

# NORTHERN TERRITORY OF AUSTRALIA

## ANIMAL WELFARE ACT

As in force at 6 February 2013

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 6 February 2013.

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## ANIMAL WELFARE ACT

An Act to provide for the welfare of animals, prevent cruelty to animals  
and for related purposes

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Animal Welfare Act*.

#### 2 Commencement

This Act comes into operation on the date or dates fixed by the Administrator by notice in the *Gazette*.

#### 3 Objectives

The objectives of this Act are:

- (a) to ensure that animals are treated humanely;
- (b) to prevent cruelty to animals; and
- (c) to promote community awareness about the welfare of animals.

#### 4 Definitions

In this Act, unless the contrary intention appears:

***adopted code of practice*** means a code of practice adopted under section 24(1)(a) or an adopted code of practice as varied from time to time under section 24(1)(b).

***Advisory Committee*** means the Animal Welfare Advisory Committee established under Part 7.

***animal*** means:

- (a) a live member of a vertebrate species including an amphibian, bird, mammal (other than a human being) and reptile;

- (b) a live fish in captivity or dependent on a person for food; or
- (c) a live crustacean if it is in or on premises where food is prepared for retail sale, or offered by retail sale, for human consumption.

***approved*** means approved by the Authority.

***authorised person***, for Part 6, see section 56(1).

***Authority*** means the Animal Welfare Authority established under Part 4.

***cage*** includes a pen, kennel, hutch and other similar receptacle.

***causes***, for Part 2, Division 1, see section 6.

***confine***, in relation to an animal, means to restrict its freedom of movement, including:

- (a) by enclosure in a cage, pit, yard, field or paddock; and
- (b) by pinioning, mutilation, tethering or other manner of restraint.

***connected with an offence***, for Part 6, see section 56(3).

***cruel***, for Part 2, Division 1, see section 9.

***dock***, for the tail of an animal, means the amputation of one or more coccygeal vertebrae of the animal.

***ethics committee***, for a licensee, means an animal ethics committee for the licensee under section 41.

***horse firing*** means the application of thermal stimulus to the leg of a horse with the intention of causing tissue damage and the development of scar tissue around tendons and ligaments of the leg.

***inspector*** means a person who is an animal welfare inspector under section 57.

***licence*** means a licence to use premises for teaching or research.

***licensed premises*** means premises in respect of which a licence is in force.

***minimum level of care***, see section 7.

***occupier***, for Part 6, see section 56(1) and (2).

***officer*** means an animal welfare officer appointed under section 58.

***permit*** means a permit to conduct a teaching or research program.

***person entitled***, for Part 6, Division 3, see section 68A.

***person in charge***, in relation to an animal, includes:

- (a) an owner of the animal; and
- (b) a person who has the animal in his or her possession.

***pinioning*** means disabling a bird's wing or removing part of a bird's wing but does not include trimming the feathers at the wing tip.

***possession*** includes custody, care, control or supervision.

***premises*** includes:

- (a) land (including water on land);
- (b) a permanent or temporary structure on land; and
- (c) a vehicle.

***reasonable action***, in relation to the treatment of an animal that is suffering, includes:

- (a) obtaining veterinary treatment; and
- (b) destroying the animal in a manner that causes it to die quickly and without unnecessary suffering.

***research*** means an experiment, procedure, test or study in which an animal is used and includes subjecting an animal to surgical, medical, psychological, biological, chemical or physical treatment.

***return or disposal order***, for an animal or thing, means one of the following orders:

- (a) that the Authority return the animal or thing to a person entitled to it;
- (b) that the Authority sell or dispose of the animal or thing under section 68F or otherwise as the court considers appropriate;
- (c) that the animal or thing is forfeited to the Crown and that the Authority sell or dispose of the animal or thing under section 68F or otherwise as the court considers appropriate.

***seizure and care costs***, see section 68H.

***sell*** includes:

- (a) barter or exchange;
- (b) agree or attempt to sell;
- (c) offer, expose, supply or receive for sale;
- (d) send, forward or deliver for sale; and
- (e) cause or permit to be sold.

***stock animals*** includes cattle, buffaloes, horses (including mules and donkeys), sheep, deer, goats, camels, swine, crocodiles and poultry.

***suffering*** includes pain and distress.

***teaching or research*** means teaching or research involving the use or breeding of animals.

***vehicle*** means:

- (a) a conveyance or other device designed to be propelled or drawn by any means; or
- (b) a device that runs on wheels or tracks (with or without motive power), including a caravan and trailer,

and includes:

- (c) an aircraft; and
- (d) a vessel as defined in the *Marine Act*.

***veterinarian*** means a registered veterinarian or registered veterinary specialist as defined in the *Veterinarians Act*.

***veterinary treatment*** means veterinary services as defined in the *Veterinarians Act*.

***welfare*** means health, safety and well-being.

## **5 Act to bind Crown**

This Act binds the Crown in right of the Territory and, to the extent that the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.



## Part 2            Animal welfare

### Division 1        Duty of care and offences

#### 6            Definitions

In this Division:

***causes*** includes substantially contributes to.

***cruel***, see section 9.

#### 7            Meaning of *minimum level of care*

- (1) The ***minimum level of care*** required for an animal is that the animal:
  - (a) has appropriate and sufficient food and water; and
  - (b) has appropriate accommodation and living conditions; and
  - (c) is appropriately treated for disease, injury or suffering; and
  - (d) is allowed appropriate exercise; and
  - (e) is handled only in ways that are appropriate; and
  - (f) is confined or restrained only in ways that are appropriate; and
  - (g) is worked, ridden or otherwise used only in ways that are appropriate; and
  - (h) is not abandoned; and
  - (i) is not used in an organised animal fight.
- (2) For this section, ***appropriate***, for an animal, means appropriate to ensure the welfare, health and safety of the animal having regard to all relevant circumstances, including the animal's species and the environment in which it is kept or lives.
- (3) Further, something is not appropriate for an animal if:
  - (a) it causes, or is likely to cause, the animal unnecessary suffering; or
  - (b) it is prescribed by the Regulations not to be appropriate.

#### 8            Duty to care for animal

- (1) A person in charge of an animal owes a duty of care to it.

- (2) The person commits an offence if the person breaches the duty of care.

Maximum penalty:        100 penalty units or imprisonment for  
   1 year.

- (3) Without limiting subsection (2), a person breaches the duty of care if the person fails to take reasonable steps to ensure the animal receives the minimum level of care.
- (4) For subsection (3), in determining whether a person has taken reasonable steps, regard must be had to:
- (a) all the relevant circumstances; and
  - (b) the steps an ordinary person might reasonably be expected to have taken in those circumstances.

## 9            **Cruelty**

- (1) A person commits an offence if the person is cruel to an animal.

Maximum penalty:        150 penalty units or imprisonment for  
   18 months.

- (2) Without limiting subsection (1), a person in charge of an animal is ***cruel*** to the animal if the person:
- (a) fails to ensure the animal receives the minimum level of care; and
  - (b) intends to cause harm to the animal.
- (3) Without limiting subsection (1), a person is ***cruel*** to an animal (whether or not the person is in charge of the animal) if the person does any of the following:
- (a) causes the animal unnecessary suffering;
  - (b) having caused the animal unnecessary suffering (including accidentally), fails to take reasonable action to mitigate the suffering;
  - (c) uses on the animal a device prescribed by the Regulations to be inhumane;
  - (d) subjects the animal to treatment prescribed by the Regulations to be cruel.

## 10            **Aggravated cruelty**

(1) A person commits an offence if:

- (a) the person is cruel to an animal; and
- (b) the cruelty causes the death of, or serious harm to, the animal; and
- (c) the person intends to kill or seriously harm the animal.

Maximum penalty:        200 penalty units or imprisonment for  
   2 years.

