authorised officer or inspector	128
207	Impersonation of authorised officer or inspector	128
208	False or misleading entry in document kept under Act	128
209	Liability of executive officer—particular offences committed by corporation	129
209A	Executive officer may be taken to have committed offence	130

Contents

210	Attempts to commit offences	131
Part 2	Miscellaneous provisions	
211	Minister may establish advisory bodies	132
212	Delegations	132
213	Electronic applications	132
214	Electronic notices about applications	133
214A	Transferring ownership of animal in particular circumstances . .	133
215	Protection from liability	133
215A	Protection from liability for giving information	135
215B	Sharing of information by authorised officer or inspector	136
215C	Interaction with other laws	136
216	Approved forms	137
217	Regulation-making power	137
Chapter 9	Transitional provision for Primary Industries Legislation Amendment Act 2006	
218	Reporting obligation of registered person	138
Schedule	Dictionary	140

Animal Care and Protection Act 2001

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;

[s 4]

- (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 7, 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.

Note—

See the *Nature Conservation Act 1992*, section 83 (Property in protected animals).

6A Relationship with Nature Conservation Act 1992

- (1) This Act does not affect the application of the *Nature Conservation Act 1992* other than as provided under subsection (2).
- (2) This Act applies to an act done, or omission made, by a person for the purposes of either of the following if authorised under the *Nature Conservation Act 1992*—
 - (a) taking, keeping or using an animal to exercise Aboriginal tradition or Island custom;
 - (b) using an animal for a scientific purpose.
- (3) A person does not commit an offence under this Act only because the person does an act or makes an omission that—

[s 7]

- (a) is authorised under the *Nature Conservation Act 1992*, other than an act or omission mentioned in subsection (2); and
- (b) would, apart from this subsection, constitute an offence under this Act.

7 Relationship with certain other Acts

- (1) This Act does not affect the application of—
 - (a) the *Fisheries Act 1994*; or
 - (b) the *Racing Act 2002*; or
 - (c) the *Racing Integrity Act 2016*.
- (2) A person who lawfully does an act, or makes an omission, authorised under an Act mentioned in subsection (1) that would, apart from 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.

8 Relationship with native title

A person does not avoid liability to be prosecuted for an offence under this Act only because the act or omission that constitutes the offence happens in the exercise or enjoyment of native title rights and interests.

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.

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

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.

Note—

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.

- (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;

[s 14]

- (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;
- (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 notified, 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.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

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.

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

Notes—

- 1 This provision is an executive liability provision—see section 209.

- 2 See also section 9 (Act does not affect other rights or remedies).
- (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
 - (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—2000 penalty units or 3 years imprisonment.

Note—

This provision is an executive liability provision—see section 209.

-
- (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
 - (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.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

- (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.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

- (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.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

- (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

- (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.

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.

- (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;

Note—

See section 23 (Cropping dog's ear).

- (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.

(b) to race or train a coursing dog.

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

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

- (2) For subsection (1)(a), it does not matter whether the dog has previously tasted or seen the blood of the animal or of another animal.

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.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

Division 3 Baits or harmful substances

36 Prohibitions

(1) A person must not, with the intention of injuring or killing an animal, administer to, or feed, the animal a substance the person knows is harmful or poisonous to the animal.

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

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

[s 37]

- (2) However, subsection (1) does not apply to a person authorised to administer or feed the substance to the animal under the *Health Act 1937*.

Note—

See, for example, the *Health (Drugs and Poisons) Regulation 1996*.

- (3) 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.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

- (4) 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.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

- (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 41A 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, applies to each exemption.

- (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; 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.

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.

41A Killing an animal under Aboriginal tradition, Island custom or native title

- (1) This section applies for an offence if the act that constitutes the offence—
 - (a) involves the killing of an animal; and
 - (b) is done—
 - (i) in the exercise of native title rights and interests; or
 - (ii) under the authority of another law of the State or the Commonwealth to take the animal to exercise Aboriginal tradition or Island custom; or
 - (iii) under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 61.

