

NORTHERN TERRITORY OF AUSTRALIA

ANIMAL PROTECTION ACT 2018

Act No. 25 of 2018

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
3	Objects of Act	1
4	Definitions	2
5	Meaning of <i>animal</i>	6
6	Minimum level of care for animal	7
7	Scientific purposes	8
8	Scientific use code	8
9	Act binds Crown	8
10	Application of Criminal Code	9
Part 2	Administration	
Division 1	CEO	
11	CEO's functions and general powers	9
12	CEO's investigative powers	9
13	Approved forms	10
14	Delegation	10
Division 2	Appointment of authorised officers	
15	Appointment	10
16	Identity card	11
17	Return of identity card	11
18	Functions of authorised officers	11
Division 3	Advisory committee	
19	Animal Welfare Advisory Committee	12
Division 4	Codes of practice	
20	Making codes of practice	13
21	Use of codes of practice in proceedings	13

Part 3	Care and protection of animals	
Division 1	Obligations and offences	
22	Obligations.....	14
23	Minimum level of care.....	14
24	Cruelty to an animal.....	14
25	Aggravated cruelty.....	16
26	Notification of injury to domesticated animal.....	17
27	Administering poison	17
28	Laying poison	18
29	Traps	19
30	Electrical devices.....	20
31	Spurs	21
32	Prohibited activities.....	22
33	Greyhounds.....	24
34	Restraining dog in moving vehicle	24
Division 2	Power to alleviate suffering	
35	Power to alleviate suffering.....	25
Part 4	Regulation of scientific users of animals	
Division 1	Preliminary matters	
36	Definitions.....	25
37	Ability to group authorities or bodies.....	26
38	Employees and contractors	26
39	CEO guidelines.....	27
Division 2	Registration	
40	Requirement for registration	27
41	Application for registration	28
42	Consideration of application	28
43	Decision on application.....	29
44	Conditions of registration	30
45	Duration and renewal of registration.....	30
46	Variation of registration by agreement or on application.....	31
47	Variation, suspension or cancellation of registration by CEO	31
48	Surrender of registration.....	32
49	Registration not transferable.....	32
Division 3	Accreditation of animal ethics committees	
50	Application for accreditation.....	32
51	Consideration of application	32
52	Decision on application.....	33

53	Conditions of accreditation	33
54	Duration and renewal of accreditation	33
55	Variation of accreditation by agreement or on application	34
56	Variation, suspension or cancellation of accreditation by CEO.....	34
57	Surrender of accreditation	35
58	Accreditation not transferable	35

Division 4 Project oversight and code requirements

59	Application for project approval	35
60	Authority to act.....	35
61	Consideration of application	35
62	Conditions of project approval	36
63	Duration and renewal of project approval	36
64	Variation of project approval by agreement or on application	36
65	Variation, suspension or cancellation of project approval by committee	37
66	Automatic suspension or cancellation of project approval	37
67	Surrender of project approval	38
68	Transferability of project approval.....	38
69	Offences relating to project approval	38
70	Offence to contravene codes.....	39

Division 5 Other matters

71	Registers	39
72	Annual report – registered persons	40
73	Annual reports – accredited animal ethics committees.....	41
74	Registered person must report contraventions	41
75	Improvement notice	42
76	Review by Civil and Administrative Tribunal.....	43

Part 5 Monitoring programs and enforcement

Division 1 Preliminary matters

77	Interpretation	44
----	----------------------	----

Division 2 Monitoring programs

78	CEO to develop programs	44
----	-------------------------------	----

Division 3 Functions and powers of authorised officers

79	Specific function relating to monitoring programs	46
80	Requirement to report suspected offences.....	46
81	Power to require name and address.....	46
82	Exercise of powers	46
83	Power of entry	47

84	Consent to entry	48
85	Application for and issue of warrant.....	48
86	Effect and term of warrant	49
87	Entry on Aboriginal land	49
88	Powers of inspection	50
89	Reports.....	50
90	Power to alleviate suffering.....	51
91	Power to destroy an animal	53
92	Animal welfare direction	54

Division 4 Dealing with seized animals and things

93	Definition.....	55
94	CEO to keep and care for seized animal or thing	56
95	Retention of animal or thing seized under section 88(2)(f)	56
96	Retention of animal seized under section 90	56
97	Animal or thing to be returned to person entitled.....	57
98	Sale or disposal of animal or thing.....	57
99	Return or disposal orders	58

Division 5 Recovery of seizure and management costs

100	Meaning of <i>seizure and management costs</i>	59
101	Order for reimbursement of seizure and management costs.....	60

Part 6 Miscellaneous matters

102	Protection from liability	61
103	Unauthorised disclosure of confidential information	61
104	Obstruction of designated persons	62
105	Misleading information.....	62
106	Falsely representing to be an authorised officer	63
107	Criminal liability of executive officer of body corporate	63
108	Criminal liability of executive officer of body corporate – evidential burden of proof on defence	65
109	Continuing offences.....	66
110	Aboriginal laws and customs	66
111	Defences	67
112	Alternative verdicts	67
113	Immediate forfeiture in certain cases.....	67
114	Additional orders on finding of guilt – seizure of animals.....	69
115	Additional orders on finding of guilt – future possession of animals	69
116	Automatic ban for multiple offences.....	69
117	Time for commencing prosecutions.....	70
118	Authority to prosecute.....	70
119	Enforcement of orders to pay	71
120	Evidentiary certificate	71
121	Power to conduct post-mortem examination.....	71

122	Regulations.....	71
-----	------------------	----

Part 7 Repeals and transitional matters

Division 1 Acts repealed

123	Acts repealed.....	72
-----	--------------------	----

Division 2 Transitional matters for Animal Protection Act 2018

124	Definitions.....	72
125	Acts of Authority	73
126	Offence provisions – before and after commencement	73
127	Permits	73
128	Officers	74
129	Transitional regulations	74

Part 8 Consequential amendments

130	Laws amended	74
131	Expiry of Part.....	74

Schedule 1 Reviewable decisions and affected persons

Schedule 2 Repealed Acts

Schedule 3 Laws amended



NORTHERN TERRITORY OF AUSTRALIA

Act No. 25 of 2018

An Act to provide for care and protection of animals, and for related purposes

[Assented to 22 November 2018]

[Introduced 8 February 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Animal Protection Act 2018*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Objects of Act

The objects of this Act are:

- (a) to ensure that animals are treated humanely; and
- (b) to prevent cruelty to animals; and
- (c) to promote community awareness about responsibilities and legal obligations associated with the care and protection of animals; and
- (d) to regulate the activities of persons who use animals for scientific purposes.

4 Definitions

In this Act:

accredited animal ethics committee, for Part 4, see section 36.

acting in an official capacity, in relation to a person, means the person is exercising functions under, or otherwise related to the administration of, this Act.

Advisory Committee means the Animal Welfare Advisory Committee established under section 19.

affected person, see section 76(2).

animal, see section 5.

animal ethics committee, for Part 4, see section 36.

animal welfare direction, see section 92.

animal welfare offence, for Part 4, see section 36.

approved form means a form approved under section 13.

authorised officer means a person appointed as an authorised officer under section 15.

cage includes a pen, kennel, hutch, receptacle or other shelter for an animal.

CEO means the Chief Executive Officer.

CEO guidelines, for Part 4, see section 39.

chief investigator, for Part 4, see section 36.

code of practice means a code of practice adopted or prescribed under section 20.

commercial premises means premises:

- (a) used for, or in connection with, commercial purposes in relation to animals, including their production, processing, sale and transportation; or
- (b) used for, or in connection with, scientific purposes in relation to animals; or
- (c) used for purposes mentioned in paragraph (a) and a portion of which are occupied as a place of residence.