(2) In this section:

***serious harm***, for an animal, means:

- (a) harm that endangers the animal's life; or
- (b) harm that results in the animal being so severely injured, so diseased, or in such physical condition, that it would be cruel not to destroy the animal; or
- (c) harm that consists of, or results in, serious and protracted impairment of a physical or mental function.

## 15            **Action in respect of injury**

If a person injures an animal not in his or her charge, and the person believes or ought reasonably to believe that the animal is domesticated or is a stock animal, he or she must:

- (a) as soon as practicable, inform a person in charge of the animal about the injury; or
- (b) if he or she is unable to inform a person in accordance with paragraph (a) – as soon as practicable, inform an inspector about the injury.

## 17            **Poison not to be administered**

(1) In this section, ***poison*** includes:

- (a) poison as defined in the *Poisons and Dangerous Drugs Act*, and
- (b) a substance containing poison, glass or any other thing likely to cause an animal suffering.

- (2) Unless authorised by a law in force in the Territory, a person must not:
  - (a) administer poison to an animal; or
  - (b) lay poison in a place with the intention of killing or causing suffering to an animal.

## **18        Traps**

- (1) In this section, ***trap*** means a trap that is made, adapted or used for the purpose of trapping an animal.
- (2) Unless authorised by a law in force in the Territory, or in writing by the Authority, a person must not sell, have in his or her possession or set a metal-jawed trap that is designed so that the metal jaws close against each other when the trap is activated.

Penalty:        10 penalty units.

- (3) This section does not apply in relation to:
  - (a) a bow trap or soft-jawed trap; or
  - (b) the possession of a trap if it is possessed solely for display or as a curio or part of a collection.

## **19        Electrical devices**

- (1) In this section, ***electrical device*** means a device or object that is made, adapted or used for the purpose of administering an electric shock to an animal but does not include an electric fence.
- (2) Unless authorised by a law in force in the Territory, a person must not:
  - (a) sell an electrical device;
  - (b) have an electrical device in his or her possession; or
  - (c) use an electrical device on an animal.

## **20        Spurs**

- (1) A person must not sell, have in his or her possession or use spurs with sharpened or fixed rowels.

- (2) A person must not sell, have in his or her possession or attach to an animal a device made or adapted, or intended by the person to be used, for attaching to an animal for the purpose of:

- (a) training the animal to fight another animal; or
- (b) increasing the ability of the animal to inflict injury on another animal during fighting.

Penalty:        10 penalty units.

- (3) This section does not apply in relation to the possession of spurs or devices referred to in this section if they are possessed solely for display or as curios or part of a collection.

## **21        Competitions, hunting and baiting etc.**

- (1) A person must not advertise, promote, take part in or be present at a match, competition or other activity in which an animal is to be released from confinement for the purpose of being:

- (a) hunted, caught, confined, killed or caused suffering by another animal; or
- (b) used to train or exercise another animal.

- (2) A person must not:

- (a) keep or use premises;
- (b) authorise premises to be used;
- (c) manage or control, or assist in the management or control, of premises that are used; or
- (d) receive money for the admission of another person to premises that are used,

for the purpose of causing an animal to fight or for the baiting of an animal.

- (3) A person must not:

- (a) cause, procure, permit, encourage, promote, organise or incite a fight in which an animal is pitted against another animal;
- (b) advertise the intention to conduct such a fight; or
- (c) attend such a fight.

- (4) A person must not have possession of an animal:
  - (a) for use as a lure to be killed or for the purpose of blooding greyhounds; or
  - (b) for any other use in connection with the training or racing of coursing dogs.
- (5) Nothing in this section applies to:
  - (a) the rehabilitation of native animals for release into the wild;
  - (b) the keeping and displaying of animals the normal diets of which include live food; or
  - (c) the mustering and working of stock animals.

## **Division 2            Power to alleviate suffering etc.**

### **22            Power to alleviate suffering**

- (1) If a veterinarian is of the opinion that:
  - (a) an animal is so severely injured, diseased or in such a poor physical condition that it is cruel to keep it alive; and
  - (b) the animal:
    - (i) is not about to be destroyed; or
    - (ii) is about to be destroyed in a manner that will inflict unnecessary suffering on it,

the veterinarian may destroy the animal, or cause it to be destroyed, in a manner that causes it to die quickly and without unnecessary suffering.
- (2) In exercising a power under subsection (1), a veterinarian may first remove the animal to a place he or she considers appropriate for the purpose.
- (3) A veterinarian who exercises a power under this section is entitled to receive from a person in charge of the animal the reasonable costs incurred in exercising the power and may recover those costs in a court of competent jurisdiction as a debt owed to the veterinarian.

**23 Power to conduct post-mortem examination**

A veterinarian may conduct a post-mortem examination of a deceased animal and take samples from the body if he or she considers it to be necessary or desirable for the purposes of this Act.

**23A Provision of food and drink**

- (1) A person who believes on reasonable grounds an animal has been confined for more than 24 hours without appropriate and sufficient food or water may, if it is reasonably necessary to do so to alleviate the animal's suffering, enter the premises where the animal is confined to supply it with food or water.
- (2) A person who does so:
  - (a) incurs no liability for entering the premises; and
  - (b) may recover the reasonable cost of the food and water from a person in charge of the animal in a court of competent jurisdiction as a debt owed to the person.
- (3) This section does not apply in relation to stock animals being transported in accordance with an adopted code of practice.

**Part 3 Codes of practice****24 Adoption etc. of code of practice**

- (1) The Minister may, on the recommendation of the Advisory Committee, by notice in the *Gazette*:
  - (a) adopt a code of practice relating to animal welfare; or
  - (b) vary or revoke an adopted code of practice.
- (2) A notice under subsection (1) is to state the place at which the adopted code of practice and any documents it applies, incorporates or refers to may be purchased or inspected.
- (3) The Authority is to make an adopted code of practice and all documents it applies, incorporates or refers to available for purchase or inspection in accordance with the relevant notice.

**25 Contents of adopted code of practice**

- (1) An adopted code of practice may specify requirements:
  - (a) for the keeping, treatment, handling, transportation, sale, killing, hunting, shooting, catching, trapping, netting, marking, care, use, husbandry or management of an animal or a class of animal; or
  - (b) in relation to licensed premises or facilities, equipment or conditions at licensed premises.
- (2) An adopted code of practice may apply, incorporate or refer to a document formulated or published by a body or authority.

**Part 4 Animal Welfare Authority****26 Establishment of Authority**

- (1) The Minister must appoint a Chief Executive Officer or an employee, as defined in the *Public Sector Employment and Management Act*, to be the Animal Welfare Authority.
- (2) The Minister may appoint an employee, as defined in the *Public Sector Employment and Management Act*, to act from time to time as the Authority during the absence from the Territory or from duty of the person appointed to be the Authority.
- (3) An appointment under this section is to be by instrument in writing.

**26A Authority's functions**

- (1) The Authority has the following functions:
  - (a) to ensure compliance with this Act and prosecute offences against this Act;
  - (b) to appoint inspectors and officers and be responsible for the performance by them of their functions;
  - (c) to administer the licensing regime for premises used for teaching or research under Part 5;
  - (d) to otherwise administer this Act;
  - (e) to perform any other functions imposed on the Authority under this or another Act.
- (2) The Authority has the powers necessary to perform the Authority's functions.



**26B Staff and facilities for Authority**

- (1) The Chief Executive Officer of the Agency administering this Act must provide the Authority with staff and facilities to enable the Authority to properly perform the Authority's functions.
- (2) To assist in the performance of the Authority's functions, the Authority may arrange with the Chief Executive Officer of any other Agency to use the staff or facilities of that Agency.