Example—

hunting and killing an animal for personal consumption

- (2) It is an offence exemption for the offence if the act is done in a way that causes the animal as little pain as is reasonable.
- (3) For subsection (2), the following acts or omissions are taken not to cause the animal as little pain as is reasonable—
 - (a) injuring the animal to stop it escaping after it has been caught;
 - (b) injuring the animal or prolonging its life to attract another animal;
 - (c) taking flesh from the animal for human consumption before the animal is dead;
 - (d) doing a thing or omitting to do a thing that causes the animal to die from dehydration or starvation.
- (4) In this section—

take, under the authority of another law, includes take, keep or use under the authority of the *Nature Conservation Act 1992*.

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) an animal that is prohibited matter or restricted matter under the *Biosecurity Act 2014*;

Notes—

- 1 See the *Biosecurity Act 2014*, schedule 1 or schedule 2.
- 2 See also the note to the *Biosecurity Act 2014*, schedules 1 and 2.

- (c) an animal declared under a regulation made under this 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 *Biosecurity Act 2014* 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; and

Note—

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

- (b) the supply is—
- (i) by or for a prescribed entity; or
 - (ii) by an inspector for the State.

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 ‘Australian code for the care and use of animals for scientific purposes 8th edition (2013)’, published by or for the National Health and Medical Research Council, including each new edition, as in force from time to time.

Editor’s note—

On the commencement of this subsection, the scientific use code was available on the National Health and Medical Research Council’s website at <https://www.nhmrc.gov.au/guidelines/publications/ea28>.

- (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.

Note—

This provision is an executive liability provision—see section 209.

- (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, 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—

- (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—

[s 71]

- (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;
 - (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—

- (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.

Note—

This provision is an executive liability provision—see section 209.

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.

Note—

This provision is an executive liability provision—see section 209.

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—
- (a) authorised officers to monitor compulsory code requirements and the scientific use code; and
 - (b) programs about carrying out the monitoring.

Part 2 Monitoring programs

95 Chief executive may make monitoring program

- (1) The chief executive may, by complying with the requirements of this part, make a program stating requirements for

authorised officers about monitoring a compulsory code requirement or the scientific use code (a *monitoring program*).

- (2) However, a failure to comply with a requirement of this part does not invalidate or otherwise affect the monitoring program.
- (3) A monitoring program may be for any of the following—
 - (a) more than 1 compulsory code requirement;
 - (b) compulsory code requirements under different codes of practice;
 - (c) a compulsory code requirement and the scientific use code.

96 Publication of draft monitoring program

- (1) The chief executive must publish a notice of a draft monitoring program in a newspaper likely to be read by people in the State particularly affected by each compulsory code requirement or provision of the scientific code to which the draft program relates (the *relevant code provisions*).
- (2) The notice must—
 - (a) identify the relevant code provisions; and
 - (b) state the following—
 - (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 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—
 - (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 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) 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—
 - (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.

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
 - (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

- (1) The functions of an inspector are to investigate and enforce compliance with the following—

- (a) this Act;
 - (b) the *Racing Integrity Act 2016*, section 195;
 - (c) the Criminal Code, section 242 or 468.
- (2) To remove any doubt, it is declared that the functions relating to investigating and enforcing compliance with this Act include investigating whether a person lawfully is doing or has done an act, or lawfully is making or has made an omission, authorised under an Act mentioned in section 7(1).

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; 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), 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 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.

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) a particular animal or other thing or activity (the *evidence*) that may provide evidence of an animal welfare offence, or another 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 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;
 - (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 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 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), an inspector may enter, or has entered, a place.
- (2) However, if an inspector, under section 122(2) 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—

Note—

See also section 162 (Power of destruction).

- (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

- (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—
 - (i) an animal welfare offence; or
 - (ii) another 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.

Note—

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.

- (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 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*);
 - (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); 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.

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.
- (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.