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

- (a) enclosing it in a cage, pit, yard, field or paddock;
- (b) physically reducing its ability to move by pinioning or mutilating it;
- (c) tethering or otherwise restraining it.

connected with an offence, for Part 5, see section 77(3).

corresponding law means a law of another jurisdiction that corresponds to this Act, and includes a law of another jurisdiction that is declared by the Regulations to be a corresponding law of that jurisdiction for this Act.

cruelty, in relation to an animal, means any conduct that constitutes an offence against section 24.

decision notice, for a decision, means a written notice setting out:

- (a) the decision and the reasons for it; and
- (b) any right the person to whom the notice is to be given has, under this or any other Act, to apply for a review of, or to appeal, the decision.

designated person means:

- (a) the CEO; or
- (b) an authorised officer; or
- (c) a person assisting an authorised officer under Part 5 or otherwise acting at the request of an authorised officer; or
- (d) a veterinarian acting under this Act.

educational institution, for Part 4, see section 36.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

former Act means the *Animal Welfare Act*.

harm means injury, damage or hurt.

horse firing means applying heat, extreme cold, acid or caustic chemicals to the leg of a horse to cause tissue damage and develop scar tissue around the tendons and ligaments of the leg.

improvement notice, see section 75(2).

minimum level of care, for an animal, see section 6.

monitoring program, for Part 5, see section 78(1).

motor vehicle, see section 3 of the *Traffic Act*.

occupier, in relation to premises, means the occupier or person in charge of the premises.

organised animal fight means an event in which an animal is encouraged to fight with a person or another animal.

person entitled, for Part 5, Division 4, see section 93.

person in control, in relation to an animal, means any of the following:

- (a) an owner of the animal;
- (b) a parent or guardian of a minor who is an owner of the animal;
- (c) a person who has control of the animal or is supervising another person in possession of the animal;
- (d) a person in possession of the animal.

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

poison includes:

- (a) a Scheduled substance as defined in section 7 of the *Medicines, Poisons and Therapeutic Goods Act*; and
- (b) a substance containing a substance mentioned in paragraph (a); and
- (c) a substance likely to cause or contribute to an animal suffering.

*Example for definition **poison**, paragraph (c)*

Ground glass in food.

possess, in relation to an animal or thing, includes having custody, care or control of the animal or thing.

premises includes:

- (a) a building or part of a building; and
- (b) a permanent or temporary structure on land; and
- (c) land, whether or not there is a building on it; and
- (d) water on land.

project, for Part 4, see section 36.

project approval, for Part 4, see section 36.

registered means registered under Part 4, Division 2.

research means to obtain fact or principles for a scientific purpose by:

- (a) conducting one or more experiments, procedures, tests or studies involving an animal; or
- (b) subjecting an animal to surgical, medical, psychological, biological, chemical or physical treatment.

residential premises means any premises, or part of premises, occupied as a place of residence.

return or disposal order, in relation to an animal or thing, means any of the following orders:

- (a) that the CEO return the animal or thing to a person entitled to it;
- (b) that the CEO sell or dispose of the animal or thing under section 98 or otherwise as the court considers appropriate;
- (c) that the animal or thing is forfeited to the Territory and that the CEO sell or dispose of the animal or thing under section 98 or otherwise as the court considers appropriate.

reviewable decision, see section 76(1).

scientific purposes, see section 7.

scientific use code, see section 8.

seizure and management costs, see section 100.

sell includes:

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

stock animals includes:

- (a) cattle, buffaloes, horses, mules, donkeys, sheep, deer, goats, camels, swine, crocodiles and poultry; and
- (b) any other animals of a class prescribed by regulation.

suffering means to feel harm, pain, extreme anxiety or other physical or psychological distress.

veterinarian means a registered veterinarian under the *Veterinarians Act*.

welfare means health, safety and well-being.

youth means a youth as defined in section 6 of the *Youth Justice Act*.

Note for section 4

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

5 Meaning of *animal*

- (1) An **animal** is a live:
 - (a) member of a vertebrate species, including an amphibian, bird, mammal and reptile; and
 - (b) bony or cartilaginous fish, cephalopod or crustacean that is in the possession or under the control of a person.
- (2) Despite subsection (1)(a), an **animal** does not include a human being.

- (3) For subsection (1)(b), a fish, cephalopod or crustacean is not in the possession or under the control of a person by reason only that it has been caught with fishing gear permitted under the *Fisheries Act* but is still in its usual aquatic or other habitat.

Examples for subsection (3)

A fish still in the water but caught on the end of a fishing line or a crab still in a trap would not be considered in a person's possession or control.

6 Minimum level of care for animal

- (1) The ***minimum level of care*** for an animal is the level of care required to ensure 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 or an injury, or when 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) Something is appropriate for an animal if it is appropriate to ensure the welfare of the animal having regard to all relevant circumstances, including the animal's species and the environment in which the animal is kept or lives.
- (3) Something is not appropriate for an animal if:
- (a) it causes, is likely to cause, contributes to, or is likely to contribute to the animal suffering that is unjustifiable, unnecessary or unreasonable in the circumstances; or
 - (b) it is prescribed by regulation as being not appropriate.

7 Scientific purposes

- (1) An animal is used for **scientific purposes** if the animal is used in connection with an activity performed to acquire, develop or demonstrate knowledge or techniques in an area of science.
- (2) Without limiting subsection (1), an activity includes:
 - (a) teaching; and
 - (b) performing field trials; and
 - (c) conducting environmental studies; and
 - (d) engaging in research, including research related to creating or breeding a new animal line where the impact on animal welfare is unknown or uncertain; and
 - (e) testing products; and
 - (f) producing biological products.
- (3) The use of an animal for scientific purposes also includes using any of the remains of an animal killed for the purpose of performing an activity mentioned in subsection (1).

8 Scientific use code

- (1) The **scientific use code** is the "Australian code for the care and use of animals for scientific purposes" published by the National Health and Medical Research Council, including each new edition of the code, as in force from time to time.
- (2) The CEO must ensure that a copy of the most recent edition of the scientific use code:
 - (a) is kept and made available for inspection, free of charge, by the public during normal business hours at the Agency's head office; and
 - (b) is published on the Agency's website.

9 Act binds Crown

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

10 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 10

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Administration

Division 1 CEO

11 CEO's functions and general powers

- (1) The CEO has the following functions:
 - (a) to ensure compliance with this Act;
 - (b) to appoint authorised officers and to be responsible for their activities under this Act;
 - (c) to decide whether offences against this Act are prosecuted;
 - (d) to administer registrations under Part 4;
 - (e) to otherwise administer this Act;
 - (f) to perform any other function conferred on the CEO under this Act.
- (2) The CEO has the powers necessary to perform the CEO's functions under this Act.

12 CEO's investigative powers

- (1) For performing functions under this Act, the CEO may do one or more of the following as, and in the way, the CEO considers appropriate:
 - (a) obtain relevant information from persons;
 - (b) consult with persons;
 - (c) make inquiries of persons.

- (2) Without limiting subsection (1)(a), the CEO may require a person to give information and documents to the CEO in the manner, and within the time, specified in the requirement.
- (3) A person must comply with a requirement given to the person under subsection (2).

Maximum penalty: 100 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) Nothing in this section is to be construed as compelling a person to answer any question that would tend to incriminate the person.
- (6) However, information or documents given by an individual in compliance with the requirement are 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.

13 Approved forms

The CEO may approve forms for this Act.

14 Delegation

- (1) The CEO may delegate any of the CEO's powers and functions under this Act to a person.
- (2) Subsection (1) does not apply to the CEO's power to appoint authorised officers.