**26C Authority's investigative powers**

- (1) For carrying out its functions under this Act, the Authority may do one or more of the following:
  - (a) obtain relevant information from persons as, and in the way, the Authority considers appropriate;
  - (b) consult with persons as the Authority considers appropriate;
  - (c) make inquiries as the Authority considers appropriate.
- (2) Without limiting subsection (1)(a), the Authority may require a person to do either or both of the following:
  - (a) give information to the Authority;
  - (b) produce documents to the Authority.
- (3) A person must comply with a requirement under subsection (2) in the manner, and within the time, specified by the Authority in the requirement.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the person establishes a reasonable excuse.
- (5) A person given a requirement under subsection (2) is not excused from complying with it on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (6) However, information or a document given or produced by an individual for compliance with the requirement is not admissible in evidence against the individual in a civil or criminal proceeding, except a proceeding for an offence in which the falsity or misleading nature of the information or document is relevant.

## **27            Delegation**

- (1) The Authority may delegate to a person any of the Authority's powers or functions under this Act (other than this power of delegation).
- (2) A delegation by the Authority is to be in writing to:
  - (a) a named person; or
  - (b) a person from time to time holding, acting in or performing the duties of a named office, designation or position.
- (3) A power or function delegated under this section, when exercised or performed by the delegate, is to be taken as having been exercised or performed by the Authority.
- (4) A delegation of a power or function under this section does not prevent the exercise of the power or performance of the function by the Authority.

## **28            Approval of fees**

- (1) The Authority may, by notice in the *Gazette*, approve a fee payable under this Act.
- (2) The Authority may waive an approved fee payable by a person or class of persons.

# **Part 5            Teaching or research involving animals**

## **Division 1        Licence to use premises for teaching or research**

### **29            When licence required**

- (1) A person may use premises for teaching or research only if the person holds a licence.

Penalty:        10 penalty units or imprisonment for 12 months.
- (2) A person holding a permit, or a person assisting a permit holder to conduct a teaching or research program, does not require a licence.
- (3) A person in charge of animals in a child-care establishment, pre-school or educational institution does not require a licence unless the animals are used or intended to be used for scientific teaching purposes.

### **30            Application for licence**

- (1) An applicant for a licence must lodge with the Authority an application in the approved form accompanied by the approved fee.
- (2) The Authority may request the applicant to provide the additional information that the Authority considers necessary to enable the Authority to determine whether or not to grant a licence.

### **31            Consideration of application**

- (1) In determining whether or not to grant a licence, the Authority must consider:
  - (a) the nature and purpose of the teaching or research to be conducted on the premises;
  - (b) whether the applicant is a fit and proper person to hold a licence, including whether the applicant has been found guilty of an offence under animal welfare legislation in Australia;
  - (c) the experience and competency of the applicant in the care and handling of animals;
  - (d) the adequacy of the premises, equipment and other facilities to be used in connection with the breeding, care, use or handling of animals;
  - (e) the adequacy of the applicant's arrangements for the provision of veterinary treatment to the animals to be kept, used or bred in or on the premises;
  - (f) whether the applicant complied with a request for additional information; and
  - (g) any other matter the Authority considers relevant.
- (2) A reference in this section to an applicant includes a reference to the following:
  - (a) if the applicant is a body corporate – an officer of the body corporate;
  - (b) if the applicant is a partnership – each of the partners, whether or not the partner's name appears on the application form.

### **32            Refusal to grant licence**

- (1) If the Authority is not satisfied in respect of the matters referred to in section 31, the Authority may refuse to grant a licence.

- (2) The Authority must inform the applicant in writing of the refusal, stating:
  - (a) the reasons for the refusal;
  - (b) the findings on the facts and circumstances underlying those reasons and the material on which those findings were based; and
  - (c) the right of appeal under this Act.

### **33            Grant of licence**

- (1) If the Authority is satisfied in respect of the matters referred to in section 31, the Authority may grant a licence.
- (2) A licence is to be issued in the approved form and is to specify the conditions to which the licence is subject.

### **34            Conditions of licence**

- (1) A licence is subject to the conditions that the licensee must:
  - (a) ensure there is at least one ethics committee for the licensee in accordance with section 41; and
  - (b) comply with directions given to the licensee by the ethics committee; and
  - (c) give an annual report to the Authority as mentioned in section 34A; and
  - (d) report and give information to the Authority as mentioned in section 34B.
- (2) A licence may be subject to the additional conditions that the Authority considers are desirable for the welfare of the animals to be used or bred in or on the licensed premises, including that the licensee must:
  - (a) make specified provisions for the breeding, care, use or handling of the animals;
  - (b) provide specified facilities or equipment for use in connection with the animals;
  - (c) consult with or seek the approval of the ethics committee about specified matters;
  - (d) provide the ethics committee with the information it requests relating to the teaching or research under the licence; and

(e) comply with a specified adopted code of practice.

(3) A licensee must comply with the conditions of the licence.

Maximum penalty:        10 penalty units or imprisonment for  
   12 months.

#### **34A        Annual reports**

(1) At the end of each financial year, a licensee must prepare a report about activities carried on during the year under the authority of its licence.

(2) The report must contain the information prescribed by the Regulations about the activities of the following:

(a) the licensee;

(b) the licensee's ethics committee;

(c) permit holders employed or engaged by the licensee.

(3) The licensee must give the report to the Authority on or before 31 October following the end of the financial year.

(4) Without limiting the information that may be prescribed, the Regulations may require the report to include information or a document that is required to be kept or made under a code of practice, standard or other document as in force or existing at a particular time or from time to time.

#### **34B        Reporting of breaches**

(1) If a licensee believes on reasonable grounds that a person employed or engaged by the licensee has engaged in, is engaging in, or intends to engage in, conduct that contravenes this Act, the licensee must report the matter to the Authority as soon as practicable after becoming aware of it.

(2) A licensee is not excused from complying with subsection (1) on the ground that to do so might tend to incriminate the licensee or make the licensee liable to a penalty.

(3) However, a report given by an individual for compliance with subsection (1) is not admissible in evidence against the individual in a civil or criminal proceeding, except a proceeding for an offence in which the falsity or misleading nature of the report is relevant.

**35            Duration and renewal of licence**

- (1) A licence takes effect on the date it is issued and continues in force for 3 years, subject to its suspension, cancellation or surrender.
- (2) Before the date of expiry, the licensee may apply to the Authority for a renewal of the licence.
- (3) An application for renewal is to be in the approved form and accompanied by the approved fee.
- (4) The Authority may renew a licence for a further 3 years if it is satisfied in respect of the matters referred to in section 31.

**36            Application for variation of licence**

- (1) A licensee may apply for the variation of a licence by lodging with the Authority an application in the approved form accompanied by the approved fee.
- (2) The Authority may request the licensee to provide the additional information that the Authority considers necessary to enable the Authority to determine whether or not to vary the licence.
- (3) After considering an application for a variation and any further information provided by the licensee, the Authority may:
  - (a) vary the licence; or
  - (b) refuse to vary the licence,

if the Authority believes on reasonable grounds that it is desirable in the interests of animal welfare to do so.

**37            Variation of licence without application**

- (1) If the Authority believes on reasonable grounds that it is desirable in the interests of animal welfare to vary a licence, it may give the licensee a notice in the approved form:
  - (a) specifying the proposed variation and the reason it is believed to be desirable; and
  - (b) inviting the licensee to show cause, in writing and within a specified period, why the licence should not be varied as proposed.

- (2) On the expiry of the period specified in the notice, and after considering any representations made by the licensee, the Authority may vary the licence if satisfied on reasonable grounds that it is desirable in the interests of animal welfare to do so.
- (3) If the Authority varies a licence:
  - (a) the Authority must request the licensee, by written notice, to lodge the licence with the Authority within the period specified in the notice;
  - (b) the licensee must comply with the notice without delay; and
  - (c) the Authority must enter the variation on the licence and return it to the licensee as soon as practicable.