- (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).
- (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

- (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), 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—
 - (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.
- (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 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.

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.

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

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—

- (i) an animal welfare offence; or
 - (ii) another 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—
 - (i) an animal welfare offence; or
 - (ii) another 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—
 - (i) an animal welfare offence; or
 - (ii) another 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.
 - (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.

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
 - (b) the person was not in a position to influence the representative in relation to the conduct.
- (4) In this section—

engaging in conduct includes failing to engage in conduct.

representative means—

 - (a) for a corporation—an agent, employee or executive officer of the corporation; or
 - (b) for an individual—an agent or employee of the individual.

state of mind of a person includes the person's—

 - (a) belief, intention, knowledge, opinion or purpose; and
 - (b) reasons for the belief, intention, opinion or purpose.

181A Interim prohibition order

- (1) This section applies if a person is charged with an animal welfare offence (the *alleged offence*).

- (2) The court may order (an *interim prohibition order*) that, pending completion of the proceeding for the alleged offence, the person must not possess or purchase or otherwise acquire—
 - (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.
- (3) The court may make an interim prohibition order against the person only if the court is satisfied there are reasonable grounds for believing there is an unacceptable risk the person will commit an animal welfare offence before the completion of the proceeding for the alleged offence.
- (4) An interim prohibition order may be made against the person—
 - (a) only at the court’s initiative or on an application by the prosecution; and
 - (b) in the person’s absence.
- (5) However, the court must not make an interim prohibition order unless the person has been given an opportunity to be heard about whether the order should be made.
- (6) An interim prohibition order—
 - (a) takes effect—
 - (i) if the person or the person’s legal representative is at the hearing when the order is made—when the order is made; or
 - (ii) otherwise—when the order is served on the person; and
 - (b) ends on the earlier of the following—
 - (i) the completion of the proceeding for the alleged offence;
 - (ii) the revocation of the order under section 187A.

- (7) For this section, if the alleged offence is heard and decided on indictment, the proceeding for the alleged offence is completed when the proceeding on indictment is completed.

Part 2 Orders relating to animal welfare offences

182 Disposal order

- (1) The court may order (a *disposal order*) the disposal or forfeiture of any of the following things that a person convicted of an animal welfare offence owns—
- (a) the animal or anything else that was the subject of, or used to commit, the offence;
 - (b) another animal;
 - (c) another thing the court considers is likely to be used in committing a further animal welfare offence.
- (2) If a disposal order orders the sale of an animal, the order may direct—
- (a) the way in which the sale is to take place; or
 - (b) how the proceeds of the sale are to be distributed.

183 Prohibition order

- (1) The court may order (a *prohibition order*) that a person convicted of an animal welfare offence must not possess or purchase or otherwise acquire—
- (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.

Note—

See section 188 (Review of certain prohibition orders).

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 each of the following—
- (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;
 - (e) if an interim prohibition order is in effect against the person—the person’s compliance or otherwise with the order.
- (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.

Note—

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

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.

187 Contravention of prohibition order unlawful

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

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

Note—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 209A, to have also committed the offence.

187A Amendment or revocation of interim prohibition order

- (1) This section applies if an interim prohibition order is made against a person.
- (2) A relevant court may amend or revoke the interim prohibition order on an application under this section.
- (3) The person may make an application if at least 6 months has passed since—
 - (a) the interim prohibition order was made; or
 - (b) the person last made an application under this section.
- (4) The prosecution may make an application at any time.
- (5) The court may amend or revoke the interim prohibition order only if satisfied that—
 - (a) there has been a substantial change in the person's circumstances since the order was made; or
 - (b) in all the circumstances, it is reasonable to amend or revoke the order.
- (6) The applicant must give the chief executive notice of the application.
- (7) In deciding the application, the court must give the chief executive and anyone else it considers appropriate an opportunity to be heard.

- (8) In this section—
relevant court means—
- (a) the court that made the interim prohibition order; or
 - (b) if another court is dealing with the proceeding for the alleged offence on indictment—that court.