Division 2 Appointment of authorised officers

15 Appointment

- (1) The CEO may appoint, by *Gazette* notice, a person to be an authorised officer.
- (2) The CEO must not appoint a person to be an authorised officer unless satisfied that the person has the skills, qualifications, training and experience to properly perform the functions of an authorised officer.
- (3) For subsection (2), the CEO may require that a person successfully complete a course of training specified by the CEO before the person may be appointed as an authorised officer.

- (4) An appointment under this section may be for a specified period and subject to conditions or limitations specified in the notice of appointment.
- (5) A police officer has the powers and functions of an authorised officer under this Act, subject to any conditions or limitations that the CEO may specify by *Gazette* notice.

16 Identity card

- (1) The CEO must give an authorised officer, other than a police officer, an identity card stating the person's name and that the person is an authorised officer.
- (2) The identity card must:
 - (a) show a recent photograph of the authorised officer; and
 - (b) show the card's date of issue and expiry; and
 - (c) specify any limitation to which the officer's appointment may be subject; and
 - (d) be signed by the officer.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

17 Return of identity card

- (1) A person, other than a police officer, who ceases to be an authorised officer must return the person's identity card to the CEO within 21 days after the cessation.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

18 Functions of authorised officers

- (1) An authorised officer has the following functions:
 - (a) to assess whether or not persons are complying with this Act;
 - (b) to investigate and gather evidence of suspected offences against this Act;
 - (c) to perform any other function conferred on authorised officers under this Act;

- (d) to assist the CEO in the performance of the CEO's functions under this Act.
- (2) An authorised officer has the powers necessary to perform the officer's functions under this Act.
- (3) In exercising a power or performing a function under this Act, an authorised officer is subject to the direction of the CEO.

Division 3 Advisory committee

19 Animal Welfare Advisory Committee

- (1) The Minister must establish the Animal Welfare Advisory Committee.
- (2) The Advisory Committee is to be constituted in accordance with the Regulations.
- (3) The Advisory Committee has the following functions:
 - (a) providing advice to the Minister or the CEO on animal welfare issues or on any other matter that is relevant to the operation of this Act;
 - (b) investigating and reporting on matters relevant to animal welfare or the operation of this Act referred to the Advisory Committee by the Minister;
 - (c) examining or developing codes of practice, and making recommendations to the Minister about adopting or prescribing codes of practice under the Regulations;
 - (d) providing advice to bodies, organisations or the general community on programs for the improvement of community awareness about animal welfare;
 - (e) performing any other function associated with the welfare of animals or the operation of this Act determined by the Minister.
- (4) A member of the Advisory Committee is to be appointed on terms and conditions determined by the Minister.

- (5) Subject to the Minister's direction, the Advisory Committee may determine its own procedures.
- (6) The CEO may:
 - (a) provide secretarial, administrative or other assistance to the Advisory Committee; and
 - (b) authorise the Agency to pay costs and expenses reasonably incurred by the Advisory Committee in performing its functions.
- (7) The Minister may:
 - (a) appoint such other advisory committees to advise or assist the Minister as the Minister considers appropriate; and
 - (b) determine the functions and the terms and conditions of membership of those committees.

Division 4 Codes of practice

20 Making codes of practice

- (1) A regulation may adopt or prescribe codes of practice relating to animal welfare.
- (2) Without limiting subsection (1), a code of practice may be about any of the following:
 - (a) the production, processing, keeping, display, treatment, handling, husbandry, management or care of animals;
 - (b) the transportation, sale, killing, hunting, shooting, catching, trapping, netting, marking, control or protection of animals;
 - (c) the use of animals, including for scientific purposes.
- (3) A code of practice may relate to any animal or class of animal.

21 Use of codes of practice in proceedings

- (1) Evidence of compliance or non-compliance with a code of practice adopted or prescribed by regulation is admissible in proceedings as evidence of whether or not a duty or obligation under this Act has been complied with.

- (2) Without limiting subsection (1), it is a defence to a prosecution for an offence against this Act if the conduct constituting the offence, or an element of the offence, was in accordance with a code of practice adopted or prescribed by regulation.

Part 3 Care and protection of animals

Division 1 Obligations and offences

22 Obligations

- (1) A person in control of an animal must provide a minimum level of care to the animal.
- (2) A person must not be cruel to an animal.

23 Minimum level of care

- (1) A person commits an offence if:
- (a) the person is in control of an animal; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in the animal not being provided with at least the minimum level of care and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(a).

24 Cruelty to an animal

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct results in the suffering of an animal, or additional suffering of an animal, and the person is reckless in relation to that result; and
 - (c) the suffering is unjustifiable, unnecessary or unreasonable and the person is reckless in relation to that circumstance.

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

(2) A person commits an offence if:

- (a) the person intentionally beats an animal; and
- (b) the beating causes the animal harm.

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

(3) A person commits an offence if the person intentionally abuses or tortures an animal.

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

(4) A person commits an offence if:

- (a) the person intentionally injures or wounds an animal; and
- (b) that conduct is unjustifiable, unnecessary or unreasonable in the circumstances.

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

(5) A person commits an offence if:

- (a) the person intentionally engages in conduct in relation to an animal; and
- (b) the conduct is prescribed by regulation to constitute cruelty.

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

(6) A person commits an offence if:

- (a) the person is in control of an animal; and
- (b) the animal is suffering and the person knows that it is suffering; and
- (c) the person intentionally fails to take action that:
 - (i) is reasonable in the circumstances; and

- (ii) the person knows would alleviate the animal's suffering.

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

Examples for subsection (6)(c)

- 1 *The person does not obtain necessary veterinary treatment for the animal.*
- 2 *The person does not destroy a suffering animal so it dies quickly without further suffering.*

- (7) A person commits an offence if the person intentionally:

- (a) docks the tail of an animal; or
- (b) crops the ears of an animal; or
- (c) removes the claws of an animal; or
- (d) removes the voice of an animal; or
- (e) engages in horse firing.

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

- (8) Subsection (7) does not apply if the person is a veterinarian who believes on reasonable grounds that the procedure is a reasonable and necessary therapeutic measure for the treatment or welfare of the animal.

Note for subsection (8)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (9) Absolute liability applies to subsection (5)(b).
- (10) Strict liability applies to subsections (1)(b), (2)(b), (4)(b) and (6)(a) and (c)(i).

25 Aggravated cruelty

- (1) The following are circumstances of aggravation for an offence against section 24:
- (a) the conduct results in serious harm to, or the death of, the animal;
 - (b) the person intends, or is reckless about, the conduct causing or contributing to a result of either serious harm or death.

- (2) The maximum penalty specified in this subsection applies to an offence against section 24 if the circumstances of aggravation applies to the offence.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

- (3) In this section:

serious harm, in relation to an animal, means harm that:

- (a) endangers the animal's life; or
- (b) causes or contributes to such serious injury, serious disease or severe physical condition that it would be cruel not to destroy the animal; or
- (c) causes serious and protracted impairment of a physical or mental function of the animal.

26 Notification of injury to domesticated animal

- (1) A person who injures a domesticated animal that is not in the person's control, must as soon as practicable after the injury occurs:

- (a) inform a person in control of the animal about the injury; or
- (b) if the person is unable to inform a person mentioned in paragraph (a) – inform an authorised officer about the injury.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

27 Administering poison

- (1) A person commits an offence if the person:

- (a) intentionally administers a substance to an animal; and
- (b) knows the substance is poison.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Subsection (1) does not apply if:

- (a) the person is a veterinarian acting in the normal course of veterinary practice; or

- (b) the person is a person, or within a class of persons, exempted by regulation; or
- (c) the conduct or a circumstance of the offence is exempted by regulation.