### **38 Cancellation or suspension of licence**

- (1) If the Authority believes on reasonable grounds that it is desirable in the interests of animal welfare to cancel or suspend a licence, it may do so in accordance with this section.
- (2) The reasonable grounds on which a licence may be cancelled or suspended include the following:
  - (a) that the licensee has been found guilty of an offence under this Act;
  - (b) that the Authority believes on reasonable grounds that the licensee:
    - (i) obtained the licence improperly;
    - (ii) has failed to comply with a condition of the licence; or
    - (iii) is not a fit and proper person to continue holding the licence.
- (3) The Authority must give the licensee a written notice stating:
  - (a) that the Authority proposes to cancel or suspend the licence;
  - (b) in the case of a proposed cancellation – the date on which the cancellation will come into effect;
  - (c) in the case of a proposed suspension – the period of the suspension and the conditions the licensee must comply with to avoid cancellation of the licence;
  - (d) the interests of animal welfare to be protected by the cancellation or suspension;

- (e) the facts and circumstances on which the Authority's reasonable grounds of belief are based; and
  - (f) that the licensee may show cause in writing, within the period specified in the notice, why the licence should not be cancelled or suspended.
- (4) If, after the expiry of the period specified in the notice and consideration of the licensee's representations, the Authority is of the opinion that in the interests of animal welfare it is desirable to do so, the Authority may:
  - (a) in the case of a proposed cancellation – cancel the licence or suspend the licence for the period and on the conditions that the Authority considers appropriate; or
  - (b) in the case of a proposed suspension – suspend the licence for the period and on the conditions it considers appropriate.
- (5) The Authority must give the licensee written notice of a cancellation or suspension.
- (6) A reference in this section to a licensee includes a reference to the following:
  - (a) if the licensee is a body corporate – an officer of the body;
  - (b) if the licence is held for the purposes of a partnership – each partner.

### **39            Surrender of licence**

A licensee may surrender a licence at any time before its expiry by lodging with the Authority a written notice of the surrender accompanied by the licence.

### **39A          Licence not transferable**

A licence is not transferable by the licensee.

### **40            Appeals**

- (1) A person aggrieved by a decision of the Authority:
  - (a) to vary, cancel or suspend a licence; or
  - (b) refusing to grant, renew or vary a licence,may appeal to the Local Court against the decision.



- (2) An appeal under this section is to be conducted as a hearing de novo.
- (3) In determining an appeal, the Local Court may make the orders it considers appropriate, including any of the following:
  - (a) affirming, varying or setting aside the decision of the Authority;
  - (b) substituting its own decision for that of the Authority;
  - (c) relating to costs.

## **Division 2            Animal ethics committees**

### **41            Animal ethics committee**

- (1) A licensee must have an animal ethics committee.
- (2) The animal ethics committee for a licensee may be:
  - (a) a committee established and maintained by the licensee; or
  - (b) a committee established and maintained by another person or body, if the other person or body has agreed to the committee being the licensee's animal ethics committee.
- (3) An animal ethics committee:
  - (a) must be constituted as prescribed by the Regulations; and
  - (b) has the powers and functions prescribed by the Regulations.

## **Division 3            Permits to conduct teaching or research program**

### **42            Definition**

In this Division:

***relevant ethics committee***, for a permit holder or applicant for a permit, means the ethics committee for the licensee by whom the permit holder or applicant is employed or engaged.

### **43            When permit required**

- (1) A person employed or engaged by a licensee may conduct a teaching or research program only if the person holds a permit.
- (2) Subsection (1) does not apply to a person providing teaching or research assistance to a person who holds a permit.

**44            Application for permit**

- (1) An applicant for a permit must lodge with the relevant ethics committee an application in the approved form accompanied by the approved fee.
- (2) The ethics committee may request the applicant to provide the additional information that it considers necessary to enable it to determine whether or not to grant a permit.

**45            Consideration of application**

- (1) In determining whether or not to grant a permit, an ethics committee must consider:
  - (a) whether the applicant is a fit and proper person to hold a permit, including whether the applicant has been found guilty of an offence under animal welfare legislation in Australia;
  - (b) the experience and competency of the applicant in the care and handling of animals;
  - (c) whether the applicant complied with a request for additional information; and
  - (d) any other matter the ethics committee considers relevant.

**46            Refusal to grant permit**

- (1) If an ethics committee is not satisfied in respect of the matters referred to in section 45, it may refuse to grant a permit.
- (2) If an ethics committee refuses to grant a permit, it must inform the applicant in writing of:
  - (a) the reasons for the refusal;
  - (b) the findings on the facts and circumstances underlying those reasons and the material on which those findings were based; and
  - (c) the right of appeal under this Act and the procedure to be followed to exercise that right.

**47            Grant of permit**

- (1) If an ethics committee is satisfied in respect of the matters referred to in section 45, it may grant a permit.
- (2) A permit is to be issued in the approved form and is to specify the conditions to which the permit is subject.

#### **48 Conditions of permit**

- (1) A permit is subject to the conditions that the permit holder:
  - (a) must comply with directions of the ethics committee; and
  - (b) must give to the licensee on request any information reasonably required by the licensee to enable the licensee to comply with its obligations under this Act.
- (2) A permit may be subject to additional conditions that the ethics committee considers are necessary in the interests of animal welfare, including conditions in relation to:
  - (a) the use of animals in the teaching or research program to which the permit relates;
  - (b) the welfare of the animals used in or bred for the teaching or research program;
  - (c) particular facilities and equipment relevant to the use or breeding of animals in the course of the teaching or research program; and
  - (d) compliance with a specified adopted code of practice.

#### **49 Duration and renewal of permit**

- (1) A permit takes effect on the date it is issued and continues in force for the period (not exceeding 2 years) specified in the permit, subject to its suspension, cancellation or surrender.
- (2) Before the date of expiry, the permit holder may apply to the relevant ethics committee for a renewal of the permit.
- (3) An application for renewal is to be in the approved form and accompanied by the approved fee.
- (4) An ethics committee may renew a permit for the period (not exceeding 2 years) specified in the permit if it is satisfied about the matters referred to in section 45.

#### **50 Application for variation of permit**

- (1) A permit holder may apply for a variation of the permit by lodging with the relevant ethics committee an application in the approved form accompanied by the approved fee.

- (2) The ethics committee may request the permit holder to provide the additional information that it considers necessary to enable it to determine whether or not to vary the permit.
- (3) After considering an application for a variation and any further information provided by the permit holder, the ethics committee may:
  - (a) vary the permit; or
  - (b) refuse to vary the permit,if it believes on reasonable grounds that it is desirable in the interests of animal welfare to do so.

## **51        Variation of permit without application**

- (1) If an ethics committee believes on reasonable grounds that it is desirable in the interests of animal welfare to vary a permit, it may give the permit holder a notice in the approved form:
  - (a) specifying the proposed variations and the reason it is believed to be desirable; and
  - (b) inviting the permit holder to show cause, in writing and within a specified period, why the permit should not be varied as proposed.
- (2) On the expiry of the period specified in the notice, and after considering any representations made by the permit holder, the ethics committee may vary the permit if satisfied on reasonable grounds that it is desirable in the interests of animal welfare to do so.
- (3) If an ethics committee varies a permit:
  - (a) it must request the permit holder by written notice to lodge the permit with the ethics committee within the period specified in the notice;
  - (b) the permit holder must comply with the notice without delay; and
  - (c) the ethics committee must enter the variation on the permit and return it to the permit holder as soon as practicable.