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), 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.
- (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.

Note—

See also sections 9 (Act does not affect other rights or remedies) and 204(2) (Particular powers about seizure or forfeiture).

Part 4 Reviews and appeals

Division 1 Internal reviews

193 Internal review process

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

194 Who may apply for internal review

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

195 Requirements for making application

- (1) An internal 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 an internal review application.

196 Stay of operation of original decision

- (1) An internal 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 relevant body.
- (3) The relevant body may stay the original decision to secure the effectiveness of the internal review and a later appeal to the court or external review by QCAT.
- (4) The stay—
 - (a) may be given on conditions the relevant body considers appropriate; and
 - (b) operates for the period fixed by the relevant body; and
 - (c) may be amended or revoked by the relevant body.
- (5) The period of the stay must not extend past the time when the chief executive makes an internal review decision about the original decision and any later period the relevant body allows

the applicant to enable the applicant to appeal against, or apply for an external review of, the internal review decision.

- (6) An internal review application affects the original decision, or carrying out of the decision, only if the decision is stayed.
- (7) In this section—

relevant body means—

 - (a) for an original decision to seize or forfeit an animal or other thing—the Magistrates Court; or
 - (b) for another original decision—QCAT.

197 Internal review

- (1) The chief executive must, within 20 days after receiving an internal review application made under section 195—
 - (a) conduct an internal review of the original decision the subject of the application; and
 - (b) make a decision (the *internal 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; and
 - (b) does not apply to an original decision made by the chief executive personally.

- (4) If the internal review decision confirms the original decision, for the purpose of an appeal or external review, the original decision is taken to be the internal review decision.
- (5) If the internal review decision amends the original decision, for the purpose of an appeal or external review, the original decision as amended is taken to be the internal review decision.

198 Notice of internal review decision

- (1) The chief executive must, within 10 days after making an internal review decision, give the applicant notice (the *internal review notice*) of the decision.
- (2) If the internal review decision is not the decision sought by the applicant, the internal review notice must—
 - (a) for an original decision to seize or forfeit an animal or other thing, state the following—
 - (i) the reasons for the decision;
 - (ii) that the applicant may, within 28 days after the notice is given, appeal against the decision to the Magistrates Court;
 - (iii) how to appeal;
 - (iv) that the applicant may apply to the court for a stay of the decision; or
 - (b) for another decision—be accompanied by a QCAT information notice for the decision.
- (3) If the chief executive does not give the internal review notice within the 10 days, the chief executive is taken to have made an internal review decision confirming the original decision.
- (4) For a decision mentioned in subsection (2)(b), the chief executive must give an information notice only if this Act so requires.

Division 1A External reviews by QCAT

198A Who may apply for external review

If an interested person has applied for an internal review of an original decision, other than an original decision to seize or forfeit an animal or other thing, any interested person for the decision may apply, as provided under the QCAT Act, to QCAT for an external review of the decision.

Division 2 Appeals

199 Who may appeal

If an interested person has applied for an internal review of an original decision to seize or forfeit an animal or other thing, any interested person for the decision may appeal against the internal 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 internal 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 internal review decision

- (1) The Magistrates Court may grant a stay of the operation of an internal 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 internal 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 internal review decision.

203 Court's powers on appeal—general

- (1) In deciding an appeal, the Magistrates Court may—
 - (a) confirm the internal 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 internal review decision.

204 Particular powers about seizure or forfeiture

- (1) If the Magistrates Court confirms an internal review decision about forfeiture, it may also give directions about the sale or disposal of the animal or other thing.
- (2) If the court sets aside an internal review decision about 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.
- (3) 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.

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 Liability of executive officer—particular offences committed by corporation

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits an offence against an executive liability provision; and
 - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

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

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
- (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
 - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
 - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
- (a) the liability of the corporation for the offence against the executive liability provision; or
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the corporation's offence against the executive liability provision.
- (5) In this section—

executive liability provision means any of the following provisions—

- section 17(2)
- section 18(1)
- section 51(1)
- section 91
- section 92
- the Criminal Code, section 242
- the Criminal Code, section 468.