Note for subsection (2)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

28 Laying poison

(1) A person commits an offence if the person:

- (a) intentionally lays a substance; and
- (b) knows the substance is poison; and
- (c) intends to:
 - (i) kill an animal; or
 - (ii) cause suffering to an animal; or
 - (iii) contribute to an animal's suffering.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) A person commits an offence if:

- (a) the person intentionally lays a substance; and
- (b) the person knows the substance is poison; and
- (c) an animal is killed as a result and the person is reckless in relation to that result.

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

(3) A person commits an offence if:

- (a) the person intentionally lays a substance; and
- (b) the person knows the substance is poison; and

(c) an animal suffers as a result and the person is reckless in relation to that result.

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

(4) A person commits an offence if:

(a) the person lays poison; and

(b) there is a reasonable likelihood that the poison will kill or cause suffering to an animal.

Maximum penalty: 20 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant took all reasonable steps to avoid killing or causing suffering to animals.

(7) Subsections (1), (2), (3) and (4) do not apply to any conduct or circumstance excluded from the offence by regulation.

Note for subsection (7)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

29 Traps

(1) A person commits an offence if the person sets or uses a metal jawed trap or prohibited trap.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if the person sells a metal jawed trap or prohibited trap.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if the person possesses a metal jawed trap or prohibited trap.

Maximum penalty: 10 penalty units.

(4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

- (5) Subsections (1), (2) and (3) do not apply if:
- (a) the trap is a bow trap or soft-jawed trap; or
 - (b) in relation to an offence against subsection (3), the trap is possessed solely for display, as a curio or as part of a collection.

Note for subsection (5)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (6) In this section:

metal jawed trap means a trap that is:

- (a) made, adapted or used for trapping an animal; and
- (b) designed so that the metal jaws close against each other when the trap is activated.

prohibited trap means a trap:

- (a) made, adapted or used for trapping an animal; and
- (b) prescribed by regulation to be a prohibited trap.

30 Electrical devices

- (1) A person commits an offence if:
- (a) the person intentionally uses a device on an animal; and
 - (b) the device is an electrical device.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if:
- (a) the person intentionally sells a device; and
 - (b) the device is an electrical device.

Maximum penalty: 50 penalty units.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).

- (4) A person commits an offence if the person has in the person's possession an electrical device.

Maximum penalty: 10 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

(6) In this section:

electrical device means a device or object that is made, adapted or used for administering an electric shock to an animal, other than:

- (a) an electric fence; or
- (b) a device or object prescribed by regulation to be an excluded device.

31 Spurs

(1) A person commits an offence if:

- (a) the person intentionally uses a thing on an animal; and
- (b) the thing is spurs.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if:

- (a) the person intentionally attaches a thing to an animal; and
- (b) the thing is spurs.

Maximum penalty: 100 penalty units.

(3) A person commits an offence if:

- (a) the person intentionally sells a thing; and
- (b) the thing is spurs.

Maximum penalty: 50 penalty units.

(4) Strict liability applies to subsections (1)(b), (2)(b) and (3)(b).

(5) A person commits an offence if the person possesses spurs.

Maximum penalty: 10 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

(7) Subsection (5) does not apply in relation to the possession of spurs solely for display, as curios or as part of a collection.

(8) Subsections (1), (2), (3) and (5) do not apply to a device prescribed by regulation to be excluded spurs.

(9) In this section:

spurs means:

- (a) spurs with sharpened or fixed rowels; or
- (b) a thing made, adapted or intended to be attached to an animal for:
 - (i) training the animal to fight another animal; or
 - (ii) increasing the ability of the animal to inflict injury on another animal during fighting.

32 Prohibited activities

(1) A person commits an offence if:

- (a) the person is in control of an animal; and
- (b) the person intentionally uses the animal, or intentionally permits the animal to be used, for an activity; and
- (c) the activity is a prohibited activity and the person is reckless in relation to that circumstance.

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

(2) A person commits an offence if:

- (a) the person intentionally organises, promotes, advertises or conducts an activity; and
- (b) the activity is a prohibited activity and the person is reckless in relation to that circumstance.

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

(3) A person commits an offence if:

- (a) the person is the owner, manager or occupier of premises; and
- (b) the person intentionally permits the premises to be used for an activity; and

- (c) the activity is a prohibited activity and the person is reckless in relation to that circumstance.

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

- (4) Strict liability applies to subsections (1)(a) and (3)(a).

- (5) A person commits an offence if:

- (a) the person intentionally attends an activity; and
(b) the activity is a prohibited activity and the person is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units.

- (6) Subsections (1), (2), (3) and (5) do not apply in relation to the following conduct:

- (a) the rehabilitation of native animals for release into the wild;
(b) the keeping and display of animals the normal diets of which include live food;
(ba) the feeding of live food to animals if that live food is their normal diet and essential to their survival;
(c) the mustering and working of stock animals.

Note for subsection (6)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (7) In this section:

prohibited activity means any of the following:

- (a) a match, competition or other activity in which an animal is released from confinement for the purpose of being hunted, caught, confined, killed or caused suffering by a person or another animal;
(b) the use of an animal to fight a person or another animal;
(c) the use of an animal as a lure for blooding greyhounds;
(d) the killing of an animal for the purpose of blooding greyhounds.

33 Greyhounds

- (1) A person commits an offence if:
- (a) the person is in control of a greyhound; and
 - (b) the greyhound is used, may be used, or is intended to be used for greyhound racing and the person is reckless in relation to that circumstance; and
 - (c) the person keeps an animal other than a greyhound on the same premises as the greyhound; and
 - (d) the other animal is a species used for the purpose of blooding a greyhound and the person is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(a) and (c).
- (3) Subsection (1) does not apply if the person is authorised by the CEO, in writing, to keep the other animal on the same premises as a greyhound.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

34 Restraining dog in moving vehicle

- (1) A person commits an offence if:
- (a) the person transports a dog by a motor vehicle or trailer on a public street; and
 - (b) the dog is not inside a passenger compartment of the motor vehicle; and
 - (c) the dog is not secured in a way that prevents it from being injured by falling from the motor vehicle or trailer.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) Subsection (1) does not apply if the dog is being used to assist in the movement of stock animals.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

(4) In this section:

public street, see section 8(1) of the *Traffic Act*.

trailer, see section 8(1) of the *Traffic Act*.

Division 2 Power to alleviate suffering

35 Power to alleviate suffering

- (1) A veterinarian may destroy an animal, or cause it to be destroyed, if the veterinarian is of the opinion that:
 - (a) the animal is so severely injured, or diseased, or in such poor physical condition that it is cruel to keep it alive; and
 - (b) the animal:
 - (i) would not otherwise be destroyed; or
 - (ii) would be destroyed in a way that is likely to cause or contribute to unnecessary suffering.
- (2) The destruction of the animal must be done in a way that causes the animal to die quickly and without unnecessary suffering.
- (3) Before acting under subsection (2), a veterinarian may first remove the animal to a place the veterinarian considers appropriate for the purpose.
- (4) A veterinarian who exercises a power under this section is entitled to receive from a person in control of the animal the reasonable costs incurred in exercising the power and may recover those costs as a debt owed to the veterinarian.

Part 4 Regulation of scientific users of animals

Division 1 Preliminary matters

36 Definitions

In this Part:

accredited animal ethics committee means an animal ethics committee accredited under Division 3.

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

animal welfare offence means:

- (a) an offence against Part 3; or
- (b) an offence under a corresponding law that is the same as, or similar to, an offence against Part 3; or
- (c) an offence against Part 2 of the former Act.

CEO guidelines, see section 39.

chief investigator means the person who holds the role of chief investigator for the purposes of a project.

educational institution means a school, college or university, or an institute established for teaching or research.

project means an activity or group of activities that form a discrete piece of work that aims to use an animal for scientific purposes.

project approval, means an approval under section 61 of a project to use an animal for scientific purposes.

