

ANIMAL WELFARE AMENDMENT BILL 2007

CLAUSE NOTES

Clause 1 Short title

The Bill amends the Animal Welfare Act 1993

Clause 2 Commencement

Provides for commencement of the Act on the day it receives Royal assent

Clause 3 Principal act

The Animal Welfare Act 1993 is referred to as the Principal Act.

Clause 4

Section 3 amended (Interpretation)

(a) The principal terms used throughout the Bill are defined. "**Animal research**" is re-defined in terms of a scientific activity in relation to an animal, undertaken to develop, demonstrate or acquire knowledge or techniques in an area of science or teaching, and which is likely to, or may, adversely affect the welfare of the animal. This is an outcomes-based definition involving both scientific intent and animal welfare compromise. It replaces a prescriptive definition, which failed to embrace some intended animal research activities, but embraced some non intended ones. "**Animal welfare guidelines**" are approved by the Minister under section 44B. These are intended to provide guidance to animal users and the courts as to good or best animal care and management practice.

"**Animal Welfare Standards**" are prescribed in the Regulations. These are intended to be mandatory minimum standards, including nationally adopted minimum standards.

"**Care or charge**" in relation to an animal is defined by section 3A, and refers to section 6 of the Act - Duty of care to animals.

(b) "**Code of Practice**" includes the code of practice for rodeos, approved by the Minister under section 11 C, in addition to the code of practice for animal research, approved by the Minister under section 34.

(c) "**function**" is defined to include duty. Functions of officers are included in section 13A.

(d) It is unnecessary to define institution for the purposes of the Act.

(e) "**Rodeo**" is defined as a public event or competition using horses and/or cattle in bucking, catching, wrestling, roping or tying events. This definition excludes horsemanship events such as barrel racing and camp drafting. It is unnecessary to define "school" for the purposes of the Act.

"**Secretary**" is defined to mean Secretary of the Department responsible for administering the Act.

(f) It is unnecessary to define "State school" for the purposes of the Act.

Clause 5 Section 3A inserted

3A. Care or charge of animals

(1) Deems certain people to have the care or charge of an animal for the purposes of the Act. These people include

- (a) the owner of the animal;
- (b) the person with control, possession or custody of the animal;
- (c) the operator or manager of any premises where an animal is held for commercial purposes, (this would include, but would not be restricted to, farms, saleyards, abattoirs, pet shops, breeding establishments, racecourses, zoos and circuses);
- (d) the owner, operator or manager of land where an animal is agisted unless there is written agreement otherwise;
- (e) a share farmer; and
- (f) the Chief Executive Officer, Manager or Director of a corporation which owns an animal.

(2) More than one person can have the care or charge of an animal for the purposes of the Act.

(3) In proceedings under the Act

- a body corporate is responsible for the conduct and actions of its officers, employees or agents acting within their usual authority; and
- an employer is responsible for the conduct and actions of his or her agents or employees acting within their usual authority.

(4) For the purposes of subclause (3), "conduct" or "acting" includes failure to act.

Clause 6 Section 7 amended (Management of animals)

Amends section 7 of the Act to apply to more than one animal, to enable section 7 to apply to herds or flocks as well as individual animals.

Increases the maximum penalties for section 7 offences to 500 penalty units for a body corporate and 100 penalty units for an individual.

Clause 7 Section 8 amended (Cruelty to animals)

- (a), (b) Increases the maximum penalties for cruelty offences to 500 penalty units for a body corporate and 100 penalty units for an individual.
- (c) Ensures that confined animals must be provided with food, drink, shelter and exercise rather than food, drink, shelter or exercise.

(d) Ensures that not only the direct application, but also indirect use of toxic substances on animals is restricted under the Act, and closes a potential loophole. For example, the laying of poison bait would be an indirect use.

(e) (v) Permits toxic substances to be used in respect of animals to control an emergency animal disease. For example it may be necessary to poison feral animals to control foot and mouth disease.