## **52            Cancellation or suspension of permit**

- (1) If an ethics committee believes on reasonable grounds that it is desirable in the interests of animal welfare to cancel or suspend a permit, it may do so in accordance with this section.
- (2) The reasonable grounds on which a permit may be cancelled or suspended include the following:
  - (a) that the permit holder has been found guilty of an offence under this Act;
  - (b) that the ethics committee believes on reasonable grounds that the permit holder:
    - (i) obtained the permit improperly;
    - (ii) has failed to comply with a condition of the permit; or
    - (iii) is not a fit and proper person to continue holding the permit.
- (3) The ethics committee must give the permit holder a written notice stating:
  - (a) that the ethics committee proposes to cancel or suspend the permit;
  - (b) in the case of a proposed cancellation – the date on which the cancellation will come into effect;
  - (c) in the case of a proposed suspension – the period of the suspension and the conditions the permit holder must comply with to avoid cancellation of the permit;
  - (d) the interests of animal welfare to be protected by the cancellation or suspension;
  - (e) the facts and circumstances on which the ethics committee's reasonable grounds of belief are based; and
  - (f) that the permit holder may show cause in writing, within the period specified in the notice, why the permit should not be cancelled or suspended.

- (4) If, after the expiry of the period specified in the notice and consideration of the permit holder's representations, the ethics committee is of the opinion that in the interests of animal welfare it is desirable to do so, it may:
  - (a) in the case of a proposed cancellation – cancel the permit or suspend the permit for the period and on the conditions it considers appropriate; or
  - (b) in the case of a proposed suspension – suspend the permit for the period and on the conditions it considers appropriate.
- (5) The ethics committee must give the permit holder a written notice of a cancellation or suspension.

### **53            Surrender of permit**

A permit holder may surrender a permit at any time before its expiry by lodging with the relevant ethics committee a written notice of the surrender accompanied by the permit.

### **54            Cessation of permit**

- (1) A permit ceases to have effect during a period when the relevant licence is of no effect due to expiry, suspension, cancellation or surrender.
- (2) In subsection (1), **relevant licence** means the licence issued in respect of the licensed premises where the permit holder is permitted to conduct a teaching or research program.

### **55            Appeals**

- (1) A person aggrieved by a decision of an ethics committee:
  - (a) to vary, cancel or suspend a permit; or
  - (b) refusing to grant, renew or vary a permit,may appeal to the Authority against the decision.
- (2) In determining the appeal, the Authority may make the determination it considers appropriate, including any of the following:
  - (a) affirming, varying or setting aside the decision of the ethics committee;
  - (b) substituting its own decision for that of the ethics committee.

## **Part 6                      Enforcement**

### **Division 1                Preliminary**

#### **56                      Interpretation**

- (1) In this Part, unless the contrary intention appears:

*authorised person* means an inspector or officer.

*occupier* means the occupier of premises or the person in charge of premises.

- (2) A reference in this Part to occupier includes a reference to a person who is believed by an authorised person, on reasonable grounds, to be the occupier of premises or the person in charge of premises.
- (3) For the purposes of this Part, an animal or thing is connected with an offence if:
- (a) it is an animal or thing in respect of which an offence is being or has been committed;
  - (b) it will provide evidence of the commission of an offence; or
  - (c) it was used or is intended to be used for the purpose of committing an offence.

### **Division 2                Animal welfare inspectors and animal welfare officers**

#### **57                      Appointment of inspectors**

- (1) The Authority may appoint, in writing, persons to be animal welfare inspectors.
- (1A) The Authority must not appoint a person to be an inspector unless satisfied that the person has the skills, qualifications, training and experience to properly perform the functions of an inspector.
- (2) An appointment under subsection (1) may be for a specified period and may be subject to conditions specified in the instrument of appointment.
- (3) Each member of the Police Force has the powers and functions of an inspector under this Act.

**58                      Appointment of officers**

- (1) The Authority may appoint, in writing, persons who are veterinarians to be animal welfare officers.
- (1A) The Authority must not appoint a person to be an officer unless satisfied that the person has the skills, qualifications, training and experience to properly perform the functions of an officer.
- (2) An appointment under subsection (1) may be for a specified period and may be subject to conditions specified in the instrument of appointment.

**58A                    Appointment of public sector employees in other Agencies**

- (1) The Authority may appoint a public sector employee in an Agency other than the Agency administering this Act to be an authorised person.
- (2) However, the Authority must not do so without the agreement of the Chief Executive Officer of the other Agency.

**59                      Identity cards**

- (1) The Authority must issue to each person appointed to be an inspector or officer an identity card containing:
  - (a) the person's name and photograph;
  - (b) the person's signature verified by the signature of the Authority; and
  - (c) the date on which the identity card was issued and on which it is due to expire (if applicable).
- (2) An authorised person issued with an identity card is not entitled to remain in or on premises if, when requested to do so, he or she does not show the identity card to the occupier.
- (3) An authorised person must return his or her identity card to the Authority as soon as practicable after he or she ceases to be an authorised person.

Penalty:            10 penalty units.

**60                      Functions of authorised persons**

- (1) An authorised person has the following functions:
  - (a) to assess whether or not the provisions of this Act are being complied with;



- (b) to seek evidence of a suspected offence against this Act;
  - (c) to perform the functions conferred on the person by this Act;
  - (d) to assist the Authority in the performance of its functions.
- (2) An authorised person may exercise a power conferred by this Act for the purpose of performing those functions.
- (3) In exercising a power or performing a function under this Act, an authorised person is subject to the direction of the Authority.

**60A      Duty to report suspected offences**

If an authorised person believes on reasonable grounds that an offence against this Act has been, is being or is likely to be, committed, the authorised person must report the matter to the Authority as soon as reasonably practicable after the person forms that belief.

**61            Power to require name and address**

An authorised person may require a person to provide his or her name and address for the purposes of this Act.

**62            Power of entry**

- (1) In this section, *premises* means:
- (a) in relation to the exercise of a power by an inspector:
    - (i) any premises (other than a vehicle) that the inspector believes on reasonable grounds are not licensed premises; or
    - (ii) if the power is exercised in relation to a vehicle – a vehicle that is not connected with licensed premises; or
  - (b) in relation to the exercise of a power by an officer:
    - (i) any premises (other than a vehicle) that the officer believes on reasonable grounds are licensed premises; or
    - (ii) if the power is exercised in relation to a vehicle – a vehicle that is connected with licensed premises.
- (2) An authorised person may enter premises in accordance with this section for the purpose of exercising the person's functions under section 60.

- (3) An authorised person must give an occupier 7 days notice of the authorised person's intention to enter the occupier's premises for the purpose of an inspection unless the authorised person believes on reasonable grounds there is in or on the premises an animal or thing connected with an offence.
- (4) An authorised person may enter premises:
  - (a) with the consent of the occupier obtained in accordance with section 63;
  - (b) in pursuance of a search warrant issued in accordance with section 64; or
  - (c) if the authorised person believes on reasonable grounds that the circumstances are so serious and urgent as to require the immediate exercise of a power under section 66 or 67 – without the occupier's consent or the authority of a search warrant, and with the assistance and using the force that is reasonable.
- (5) An inspector is not entitled to enter:
  - (a) licensed premises unless accompanied by an officer; or
  - (b) an abattoir unless he or she is a veterinarian or is accompanied by an officer or veterinarian.
- (6) An officer is not entitled to enter premises that are not licensed premises unless he or she is accompanied by an inspector.
- (7) If an authorised person exercises a power under subsection (2) in respect of a vehicle, he or she may stop and detain the vehicle for that purpose.
- (8) In subsection (5), *abattoir* means an establishment within the meaning of the *Meat Industries Act* to which a licence under that Act permitting the slaughter of an animal relates.

## **63                      Consent to entry**

- (1) An authorised person seeking an occupier's consent to the authorised person's entry into or onto the occupier's premises must:
  - (a) show the authorised person's identity card to the occupier;
  - (b) give the occupier the reasons why entry is sought; and
  - (c) inform the occupier that he or she may refuse to give that consent.