37 Ability to group authorities or bodies

The CEO may treat a group of 2 or more authorities, institutions, bodies or entities as a single applicant and register them as a single registered person.

Examples for section 37

- 1 A group of Agencies.
- 2 A group of educational institutions.

38 Employees and contractors

For this Part, a person is engaged by another person if the person is employed or engaged under a contract or other arrangement, whether or not for remuneration, to perform work or provide services for, or on behalf of, that other person.

39 CEO guidelines

The CEO may publish guidelines (**CEO guidelines**) on the Agency's website that specify matters that are:

- (a) to be taken into account for the purposes of determining whether a person is a fit and proper person to be registered, or to act under a project approval, under this Part; and
- (b) relevant to an application for the accreditation of an animal ethics committee under this Part.

Division 2 Registration

40 Requirement for registration

- (1) Only the following persons may use, or allow an animal to be used, for scientific purposes:
 - (a) a registered person;
 - (b) an individual engaged by a registered person and acting in the course of that engagement;
 - (c) a student studying at an educational institution that is a registered person and acting in the course of the student's studies at the institution.
- (2) A person commits an offence if:
 - (a) the person intentionally:
 - (i) uses an animal for scientific purposes; or
 - (ii) allows an animal to be used for scientific purposes; and
 - (b) the person is not:
 - (i) a registered person; or
 - (ii) an individual engaged by a registered person and acting in the course of that engagement; or
 - (iii) a student studying at an educational institution that is a registered person and acting in the course of the student's studies at the institution.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (3) Strict liability applies to subsection (1)(b).

41 Application for registration

- (1) A person may apply to the CEO for registration under this Part.
- (2) The application must:
- (a) be in the approved form; and
 - (b) specify the type of activity to be undertaken by the applicant if registered; and
 - (c) specify the accredited animal ethics committee or animal ethics committees that the person intends to use for the purposes of the registration; and
 - (d) specify the address of any premises where the work is to be undertaken; and
 - (e) be supported by the other information specified by the CEO; and
 - (f) be accompanied by any fee prescribed by regulation.
- (3) The CEO may require the applicant to provide any additional information the CEO considers necessary to enable the CEO to determine whether or not to register the applicant.

42 Consideration of application

- (1) The CEO must not register an applicant unless satisfied that the applicant:
- (a) is a fit and proper person to be registered; and
 - (b) is competent in relation to the care and handling of animals; and
 - (c) has the competency to comply with the scientific use code.
- (2) A reference in subsection (1) to an applicant, if the applicant is a body corporate, includes:
- (a) in the case of subsection (1)(a) – a reference to the executive officers of the body corporate; and
 - (b) in the case of subsection (1)(b) and (c) – a reference to the staff of the body corporate.

- (3) In considering the application, the CEO must take into account:
- (a) whether the applicant was involved in a disqualifying event; and
 - (b) if the applicant is a body corporate – whether any of the following were involved in a disqualifying event:
 - (i) any of its executive officers;
 - (ii) another body corporate of which any of its executive officers are, or have been, an executive officer; and
 - (c) any matter specified in the CEO guidelines; and
 - (d) any other matter the CEO considers relevant to the application.

- (4) In this section:

disqualifying event means:

- (a) a finding of guilt for an animal welfare offence; or
- (b) the suspension or cancellation of a registration under section 47 or an approval under section 65; or
- (c) the suspension or cancellation, under a corresponding law, of:
 - (i) an authority, instrument, licence, permit or registration (however called) that is the same as, or similar to, a registration under this Part under a section that corresponds to section 47; or
 - (ii) an approval that is the same as, or similar to, an approval under this Part under a section that corresponds to section 65; or
- (d) the cancellation or suspension of a licence or permit under Part 5 of the former Act.

43 Decision on application

- (1) After considering an application for registration, the CEO may:
- (a) approve the application and register the applicant; or
 - (b) refuse the application.

- (2) As soon as practicable after making a decision under subsection (1), the CEO must give a decision notice to the applicant.

44 Conditions of registration

- (1) A registration is subject to the conditions the CEO considers appropriate.
- (2) The CEO must specify, in the decision notice given under section 43(2), any conditions imposed on the registration.
- (3) A person commits an offence if:
- (a) the person is a registered person; and
 - (b) the registration is subject to a condition under subsection (1); and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in a contravention of the condition and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (4) Strict liability applies to subsection (3)(a) and (b).

45 Duration and renewal of registration

- (1) A registration continues in force for 3 years, subject to its suspension, cancellation or surrender.
- (2) Before the date of expiry, the registered person may apply to the CEO for the renewal of the registration.
- (3) The application for renewal must:
- (a) be in the approved form; and
 - (b) be supported by the information specified by the CEO for this subsection; and
 - (c) be accompanied by any fee prescribed by regulation.
- (4) Sections 42 to 44 apply to an application for a renewal of registration as if it were an application for registration.

46 Variation of registration by agreement or on application

- (1) The CEO may, with the agreement of the registered person or on the application of the registered person:
 - (a) vary the registration of the person; or
 - (b) vary a condition of the registration.
- (2) As soon as practicable after making a decision on an application under subsection (1), the CEO must give a decision notice to the registered person.

47 Variation, suspension or cancellation of registration by CEO

- (1) The CEO may take action under subsection (2) if satisfied that:
 - (a) a registration has been obtained improperly; or
 - (b) a registered person has contravened a condition of the registration; or
 - (c) a registered person has contravened the scientific use code; or
 - (d) a registered person has failed to give the CEO an annual report in accordance with section 72; or
 - (e) a registered person has contravened this Act or a corresponding law in any other respect; or
 - (f) a registered person, or an animal ethics committee used by a registered person, has otherwise acted inappropriately.
- (2) The CEO may take any of the following actions:
 - (a) vary a condition of the registration;
 - (b) suspend the registration;
 - (c) cancel the registration.
- (3) Before taking action under subsection (2), the CEO must:
 - (a) notify the registered person of the proposed action and the reasons for it; and
 - (b) allow the registered person a reasonable opportunity to make representations about the proposed action within a reasonable period specified in the notice.

- (4) As soon as practicable after making a decision to take action under subsection (2), the CEO must give a decision notice to the registered person.

48 Surrender of registration

A registered person may, by written notice given to the CEO, surrender the registration.

49 Registration not transferable

A registration under this Part is not transferable.

Division 3 Accreditation of animal ethics committees

50 Application for accreditation

- (1) A person may apply to the CEO for the accreditation of an animal ethics committee for the purposes of this Part.
- (2) The application must:
- (a) be in the approved form; and
 - (b) specify the terms of reference of the animal ethics committee; and
 - (c) describe how the animal ethics committee is to be constituted; and
 - (d) include the other information specified by the CEO; and
 - (e) be accompanied by any fee prescribed by regulation.
- (3) The CEO may require the applicant to provide any additional information the CEO considers necessary to enable the CEO to determine whether or not to grant the accreditation.

51 Consideration of application

- (1) The CEO must not accredit an animal ethics committee unless satisfied that:
- (a) the constitution of the committee is appropriate, taking into account its terms of reference; and
 - (b) the committee has the competence to comply with the scientific use code and to assess projects against the requirements of the scientific use code.

- (2) In considering the application, the CEO must take into account:
 - (a) the provisions and requirements of the scientific use code to the extent that they apply to animal ethics committees; and
 - (b) any matter specified in the CEO guidelines; and
 - (c) any other matter the CEO considers relevant to the application.