(e) (vi) Retains the ability to ensure toxic substances for the control of animal pests are acceptable from an animal welfare viewpoint, but replaces the need to do this by regulation, with a pest register.

(f) Defines terms used in Clause 8

"**Abandons**" is defined to include relinquishing care or charge without ensuring on-going care or charge.

"**appropriate and sufficient**" is defined in terms of food, drink and shelter for the purposes of section 8 of the Act.

- In terms of food, it means food of a quality and quantity sufficient to maintain the animal in reasonable body condition, fed at a frequency appropriate to the animal's digestion and metabolism.

- In terms of drink it means fluid of quality and quantity sufficient to keep the animal hydrated.

- In terms of shelter, it means shelter sufficient to protect the animal from the adverse effects of weather.

"**Pest animal**" is defined as an animal in the pest register.

"**Pest register**" is a register of pest animals and substances acceptable for their control, established under Clause 9.

Clause 8 Section 8A inserted

8A. Pest register

Allows the Minister to establish a register of pest animals and substances which are acceptable for their control on animal welfare grounds. Requires the Minister to consult with the Advisory Committee before entering in or removing from the register, pest animals and substances for their control.

Clause 9 Section 9 amended (Aggravated cruelty)

Increases the maximum penalties for aggravated cruelty offences to 1000 penalty units for a body corporate and 200 penalty units for an individual.

Clause 10 Section 10 amended (baiting and shooting)

The Act limits the offences relating to releasing animals for the purpose of being shot, killed, worried or injured to "matches or competitions". This amendment broadens this to include any activity. The intention is to prevent organised animal fights, which could be said to be matches or competitions, but to also prevent activities such as the blooding of greyhounds or the coursing of dogs using a live animal as bait. These activities may not take the form of a match or competition. Increases the maximum penalties for baiting and shooting offences to 1000 penalty units for a body corporate and 200 penalty units for an individual.

Clause 11 Section 11A, 11B and 11c inserted

11A. Rodeos

(1), (2), (3). Ensures that the conduct of and participation in rodeos must be in accordance with the code of practice approved under section 11C, and that a veterinary surgeon must be in attendance at all rodeo events. Penalties can be imposed for conducting or participating in a rodeo except in accordance with the approved code of practice, and for conducting a rodeo without a veterinary surgeon in attendance.

(4) Prohibits the riding of sheep, calves or goats at a rodeo, for example making events such as "mutton busting" illegal.

11B. Functions of veterinary surgeon at rodeos

(1) Sets out the functions of a veterinary surgeon in official attendance at a rodeo. These functions include

- examining animals for fitness to compete;
- examining and treating sick and injured animals;
- euthanasia of animals; and
- any other function imposed by the code of practice.

(2) Sets out the powers of a veterinary surgeon in official attendance at a rodeo. These powers include

- powers to require that an unfit animal not compete;
- powers to require assistance in the assessment and treatment of an animal;
- powers to perform the functions of the veterinary surgeon; and
- any other powers provided by the code of practice.

Non compliance with the requirement of a veterinary surgeon is an offence and penalties can be imposed.

11 C. Code of practice for rodeos

Allows the Minister to approve a code of practice to regulate the conduct of rodeos and ensure the welfare of animals used in rodeos.

Clause 12 Section 12 amended (Traps)

Extends the ban, unless exempted by the Minister, on the setting, laying or placing of leg hold traps and snares to include glueboard traps. These are defined as traps which use an adhesive substance to trap an animal.

Clause 13 Section 13A inserted

13A. Functions of officer

Establishes the functions of officers authorised under section 13 of the Act. These functions are to protect and secure the welfare of animals, to advise and instruct people with animals and to investigate possible contraventions of the Act, taking appropriate action.

Clause 14 Section 14 amended (Instructions by officers)

Allows an officer to direct instructions regarding the welfare of animals not only to the person with the current care of the animal, but also to the person who usually has the care, or is likely to have the care in the future. For example an officer will be able to instruct the operator of an empty livestock transport vehicle to repair obvious hazards such as jagged projections before carrying any more livestock.