- (2) If an authorised person obtains consent from an occupier to enter premises, the authorised person must ask the occupier to sign a notice of consent in an approved form.
- (3) If it is material in a proceeding for a court to be satisfied that an occupier consented to an entry under this Division, and a notice of consent is not produced in evidence, the court may presume, in the absence of evidence to the contrary, that the occupier did not give consent.
- (4) This section does not apply to members of the Police Force.

## **64                      Search warrants**

- (1) An authorised person may apply to a Justice, by information on oath, for a search warrant if the authorised person believes on reasonable grounds that:
  - (a) an offence against this Act or the Regulations is about to be, is being or has been committed in or on premises;
  - (b) there is in or on premises, an animal or thing connected with an offence; or
  - (c) there is in or on premises an animal referred to in section 67.
- (2) An inspector is entitled to apply for a search warrant only in respect of premises that are not licensed premises.
- (3) An officer is entitled to apply for a search warrant only in respect of licensed premises.
- (4) A Justice may issue a search warrant if satisfied about the matters set out in the information.
- (5) A search warrant authorises the authorised person named in the warrant and any other person assisting the authorised person, with force if necessary, to enter the premises and do anything referred to in section 66 or 67.
- (6) A search warrant is to:
  - (a) state the purpose for which it is issued;
  - (b) state the nature of the offence or contravention in respect of which the entry is authorised;
  - (c) specify the hours during which entry to the premises is authorised, or state that the entry is authorised at any time of the day or night;

- (d) include a description of the kinds of things or animals in relation to which the powers of the officer may be exercised; and
- (e) specify the date on which the warrant ceases to have effect, which is to be not later than 30 days after the date on which it is issued.

## **65 Entry onto Aboriginal land**

If it is necessary or convenient for an authorised person to go onto land for the purpose of exercising a power under this Act, he or she may do so for that purpose despite:

- (a) the land being Aboriginal land within the meaning of the *Aboriginal Land Act*; and
- (b) the authorised person not holding a permit under that Act to enter or remain on the land.

## **66 Power of inspection etc.**

An authorised person who enters premises under this Division may take any of the following actions:

- (a) examine any animal in or on the premises;
- (b) inspect the premises and any thing in or on the premises;
- (c) take copies of, or extracts from, documents in or on the premises;
- (d) take photographs or make films or videotapes of the premises or animals or things in or on the premises;
- (e) seize animals or things that the authorised person believes on reasonable grounds to be connected with an offence;
- (f) require a person in or on the premises to give the authorised person all reasonable assistance to enable the authorised person to exercise his or her powers under this section;
- (g) ask questions of persons in or on the premises if the authorised person considers it reasonable to enable him or her to exercise powers under this section.

**67                      Power to alleviate suffering**

- (1) If an authorised person believes on reasonable grounds that:
- (a) an animal has not been provided with appropriate or sufficient food or drink during the previous 24 hours;
  - (b) an animal is so severely injured, overworked, diseased or in such a physical condition that it is necessary for the animal to be provided with veterinary treatment; or
  - (c) an animal is being treated in a manner that is likely to cause it suffering,

the authorised person may take the action he or she believes is necessary to alleviate the animal's suffering.

- (2) The action that may be taken under subsection (1) includes any of the following:
- (a) providing the animal with food or drink;
  - (b) seizing the animal and removing it to a place the authorised person considers appropriate;
  - (c) giving a person in charge of the animal a written notice requiring the person:
    - (i) to provide the animal with the specified rest, food, drink, shelter or treatment that is necessary in the interests of the animal's welfare; and
    - (ii) if necessary – to obtain veterinarian treatment for the animal within the specified period that is reasonable in the circumstances.

- (3) A person must comply with a requirement in a notice given under subsection (2)(c).

Penalty:            50 penalty units or imprisonment for 6 months.

- (4) Subject to subsection (6), if an authorised person is of the opinion that:
- (a) an animal is so severely injured, diseased or in such a poor physical condition that it is cruel to keep it alive; and
  - (b) the animal:
    - (i) is not about to be destroyed; or

- (ii) is about to be destroyed in a manner that will inflict unnecessary suffering on it,

the authorised person may destroy the animal, or cause it to be destroyed, in a manner that causes it to die quickly and without unnecessary suffering.

- (5) In exercising a power under subsection (4), an authorised person may first remove the animal to a place he or she thinks is suitable for the purpose.
- (6) An inspector may exercise a power under subsection (4) only with the consent of a person in charge of the animal unless:
  - (a) after making reasonable enquiries the inspector is unable to locate the person; or
  - (b) the inspector is a veterinarian.

## 68 Reports

- (1) In this section, ***commercial premises*** means premises used for or in connection with the sale or transportation of animals or other commercial purposes in relation to animals.
- (2) If, after giving 7 days notice and with the occupier's consent, an authorised person enters commercial premises or licensed premises for the purpose of inspecting the premises under section 66, the authorised person must provide the occupier with a written report of the inspection.
- (3) The report is to be provided not later than 30 days after the date of the inspection and is to contain:
  - (a) a description of the inspection and the action taken by the authorised person or the Authority as a result of the inspection;
  - (b) comments about other matters connected with the welfare of animals kept in or on the premises that are reasonably requested by the occupier; and
  - (c) other comments connected with the welfare of the animals kept in or on the premises that the authorised person considers appropriate.

## **Division 3                Dealing with seized animals or things**

### **68A                Definition**

In this Division:

***person entitled***, to an animal or thing, means one of the following:

- (a) the owner of the animal or thing;
- (b) a person authorised by the owner to possess the animal or thing;
- (c) another person who is legally entitled to possession of the animal or thing.

### **68B                Authority to keep and care for seized animal or thing**

- (1) If an animal or thing is seized under this Act, the Authority:
  - (a) is taken to be in possession of it; and
  - (b) must take reasonable steps to ensure it is kept safely and provided with at least the minimum level of care.
- (2) The Authority may enter into an arrangement with another person to keep and care for the animal or thing.

### **68C                Retention of animal or thing seized under section 66**

- (1) If an animal is seized under section 66(e), the Authority must deal with it under this section.

*Note for subsection (1)*

*Section 66(e) allows an authorised person to seize an animal or thing believed to be connected with an offence.*

- (2) The Authority may retain the animal or thing until one of the following occurs:
  - (a) 2 years elapse from when the animal or thing was seized without a prosecution having been commenced for an offence with which it is connected;
  - (b) the Authority decides not to prosecute any person for an offence with which the animal or thing is connected;
  - (c) if a prosecution has been commenced for an offence with which it is connected – all proceedings relating to the prosecution (including any appeals) have been completed;

- (d) a court makes a return or disposal order for the animal or thing.
- (3) When the Authority's right to retain the animal or thing ceases, the Authority must deal with it:
  - (a) if subsection (2)(a), (b) or (c) applies – under section 68E; or
  - (b) if subsection (2)(d) applies – in accordance with the order.

**68D        Retention of animal seized under section 67**

- (1) If an animal is seized under section 67(2)(b), the Authority must deal with it under this section.

*Note for subsection (1)*

*Section 67(2)(b) allows an authorised person to seize an animal for the purpose of alleviating its suffering.*

- (2) However, if the Authority believes on reasonable grounds that the animal is connected with an offence, the Authority may instead deal with the animal as if it had been seized under section 66(e).
- (3) The Authority may retain the animal for as long as the Authority considers reasonably necessary for the purpose of alleviating its suffering.
- (4) When it is no longer necessary to retain the animal for that purpose, the Authority must deal with it under section 68E.