52 Decision on application

- (1) After considering an application for accreditation, the CEO may:
 - (a) approve the application and accredit the applicant animal ethics committee; or
 - (b) refuse the application.
- (2) As soon as practicable after making a decision under subsection (1), the CEO must give a decision notice to the applicant.

53 Conditions of accreditation

- (1) Accreditation is subject to the conditions the CEO considers appropriate.
- (2) The CEO must specify, in the decision notice given under section 52(2), any conditions imposed on the accreditation.

54 Duration and renewal of accreditation

- (1) An accreditation continues in force for 3 years, subject to its suspension, cancellation or surrender.
- (2) Before the date of expiry, the accredited animal ethics committee may apply to the CEO for the renewal of the accreditation.
- (3) The application for renewal must:
 - (a) be in the approved form; and
 - (b) be supported by the information specified by the CEO; and
 - (c) be accompanied by any fee prescribed by regulation.
- (4) Sections 51 to 53 apply to an application for renewal of an accreditation as if it were an application for accreditation.

55 Variation of accreditation by agreement or on application

- (1) The CEO may, on the CEO's own initiative and with the agreement of the person holding the accreditation or on the application of that person:
 - (a) vary the accreditation of an animal ethics committee, its authority or its composition; or
 - (b) vary a condition of an accreditation.
- (2) As soon as practicable after making a decision on an application under subsection (1), the CEO must give a decision notice to the person holding the accreditation.

56 Variation, suspension or cancellation of accreditation by CEO

- (1) The CEO may take action under subsection (2) if satisfied that:
 - (a) an accreditation has been obtained improperly; or
 - (b) a person has contravened a condition of an accreditation; or
 - (c) an accredited animal ethics committee has contravened the scientific use code; or
 - (d) an accredited animal ethics committee has failed to give the CEO an annual report in accordance with section 73; or
 - (e) an accredited animal ethics committee has otherwise acted inappropriately.
- (2) The CEO may take any of the following actions:
 - (a) vary a condition of the accreditation;
 - (b) suspend the accreditation;
 - (c) cancel the accreditation.
- (3) Before taking action under subsection (2), the CEO must:
 - (a) notify the person holding the accreditation of the proposed action and the reasons for it; and
 - (b) allow that person a reasonable opportunity to make representations about the proposed action within a reasonable period specified in the notice.

- (4) As soon as practicable after making a decision to take action under subsection (2), the CEO must give a decision notice to the person holding the accreditation.

57 Surrender of accreditation

A person holding an accreditation may, by written notice given to the CEO, surrender the accreditation.

58 Accreditation not transferable

An accreditation under this Part is not transferable.

Division 4 Project oversight and code requirements

59 Application for project approval

- (1) An application for a project approval may be made to an accredited animal ethics committee by:
- (a) a registered person; or
 - (b) the chief investigator for the project acting under the authority of a registered person.
- (2) The application must be in the form required by the animal ethics committee.
- (3) The animal ethics committee may require the applicant to provide any additional information the committee considers necessary to enable the committee to determine whether or not to approve the project.

60 Authority to act

An animal ethics committee must not deal with an application that is outside its terms of reference.

61 Consideration of application

- (1) An accredited animal ethics committee must not grant a project approval unless satisfied that:
- (a) the applicant undertaking the project is a fit and proper person; and
 - (b) the person or persons undertaking the project have the competence to comply with the scientific use code.

- (2) In considering the application, the animal ethics committee must take into account:
 - (a) the requirements of the scientific use code; and
 - (b) any matter specified in the CEO guidelines; and
 - (c) any other matter the committee considers relevant to the application.
- (3) After considering the application, the animal ethics committee may:
 - (a) approve the application and the project; or
 - (b) refuse the application.

62 Conditions of project approval

A project approval is subject to the conditions the accredited animal ethics committee considers appropriate.

63 Duration and renewal of project approval

- (1) A project approval continues in force for a period determined by the accredited animal ethics committee and is subject to the project approval's variation, suspension, cancellation or surrender.
- (2) Before the date of expiry, the registered person or the chief investigator (acting under the authority of the registered person) may apply to the animal ethics committee for the renewal of the project approval.
- (3) The application must be in the form required by the animal ethics committee.
- (4) Sections 60 to 62 apply to an application for renewal of a project approval as if it were an application for project approval.

64 Variation of project approval by agreement or on application

An accredited animal ethics committee may vary its approval of a project, a condition of its approval or the terms of reference of the project if:

- (a) the registered person for the project consents to the variation; or
- (b) the variation is requested by the registered person or the chief investigator for the project acting with the authority of the registered person.

65 Variation, suspension or cancellation of project approval by committee

- (1) An accredited animal ethics committee may take action under subsection (2) if satisfied that:
 - (a) a project approval has been obtained improperly; or
 - (b) a person acting under a project approval has contravened a condition of the approval; or
 - (c) a person acting under a project approval has contravened the scientific use code; or
 - (d) a person acting under a project approval has otherwise acted inappropriately.
- (2) The animal ethics committee may take any of the following actions:
 - (a) vary a condition of the project approval;
 - (b) suspend the project approval;
 - (c) cancel the project approval.
- (3) Before taking action under subsection (2), the animal ethics committee must:
 - (a) notify the registered person of the proposed action and the reasons for it; and
 - (b) allow the registered person a reasonable opportunity to make representations about the proposed action within a reasonable period specified in the notice.
- (4) As soon as practicable after making a decision to take action under subsection (2), the animal ethics committee must give a decision notice to the registered person.

66 Automatic suspension or cancellation of project approval

- (1) If a person's registration is suspended, any approval of a project of the person or the person's chief investigator is also suspended while the registration remains suspended.
- (2) If a person's registration is cancelled or surrendered, any approval of a project of the person or the person's chief investigator is also cancelled or surrendered.

67 Surrender of project approval

A registered person may, by written notice given to an accredited animal ethics committee, surrender a project approval.

68 Transferability of project approval

- (1) A project approval is transferable with the approval of an accredited animal ethics committee.
- (2) A chief investigator may not transfer a project approval without the consent of the registered person.
- (3) An application to an accredited animal ethics committee for approval to transfer a project approval must be in a form required by the accredited animal ethics committee.
- (4) Sections 60 to 62 apply to an application for the approval of the transfer of a project approval as if it were an application for project approval.

69 Offences relating to project approval

- (1) A person commits an offence if:
 - (a) the person is a registered person; and
 - (b) the person intentionally:
 - (i) uses an animal for scientific purposes; or
 - (ii) allows an animal to be used for scientific purposes; and
 - (c) there is no project approval in force for the use.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) A person commits an offence if:
 - (a) the person is a registered person; and
 - (b) the person intentionally:
 - (i) uses an animal for scientific purposes; or
 - (ii) allows an animal to be used for scientific purposes; and
 - (c) there is a project approval in force for the use; and

- (d) the use results in a contravention of the project approval or its conditions and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (3) Strict liability applies to subsections (1)(a) and (c) and (2)(a) and (c).

70 Offence to contravene codes

- (1) A person must comply with the scientific use code and any applicable code of practice adopted or prescribed by regulation, if the person is:

- (a) using an animal for scientific purposes; or
(b) allowing an animal to be used for scientific purposes.

- (2) A person commits an offence if:

- (a) the person intentionally:
(i) uses an animal for scientific purposes; or
(ii) allows an animal to be used for scientific purposes; and
(b) the use of the animal results in a contravention of the scientific use code or an applicable code of practice adopted or prescribed by regulation and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

Division 5 Other matters

71 Registers

- (1) The CEO must keep:
(a) a register of persons registered under this Part; and
(b) a register of accredited animal ethics committees under this Part.