209A Executive officer may be taken to have committed offence

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
 - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
 - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—
 - (a) the liability of the corporation for the offence against the deemed executive liability provision;
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—

deemed executive liability provision means any of the following provisions—

- section 15(3)
- section 19(1)
- section 19(2)
- section 21(1)
- section 30
- section 31
- section 32
- section 35
- section 36(1)
- section 36(3)
- section 37(1)
- section 161
- section 187.

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 applies to subsection (1).

- (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); 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*)—

- (a) 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;
 - (b) 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 does not incur civil liability for engaging, or for the result of engaging, in conduct in connection with giving the help or acting under the direction, order or requirement.
- (3) If subsection (2) prevents a civil liability attaching to a relevant person, the liability attaches instead to the State.
- (4) If liability attaches to the State under subsection (3), the State may recover contribution from the relevant person but only if the conduct was engaged in—
- (a) other than in good faith; and
 - (b) with gross negligence.
- (5) In a proceeding under subsection (4) to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.
- (6) This section does not apply to a person who is a State employee under the *Public Service Act 2008*, section 26B(4) engaging in conduct in an official capacity under section 26C of that Act.

Note—

For protection from civil liability in relation to State employees, see the *Public Service Act 2008*, section 26C.

(7) 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.

conduct means an act or an omission to perform an act.

215A Protection from liability for giving information

(1) This section applies if a person, acting honestly and in good faith, gives an inspector information the person reasonably believes may help with an investigation of an animal welfare offence.

Example—

Acting in good faith may include a person choosing a time and a place to give the information to an inspector to avoid other people overhearing the information.

(2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.

(3) Also, merely because the person gives the information, the person can not be held to have—

- (a) breached any code of professional etiquette or ethics; or
- (b) departed from accepted standards of professional conduct.

(4) Without limiting subsections (2) and (3)—

- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
- (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and

- (ii) is not liable to disciplinary action for giving the information.

215B Sharing of information by authorised officer or inspector

- (1) Despite section 85, an authorised officer or inspector may give information obtained under this Act in the following circumstances—
 - (a) to a police officer if the authorised officer or inspector reasonably believes the information will help a police officer in the performance of the police officer's functions in relation to—
 - (i) an animal; or
 - (ii) an animal welfare offence;
 - (b) to an RIA authorised officer if the authorised officer or inspector reasonably believes the information will help an RIA authorised officer in the performance of the officer's functions under the *Racing Integrity Act 2016* in relation to—
 - (i) an animal; or
 - (ii) an animal welfare offence.
- (2) In this section—

RIA authorised officer means an authorised officer under the *Racing Integrity Act 2016*.

215C Interaction with other laws

- (1) Sections 215A and 215B do not limit a power or obligation under another Act or law to give information about an animal or an animal welfare offence.
- (2) Sections 215A and 215B apply to information—
 - (a) despite any other law that would otherwise prohibit or restrict the giving of the information; and

- (b) whenever the information was obtained including before the commencement.

Example of another law for paragraph (a)—

Police Service Administration Act 1990, section 10.1

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—
- (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 means an offence against—

- (a) this Act, other than chapter 6, part 2, divisions 2, 3, 4 and 7 and sections 206, 207, 208, 209 and 210; or
- (b) the Criminal Code, section 242 or 468; or
- (c) the *Racing Integrity Act 2016*, section 195.

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).

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.

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

external review, for a decision, means a review of the decision by QCAT under the QCAT 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 an internal review of the decision within 14 days after the person receives the notice;
- (d) how to apply for an internal 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.

interim prohibition order see section 181A(2).

internal review application see section 194.

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

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.

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.

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—

- (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.

Note—

See, for example, the *Police Powers and Responsibilities Act 2000*, schedule 6, definition *public place*.

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

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—

- (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).

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.

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.