Clause 15 Section 16 amended (Power to enter, search and inspect premises)

Allows an officer searching a premises not only to seize anything used in the committing of an offence, but also to seize anything the officer believes is evidence that an offence is being or has been committed. This will allow an officer to seize evidence such as private photographs or video film depicting the offence in question.

Clause 16 Section 26 substituted

26. Power to require information

This provision enhances the powers of officers performing functions or exercising powers under the Act.

(1) Allows an officer to require a person to provide information over and above name and address. An officer can require a person to answer questions, provide documents and provide information on the health or welfare of an animal or on any matter to which the Act applies.

(2) Allows an officer to require a document or information to be provided at a specified place, to a specified person, by a specified time or in a specified manner.

(3) Failure to comply with the requirement of an officer under sub- clause (1) is an offence and penalties can be imposed.

(4) Providing false or misleading information is an offence and penalties can be imposed.

(5) Information provided by a person under this section is inadmissible against the person in any civil or criminal proceedings other than for proceedings under the Act.

Clause 17 Section 27 amended (Animal research)

Removes the exemptions from the requirement to be licensed to carry out animal research. The amended definition of animal research removes the need for exemptions.

Clause 18 Section 30 amended (Grant of licences)

(a) Removes the requirement for the Minister to consult with the Advisory Committee before granting or refusing to grant an animal research licence.

(b) Distinguishes the existing code of practice for animal research from the rodeo code of practice.

(c) Provides grounds for the inspection of a licensed institution - ie for compliance with licence conditions - and requires a licensed institution to advise an inspector of the date, nature and result of any external audit of compliance with the code of practice.

Clause 19 Section 32 amended (Cancellation of licences)

Removes the requirement for the Minister to consult with the Advisory Committee before cancelling an animal research licence.

Clause 20 Section 35 amended (Annual reports)

Requires a licensed institution to submit a report to the Minister by the date specified in its licence conditions or no later than 14 months after the date of issue of the licence if no date is specified, and thereafter at twelve monthly intervals.

Clause 21 Section 39 amended (Membership of advisory committee)

Recognises the new name of this organisation.

Clause 22 Section 40 amended (Functions of advisory committee)

Includes the function of advising the Minister on animal welfare guidelines as well as animal welfare standards, and any other functions imposed by the Act.

Clause 23 Sections 43AA and 43AAB inserted 43AA forfeiture of an animal for contravention of a section 43 order

(1) Allows a magistrate, on the application of an officer, to order the forfeiture to the Crown of any animal kept in contravention of a court order made under section 43 of the Act.

(2) The keeping of an animal in contravention of a court order is an offence under the Act. This provision allows a magistrate to order the forfeiture of such an animal in conjunction with or independently of any proceedings for such an offence.

(3) Allows an officer to seize a forfeited animal.

(4) Allows the Secretary to dispose of a forfeited animal.

(5) Defines forfeited animal to include any animal referred to in an order made under subsection (1), and if no particular animal is referred to in the order, any animal the officer determines to be forfeited in accordance with the order. For example, an order under section 43 of the Act may restrict a person to a certain maximum number of horses. In this case, an officer would be able to seize any horses above this number.

43AAB Registering an interstate order

This sub-clause provides for disqualifications or conditions, placed on the custody of animals by any Australian court under corresponding law, to apply in Tasmania, and for the breach of such to be an offence in this State.

The mechanism used is a registry of interstate orders maintained by the Minister, with interstate orders being registered at the written request of the interstate Minister.

A person in Tasmania who is the subject of an interstate order will be served a notice of such, and has 14 days to comply. After this time, the order will come into effect in Tasmania and non compliance will be an offence. Penalties can be imposed.

"**Corresponding law**" is defined as any State or Territory law concerning animal welfare or the prevention of cruelty to animals, which the Minister accepts as being corresponding law.

"**Interstate Minister**" is defined as the Minister responsible for the administration of a corresponding law.

"**Interstate order**" means an order made under corresponding law.

"**registration**" means recording in the register.