- (2) The registers must contain the following information:
 - (a) for registered persons – the name and contact details of each registered person;
 - (b) for accredited animal ethics committees – the terms of reference and contact details of each accredited animal ethics committee.
- (3) The registers may contain other information the CEO considers appropriate.
- (4) A register must not include the names or contact details of members of accredited animal ethics committees.
- (5) The CEO must:
 - (a) keep and make the registers available for inspection, free of charge, by the public during normal business hours at the Agency's head office; and
 - (b) allow a person to take extracts, free of charge, from the registers; and
 - (c) give a person a copy of a register, or a part of it, on payment of any fee prescribed by regulation.

72 Annual report – registered persons

- (1) A registered person must give an annual report to the CEO in accordance with subsections (3) and (4) for each calendar year, or part of a calendar year, for which the person is registered.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) The report must include:
 - (a) the following information in relation to the calendar year, or the part of the calendar year, to which it relates:
 - (i) prescribed information about the animals used, or allowed to be used, for scientific purposes;
 - (ii) prescribed information about the activities performed in connection with the registration;
 - (iii) prescribed information about any complaints received by the registered person in relation to those activities, including the steps taken by the registered person to

deal with any such complaint and any outcome from a complaint achieved during the reporting period; and

- (b) any other information prescribed by regulation.
- (4) The registered person must give the annual report to the CEO within the later of:
 - (a) 5 months after the end of the calendar year; or
 - (b) any longer period allowed by the CEO.

73 Annual reports – accredited animal ethics committees

- (1) An accredited animal ethics committee must give an annual report to the CEO in accordance with subsections (2) and (3) for each calendar year, or part of a calendar year, for which the committee is accredited.
- (2) The report must include:
 - (a) prescribed information about each project approval granted by the animal ethics committee during the calendar year; and
 - (b) prescribed information about any complaints received by the animal ethics committee during the calendar year in relation to any activities conducted under a project approval granted by the committee, including the steps taken by the committee to deal with any such complaint and any outcome received during the reporting period; and
 - (c) any other information prescribed by regulation.
- (3) The accredited animal ethics committee must give the annual report to the CEO within the later of:
 - (a) 5 months after the end of the calendar year; or
 - (b) any longer period allowed by the CEO.

74 Registered person must report contraventions

- (1) A registered person must report to the CEO and to the accredited animal ethics committee any conduct that the person believes on reasonable grounds contravenes this Part.
- (2) The report to the CEO and to the accredited animal ethics committee must be:
 - (a) made within 7 days after the person forms the belief; and

(b) made in the prescribed manner, if any.

(3) A person commits an offence if:

(a) the person is a registered person; and

(b) the person fails to make a report to the CEO and to the accredited animal ethics committee in accordance with subsections (1) and (2).

Maximum penalty: 100 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

75 Improvement notice

(1) This section applies if an authorised officer reasonably believes that a person:

(a) is contravening or has contravened a provision of the scientific use code or a requirement of an accredited animal ethics committee; or

(b) has contravened a provision of the scientific use code or a requirement of an accredited animal ethics committee in circumstances that make it likely that the contravention will continue or be repeated; or

(c) is performing or has performed an activity that unreasonably threatens the welfare of an animal.

(2) The authorised officer may issue a notice (an **improvement notice**) requiring the person within the time specified in the notice:

(a) to remedy the contravention; or

(b) to prevent a likely contravention from occurring; or

(c) to remedy the things, circumstances or activities causing the contravention or likely contravention; or

(d) to take other action specified in the improvement notice that the authorised officer considers reasonably necessary for the protection or improvement of an animal's welfare.

(3) An improvement notice may be issued to:

(a) a registered person; or

(b) a person engaged by a registered person.

- (4) An improvement notice must contain any information prescribed by regulation.
 - (5) An authorised officer may vary or cancel an improvement notice if the authorised officer considers that it is appropriate to do so.
 - (6) A person given an improvement notice must comply with the notice.
 - (7) A person commits an offence if:
 - (a) the person is given an improvement notice; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in a contravention of the improvement notice and the person is reckless in relation to that result.
- Maximum penalty: 100 penalty units.
- (8) Strict liability applies to subsection (7)(a).
 - (9) An improvement notice may include recommendations.
 - (10) It is not an offence to fail to comply with a recommendation in an improvement notice.

76 Review by Civil and Administrative Tribunal

- (1) The Civil and Administrative Tribunal has jurisdiction to review a decision (a **reviewable decision**) specified in Schedule 1.
- (2) An **affected person**, for a reviewable decision, is the person specified in Schedule 1 for the decision.
- (3) An affected person for a reviewable decision may apply to the Tribunal for review of the decision.

Note for section 76

The Northern Territory Civil and Administrative Tribunal Act sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews.

Part 5 Monitoring programs and enforcement

Division 1 Preliminary matters

77 Interpretation

- (1) A reference in this Part to an occupier of premises includes a reference to a person who an authorised officer believes on reasonable grounds to be an occupier of the premises or the person in charge of the premises.
- (2) A reference in this Part to premises includes a reference to:
 - (a) a motor vehicle; and
 - (b) a trailer or caravan; and
 - (c) an aircraft; and
 - (d) a boat or other vessel; and
 - (e) a train or rolling stock on or for use on a railway.
- (3) For this Part, an animal or thing is ***connected with an offence*** if:
 - (a) it is an animal or thing in relation to which the offence is being or has been committed; or
 - (b) it is likely to provide evidence of the commission of the offence; or
 - (c) it was used or intended to be used for the purpose of committing the offence.

Division 2 Monitoring programs

78 CEO to develop programs

- (1) The CEO may develop a program (a ***monitoring program***) under which authorised officers may monitor:
 - (a) compliance with a code of practice; or
 - (b) compliance with the scientific use code.

- (2) The CEO must, before finalising the development of a monitoring program, publish a notice about the proposed program:
 - (a) in a newspaper circulating generally throughout the Territory;
and
 - (b) on the Agency's website.
- (3) The notice must:
 - (a) identify the requirements or provisions of any code of practice or scientific use code to which the proposed monitoring program relates; and
 - (b) specify where copies of the proposed program may be inspected; and
 - (c) state that any person may comment on the proposed program;
and
 - (d) specify the method for giving comments; and
 - (e) specify the period, which must be at least 28 days, during which comments may be given.
- (4) The CEO must ensure that a copy of the proposed monitoring program is, during the period mentioned in subsection (3)(e), kept and made available for inspection, free of charge, by the public during normal business hours at:
 - (a) the Agency's head office; and
 - (b) any other place the CEO considers appropriate.
- (5) The CEO may, by *Gazette* notice, adopt the monitoring program, with or without variation, after considering any comments submitted under subsection (3) and any other matters the CEO considers appropriate.
- (6) The CEO may vary an adopted monitoring program by following the procedure for developing, publishing and adopting a monitoring program under this section.
- (7) The CEO must ensure that a copy of the most recent version of a monitoring program:
 - (a) is kept and made available for inspection, free of charge, by the public during normal office hours at the Agency's head office; and

(b) is published on the Agency's website.

Division 3 Functions and powers of authorised officers

79 Specific function relating to monitoring programs

An authorised officer must, as required by the CEO, perform the functions specified in a monitoring program.

80 Requirement to report suspected offences

If an authorised officer believes on reasonable grounds that an offence against this Act has been, is being or is likely to be committed, the authorised officer must report the matter to the CEO as soon as practicable.

81 Power to require name and address

(1) An authorised officer may require a person to state the person's name and address if the authorised officer believes on reasonable grounds that the person has committed, is committing, or is about to commit, an offence against this Act.

(2) A person commits an offence if the person contravenes a requirement given under subsection (1).