**68E        Animal or thing to be returned to person entitled**

- (1) If the Authority is required to deal with an animal or thing under this section, the Authority must return it to a person who the Authority believes on reasonable grounds is a person entitled to it.
- (2) However, the Authority may instead deal with the animal or thing under section 68F if:
  - (a) the Authority has taken all reasonable steps to find a person entitled to it but has been unable to do so; or
  - (b) no person entitled to it is willing to take possession of it; or
  - (c) the owner, or another person with a legal right to sell it, in writing, authorises the Authority to deal with it under section 68F.
- (3) Further, if a court makes a return or disposal order for the animal or thing, the Authority must deal with it in accordance with the order.



**68F            Sale or disposal of animal or thing**

- (1) If required or permitted by this Act to deal with an animal or thing under this section, the Authority may do any of the following as the Authority thinks fit:
  - (a) sell the animal or thing;
  - (b) give the animal or thing to a charitable organisation;
  - (c) if the animal or thing is of use to the Authority – retain it;
  - (d) if the animal or thing is of use to another Agency – give it to that Agency;
  - (e) if it is not reasonable or practicable to do one of the things mentioned in paragraphs (a) to (d) – destroy the animal or thing.
- (2) If an animal or thing is sold under subsection (1)(a) and any seizure and care costs incurred by a person for the animal or thing have not been reimbursed in accordance with a reimbursement order under Division 4, the person is to be reimbursed for those costs out of the proceeds of the sale.
- (3) Any balance of the proceeds must be paid:
  - (a) if the animal or thing has been forfeited to the Crown – to the Central Holding Authority; or
  - (b) otherwise:
    - (i) to the owner or another person who is legally entitled to those proceeds; or
    - (ii) if the Authority has taken all reasonable steps to find a person mentioned in subparagraph (i) but has been unable to do so – to the Central Holding Authority.
- (4) However, if a court makes an order for the sale or disposal of the animal or thing or distribution of proceeds in a different way, the Authority must deal with the animal, thing or proceeds in accordance with the order.

**68G            Return or disposal orders**

- (1) This section applies if an animal or thing:
  - (a) has been seized under this Act; and

- (b) has not been forfeited to the Crown; and
  - (c) has not been sold or disposed of under section 68F.
- (2) On application by the Authority or any person entitled to the animal or thing, a return or disposal order may be made:
  - (a) by the appropriate civil court; or
  - (b) if a person has been charged with an offence against this Act with which the animal or thing is connected – by the court hearing the charge.
- (3) An order may be made under subsection (2)(a) whether or not a person has been charged with an offence with which the animal or thing is connected.
- (4) An order may be made under subsection (2)(b):
  - (a) as an interim order or on conclusion of the proceedings; and
  - (b) whether or not a person is convicted of an offence.
- (5) If a person has been charged with an offence against this Act with which the animal or thing is connected, an application to the appropriate civil court for an order under subsection (2)(a) may be transferred to the court hearing the charge.
- (6) In this section:

***appropriate civil court*** means:

- (a) if the value of the animal or thing is within the jurisdictional limit of the Local Court (as defined in section 3 of the *Local Court Act*) – the Local Court; or
- (b) otherwise – the Supreme Court.

## **Division 4            Recovery of seizure and care costs**

### **68H            Meaning of *seizure and care costs***

- (1) If an animal or thing is seized under this Act, the ***seizure and care costs*** for the animal or thing are the reasonable costs incurred in relation to any of the following:
  - (a) taking possession of the animal or thing;
  - (b) transporting the animal or thing;

- (c) for an animal – ensuring the animal is provided with the minimum level of care;
  - (d) for a thing – storing or looking after the thing;
  - (e) returning, or selling or disposing, of the animal or thing in accordance with this Act.
- (2) If an authorised person takes action under section 67 in relation to an animal, other than by seizing it under section 67(2)(b), the ***seizure and care costs*** for the animal are the reasonable costs incurred in taking the action.

#### **68J            Order for reimbursement of seizure and care costs**

- (1) This section applies if:
- (a) an animal or thing is seized under this Act or an authorised person takes action under section 67 in relation to an animal; and
  - (b) a person incurs seizure and care costs for the animal or thing.
- (2) On application by the person who incurs the seizure and care costs, a reimbursement order may be made against a person in charge of the animal or thing:
- (a) by the appropriate civil court; or
  - (b) if a person has been charged with an offence against this Act with which the animal or thing is connected – by the court hearing the charge.
- (3) An order may be made under subsection (2)(a) whether or not a person has been charged with an offence with which the animal or thing is connected.
- (4) An order may be made under subsection (2)(b):
- (a) as an interim order or on conclusion of the proceedings; and
  - (b) whether or not a person is convicted of an offence.
- (5) The court must not make a reimbursement order unless satisfied that:
- (a) the seizure of the animal or thing, or the taking of the action under section 67, was reasonable in the circumstances; and

- (b) it is reasonable in the circumstances to require the person against whom the order is sought to pay the seizure and care costs.
- (6) If a person has been charged with an offence against this Act with which the animal or thing is connected, an application to the appropriate civil court for an order under subsection (2)(a) may be transferred to the court hearing the charge.
- (7) In this section:

***appropriate civil court*** means:

- (a) if the amount of costs sought is within the jurisdictional limit of the Local Court (as defined in section 3 of the *Local Court Act*) – the Local Court; or
- (b) otherwise – the Supreme Court.

***person in charge***, of an animal, includes a person who was in charge of the animal when it was seized or action was taken under section 67 in relation to it.

***person in charge***, of a thing, includes:

- (a) an owner of the thing; and
- (b) a person who has possession of the thing or had possession of it when it was seized.

***reimbursement order*** means an order that a person reimburse the applicant for seizure and care costs incurred by the applicant that have not been paid under section 68F(2).

## **68K Enforcement of orders to pay**

An order under section 68J or 76(3)(b) for the payment of money is an ancillary money order for Part 7 of the *Fines and Penalties (Recovery) Act* and is recoverable under that Part.

## **Part 7 Animal Welfare Advisory Committee**

### **69 Establishment**

- (1) The Minister must, in writing, establish the Animal Welfare Advisory Committee.
- (2) The Advisory Committee is to be constituted in accordance with the Regulations.

**70            Functions**

The functions of the Advisory Committee include the following:

- (a) advising the Minister about animal welfare legislation and other matters relevant to animal welfare;
- (b) investigating and reporting on matters relevant to animal welfare referred to it by the Minister;
- (c) participating in the development of codes of practice and the review of adopted codes of practice;
- (d) providing advice to bodies, organisations or the general community on programs for the improvement of community awareness about animal welfare;
- (e) any other functions prescribed by the Regulations.

**Part 8            Miscellaneous**

**Division 1        Offences etc.**

**71            Time for commencing proceeding**

Despite anything to the contrary in another law in force in the Territory, proceedings in respect of an offence under this Act are to be commenced not later than 2 years after the date on which it is alleged the offence occurred.

**72            Obstruction**

A person must not hinder or obstruct the Authority, an inspector, officer or veterinarian in the exercise of powers or performance of functions under this Act.

Penalty:        50 penalty units or imprisonment for 6 months.

**73            False information**

A person must not knowingly provide to the Authority, an inspector, officer or veterinarian false information in relation to an offence under this Act.

Penalty:        50 penalty units or imprisonment for 6 months.

## 74                      Aiding and abetting

A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence under this Act or the Regulations is taken to have committed that offence and is liable to the penalty for the offence.