Clause 24

Part 7A inserted

43A. Service of infringement notices

(1) Provides a mechanism for issuing an infringement notice instead of pursuing matters through the courts. This applies to any offence under the Act. Penalties are to be prescribed in the Regulations.

(2) Applies only to people over 18 years of age.

43B. Form of infringement notices

An infringement notice must

- be in a form approved by the Secretary;
 - relate to a maximum of 3 offences;
 - specify each offence and the prescribed penalty for each offence;
 - specify name of person;
 - specify total amount payable, and place where payment is to be made;
- and
- inform the person concerned that they may disregard the infringement notice, but may then be prosecuted for each offence.

43C. Acceptance of infringement notice

Payment or making an undertaking to pay, within 21 days of service, constitutes acceptance of the infringement notice

43D. Extension of acceptance

A clerk of petty sessions may allow a further 14 days for payment after the 21 days has expired.

43E. Payment

If a person undertakes to pay the full amount, a clerk of petty sessions may allow a period for payment in full of up to 60 days from the date of service of the infringement notice, after which proceedings may be taken to recover the balance owing.

43F. Effect of acceptance

(1) Acceptance of an infringement notice is not an admission of liability in civil proceedings.

(2) Proceedings for the original offence cannot be brought if the person has accepted the infringement notice or within 28 days of service of the notice, or within 42 days of service of the notice if a clerk of petty sessions has allowed an extension.

43G. Withdrawal of infringement notice

Allows an officer or the Secretary to withdraw an infringement notice, whether or not it has been accepted, with any penalty paid to be refunded.

43H. Certain evidence inadmissible

Restricts evidence of service, acceptance or withdrawal of infringement notices to proceedings taken under section 43F(2).

43I. Delegation by clerk of petty sessions

A clerk of petty sessions may delegate powers and functions in respect of infringement notices.

Clause 25 Section 44 substituted

44. Delegation by Minister

Allows the Minister to delegate powers under the Act. This could for example include powers to licence research institutions or grant exemptions for the use of traps.

44A. Animal welfare standards

Allows the regulations to prescribe animal welfare standards. These are intended to be mandatory minimum standards, including nationally adopted minimum standards, with non compliance being an offence.

44B. Animal welfare guidelines

(1) Allows the Minister, after consulting the Advisory Committee, to approve guidelines on animal welfare.

(2) These guidelines are not legally binding and are intended to provide guidance to animal users and the courts as to good or best animal care and management practice.

Clause 26 Section 48 amended (Immunity from action)

This amendment corrects a minor inconsistency in the Act.

Clause 27 Sections 48A, 48B and 48C inserted

48A. Liability of employer or body corporate

(1) If a court is satisfied an employee charged with an offence under the Act was acting on the instructions of an employer, the court may order the employer to appear and answer the charge, and dismiss, or continue hearing the charge against the employee.

(2)

(a) If a body corporate commits an offence under the Act, each person concerned in the management of the body corporate is liable and may be convicted, unless they had no knowledge, gave no consent, or used all due diligence.

(b) The obligations of the body corporate remain despite dissolution or bankruptcy.

48B. Evidentiary matters

In legal proceedings under the Act

(1) the report of a veterinary surgeon is admissible in evidence in the absence of evidence to the contrary ;

(2) a certificate signed by the Minister relating to the entry of an animal or poison in the pest register is admissible in evidence;

(3) an inspector or officer is taken to be validly appointed in the absence of evidence to the contrary.

48C. Limitation period for offences

The period of limitation for offences is set at 5 years for section 9 and 10 offences and 2 years for all other offences.

Clause 28

Section 50 amended (Regulations)

(6) The regulations may authorise a person to determine, apply or regulate matters. For example, the regulations may authorise an inspector to determine whether or not a proposed activity constitutes animal research, for licensing purposes.

(7) The regulations may provide that the contravention of any of the regulations is an offence, and penalties may be imposed. It is intended that this provision be used to establish offences in relation to contravention of the prescribed animal welfare standards.