## 74A                    Alternative verdicts

- (1) This section applies if, in a proceeding against a person charged with an offence against a provision listed in the following Table (the *prosecuted offence*), the court:
  - (a) is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; but
  - (b) is satisfied beyond reasonable doubt that the person committed an offence, or the offence of attempting to commit an offence, listed in the Table as an *alternative offence* for the prosecuted offence.
- (2) The court may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

**Table                  Alternative offences**

Prosecuted offence	Alternative offence
section 10	section 8 or 9
section 9	section 8

## 75                      Penalties

- (1) A person who contravenes or fails to comply with this Act or a direction, restriction, requirement or condition given, made or imposed under this Act is guilty of an offence.
- (2) A person guilty of an offence under this Act for which no other penalty is prescribed is, on a finding of guilt, liable to a penalty not exceeding 100 penalty units or imprisonment for 12 months.
- (3) A person found guilty of an offence under this Act is liable to an additional penalty not exceeding 5 penalty units for each day on which the offence continues after the first day on which it was committed.

**76            Additional orders on finding of guilt – seizure of animals**

- (1) This section applies if:
  - (a) a court finds a person guilty of an offence against this Act; and
  - (b) the offender is in charge of an animal (whether or not the animal is connected with the offence); and
  - (c) the court is satisfied that the offender is likely to commit an offence against this Act in relation to the animal unless an order is made under this section.
- (2) The court may order that the animal be seized from the offender.
- (3) If it does so the court:
  - (a) must make a return or disposal order for the animal; and
  - (b) may make orders as it considers appropriate for the payment by the offender of seizure and care costs for the animal.

**76A          Additional orders on finding of guilt – future possession of animals**

- (1) This section applies if:
  - (a) a court finds a person guilty of an offence against this Act; and
  - (b) the court is satisfied that the offender is likely to commit another offence against this Act in relation to an animal unless an order is made under this section.
- (2) The court may, as it considers appropriate, order that the offender must not, for the period specified in the order:
  - (a) be a person in charge of an animal; or
  - (b) allow an animal into or onto premises occupied by the offender.
- (3) The offender must comply with the order.

Maximum penalty        50 penalty units or imprisonment for  
6 months.

## **77                      Appropriation of penalties**

- (1) In this section, *approved body* means an incorporated body formed and carried on for purposes relating to animal welfare and approved by the Minister, by notice in the *Gazette*, for the purposes of this section.
- (2) If on the prosecution of an offence against this Act by an approved body, the defendant pays to the court an amount of money that the court ordered to be paid, the amount must be paid by the court to the approved body.
- (3) If in accordance with the *Fines and Penalties (Recovery) Act*, an amount of money is paid to the Fines Recovery Unit in respect of an infringement notice issued by a person who is an employee or a member of an approved body, the Fines Recovery Unit must pay to the approved body the infringement penalty and the prescribed costs, if any, of issuing a courtesy letter under the *Fines and Penalties (Recovery) Act* in respect of the infringement notice.

## **78                      Infringement notices**

The Regulations may provide for the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or regulations made under this Act and for the service of a notice relating to the payment of the amount on a person alleged to have committed the offence and the particulars to be included in the notice.

## **79                      Defences**

- (1) It is a defence to a prosecution for an offence under this Act if the defendant establishes that the act or omission constituting the offence, or an element of the offence, was:
  - (a) in accordance with an adopted code of practice; or
  - (b) for the purpose of alleviating the suffering of an animal and was reasonable in the circumstances.
- (2) It is not a defence to a prosecution for an offence under this Act that the act or omission constituting the offence, or an element of the offence, was in accordance with cultural, religious or traditional practices.

## **80                      Indemnity**

The Authority, an inspector, officer or veterinarian is not personally liable for or in relation to a matter or thing done in good faith in pursuance of and for the purposes of this Act.



## **Division 2            General**

### **81            Exemptions**

- (1) The Minister may, by notice in the *Gazette*:
  - (a) exempt a person or class of persons from complying with this Act or the Regulations or a specified provision of this Act or the Regulations; or
  - (b) provide that this Act or the Regulations or a specified provision of this Act or the Regulations does not apply to or in relation to an animal or class of animals.
- (2) The notice may specify the circumstances, whether generally or in a particular case, in which an exemption made under subsection (1) is to apply.

### **82            Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may apply, adopt or incorporate (with or without changes) the whole or part of a code of practice, standard or other document as in force or existing at a particular time or from time to time.

### **83            Repeal**

The *Prevention of Cruelty to Animals Act* (No. 18 of 1935, No. 14 of 1963 and No. 1 of 1967) is repealed.

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## ENDNOTES

## 1

## KEY

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
*Gaz* = *Gazette*  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

## 2

## LIST OF LEGISLATION

***Animal Welfare Act 1999 (Act No. 44, 1999)***

Assent date	10 November 1999
Commenced	27 March 2000 ( <i>Gaz</i> S13, 27 March 2000, p 1)

***Statue Law Revision Act 2001 (Act No. 3, 2001)***

Assent date	22 March 2001
Commenced	22 March 2001

***Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)***

Assent date	11 December 2001
Commenced	1 January 2002 (s 2, s 2 <i>Fines and Penalties (Recovery) Act 2001</i> (Act No. 59, 2001) and <i>Gaz</i> G50, 19 December 2001, p 3)

***Animal Welfare Amendment Act 2004 (Act No. 24, 2004)***

Assent date	28 April 2004
Commenced	28 April 2004

***Statue Law Revision Act 2005 (Act No. 44, 2005)***

Assent date	14 December 2005
Commenced	14 December 2005

***Statue Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

***Personal Property Securities (National Uniform Legislation) Implementation Act 2010 (Act No. 30, 2010)***

Assent date	9 September 2010
Commenced	ss 58 to 60: nc; rem: 25 November 2011 ( <i>Gaz</i> S68, 25 November 2011)

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***Animal Welfare Amendment Act 2012 (Act No. 31, 2012)***

Assent date 18 December 2012  
Commenced 6 February 2013 (*Gaz G6*, 6 February 2013, p 3)

**3 LIST OF AMENDMENTS**

s 4	amd No. 24, 2004, s 3; No. 44, 2005, s 35; No. 31, 2012, s 4
pt 2	
div 1 hdg	amd No. 31, 2012, s 5
ss 6 – 7	sub No. 31, 2012, s 6
s 8	amd No. 4, 2007, s 7
	sub No. 31, 2012, s 6
s 9	amd No. 24, 2004, s 4
	sub No. 31, 2012, s 6
s 10	sub No. 31, 2012, s 6
ss 11 – 14	rep No. 31, 2012, s 6
s 15	amd No. 31, 2012, s 7
s 16	rep No. 31, 2012, s 8
s 17	amd No. 3, 2001, s 8
pt 2	
div 2 hdg	amd No. 31, 2012, s 9
s 23A	ins No. 31, 2012, s 10
ss 26A – 26C	ins No. 31, 2012, s 11
s 34	amd No. 31, 2012, s 12
ss 34A – 34B	ins No. 31, 2012, s 13
s 39A	ins No. 30, 2010, s 26
s 41	sub No. 31, 2012, s 14
s 42	sub No. 31, 2012, s 15
s 48	amd No. 31, 2012, s 16
s 57	amd No. 31, 2012, s 17
s 58	amd No. 31, 2012, s 18
s 58A	ins No. 31, 2012, s 19
s 60	sub No. 31, 2012, s 20
s 60A	ins No. 31, 2012, s 20
s 62	amd No. 31, 2012, s 21
s 67	amd No. 31, 2012, s 22
pt 6	
div 3 hdg	ins No. 31, 2012, s 23
ss 68A – 68G	ins No. 31, 2012, s 23
pt 6	
div 4 hdg	ins No. 31, 2012, s 23
ss 68H – 68K	ins No. 31, 2012, s 23
s 71	amd No. 31, 2012, s 24
s 74A	ins No. 31, 2012, s 25
s 75	amd No. 31, 2012, s 26
s 76	sub No. 31, 2012, s 27
s 76A	ins No. 31, 2012, s 27
s 77	amd No. 3, 2001, s 8; No. 60, 2001, s 18
s 82	amd No. 31, 2012, s 28