Maximum penalty: 50 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) Subsection (2) does not apply if:

(a) the authorised officer did not produce the officer's identity card for inspection by the person if asked; or

(b) the authorised officer did not, before giving the requirement, warn the person that failure to comply with the requirement is an offence.

Note for subsection (4)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

82 Exercise of powers

(1) An authorised officer has the powers necessary to perform the officer's functions under this Act.

(2) An authorised officer may use reasonable force and assistance in exercising a power or performing a function under this Act.

83 Power of entry

- (1) An authorised officer may enter premises:
 - (a) with the consent of the occupier obtained under section 84; or
 - (b) under a search warrant issued under section 85; or
 - (c) without the occupier's consent or the authority of a warrant if justified under subsection (2).
- (2) The entry is justified without the consent or warrant if:
 - (a) the entry is to the surrounding area or yard of any building, or any other place that does not constitute a building, and the officer is entering to determine whether an animal is suffering; or
 - (b) the officer believes on reasonable grounds that the premises are being used for greyhound racing, or any training or other practice or purpose in relation to greyhound racing, and the entry is undertaken at a reasonable time; or
 - (c) the entry is to premises where a registered person is keeping or using animals for scientific purposes and the entry is undertaken at a reasonable time; or
 - (d) an animal welfare direction has been issued to the occupier and the entry is made to check compliance with the direction; or
 - (e) without limiting paragraphs (a) to (d), the officer believes on reasonable grounds that the circumstances are so serious and urgent as to require the immediate exercise of a power under this Division.
- (3) An authorised officer must give an occupier at least 48 hours advance notice of the officer's intention to enter the premises to conduct an inspection unless:
 - (a) the officer is acting under a search warrant; or
 - (b) the officer is acting under subsection (2)(a) or (c); or
 - (c) the occupier agrees to a shorter notice period.
- (4) However, before acting under subsection (2)(a), the authorised officer must take reasonable steps to contact an occupier of the premises about the inspection.

- (5) Subsection (3) does not apply to the following:
- (a) a motor vehicle;
 - (b) a trailer or caravan;
 - (c) an aircraft;
 - (d) a boat or other vessel;
 - (e) a train or rolling stock on, or for use on, a railway.
- (6) The amount of any reasonable expenses incurred in gaining access to premises may be recovered by the Territory from the occupier of the premises as a debt owed to the Territory.

84 Consent to entry

- (1) An authorised officer seeking an occupier's consent to enter premises must:
- (a) show the officer's identity card to the occupier; and
 - (b) give the occupier the reasons why the entry is sought; and
 - (c) inform the occupier that the occupier may refuse to give consent.
- (2) An authorised officer is not entitled to remain on premises if the authorised officer does not show the identity card to an occupier of those premises.
- (3) Having entered premises, an authorised officer may remain on the premises for as long as is reasonably necessary to enable the officer to perform the officer's functions.
- (4) This section does not affect any powers a police officer may exercise under another law.

85 Application for and issue of warrant

- (1) An authorised officer may apply to a justice of the peace for a search warrant to enter premises:
- (a) by appearing in person before the justice of the peace; or
 - (b) if it is not practicable to appear in person – by telephone, radio or other means of communication.

- (2) If the justice of the peace is satisfied that there are reasonable grounds to permit the authorised officer to enter the premises, the justice may issue a warrant directed to the authorised officer.
- (3) If the justice of the peace issues a warrant on an application made under subsection (1)(b), the justice must:
 - (a) complete and sign the warrant (the **original warrant**); and
 - (b) record on the original warrant the reasons for issuing it; and
 - (c) inform the authorised officer by telephone or radio or other means of communication of its terms.
- (4) When informed of the terms of the warrant under subsection (3)(c), the authorised officer must, as soon as practicable:
 - (a) complete 2 copies of a form of warrant in the terms provided by the justice of the peace; and
 - (b) write on each copy the name of the justice of the peace and the date and time of the issue of the original warrant; and
 - (c) forward one copy to the justice of the peace.
- (5) The authorised officer may use the remaining copy of the warrant to exercise the powers granted by the original warrant.
- (6) If the justice of the peace is satisfied, after comparing the forwarded copy with the original warrant, that the copy is in substance identical to the original warrant, the justice must certify the copy as being in substance identical to the original warrant.

86 Effect and term of warrant

- (1) A warrant permits the authorised officer to whom it is directed, and any person assisting the authorised officer, to:
 - (a) enter the premises specified in the warrant; and
 - (b) exercise the powers of an authorised officer under this Act.
- (2) A warrant remains in force for 1 month from its date of issue.

87 Entry on Aboriginal land

The power of an authorised officer to enter premises may be exercised under this Act, despite:

- (a) the premises being Aboriginal land as defined in section 3 of the *Aboriginal Land Act*; and

- (b) the officer not holding a permit under that Act to enter or remain on Aboriginal land.

88 Powers of inspection

- (1) An authorised officer who enters premises under this Act may inspect the premises to the extent reasonably required for the administration, operation or enforcement of this Act.
- (2) The authorised officer may do any of the following during an inspection:
 - (a) examine any animal on the premises;
 - (b) inspect anything on the premises;
 - (c) take copies of, or extracts from, documents on the premises;
 - (d) take photographs or make films or video recordings of the premises or animals or things on the premises;
 - (e) bring onto the premises and use any equipment or other thing that is reasonably necessary to enable the officer to exercise the officer's powers under this Act;
 - (f) seize animals or things that the officer believes on reasonable grounds are connected with an offence;
 - (g) require a person on the premises to do any of the following:
 - (i) answer questions asked by the officer;
 - (ii) produce documents to the officer;
 - (iii) give the officer reasonable help to exercise the officer's powers under this Act.
- (3) A person given a requirement under subsection (2)(g) must take reasonable steps to comply with the requirement.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

89 Reports

- (1) If an authorised officer enters commercial premises with an occupier's consent obtained under section 84, the officer must give the occupier a written report about the inspection conducted under section 88.

- (2) The report must be given not later than 30 days after the date of the inspection and contain:
 - (a) a description of the inspection; and
 - (b) a description of the action taken by the authorised officer or the CEO as a result of the inspection; and
 - (c) any comments reasonably requested by the occupier about other matters connected with the welfare of animals kept on the premises; and
 - (d) any other comments the authorised officer considers appropriate and relevant to the welfare of the animals kept on the premises.

90 Power to alleviate suffering

- (1) This section applies if an authorised officer believes on reasonable grounds that:
 - (a) an animal has not been provided with appropriate or sufficient food or drink; or
 - (b) an animal is so severely injured, diseased or overworked, or in such a poor physical condition, that it is necessary for the animal to be provided with veterinary treatment; or
 - (c) an animal is being treated in a way that is likely to cause or contribute to it suffering.
- (2) The authorised officer may take any action the officer considers necessary to alleviate the animal's suffering or to provide for its reasonable care.
- (3) Without limiting subsection (2), the following actions may be taken:
 - (a) providing the animal with food or drink;
 - (b) seizing the animal and removing it to a place the officer considers appropriate;
 - (c) giving the person in control of the animal a written notice requiring the person to obtain veterinary treatment for the animal within a specified period;
 - (d) authorising another person to take action the officer considers appropriate and specifying or approving the action.

- (4) The authorised officer may also require a person in control of an animal or otherwise required to take action under this section to do any of the following:
- (a) give the officer a report, within a specified period, about action taken to care for the animal or to comply with a requirement imposed by the officer;
 - (b) be available at a specified time and place to present the animal for inspection by the officer;
 - (c) be available at a specified time and place to answer questions about the welfare of the animal.
- (5) The authorised officer may require the person to include in a report mentioned in subsection (4)(a):
- (a) the name and contact details of any veterinarian who examined the animal; and
 - (b) the nature of any treatment to the animal provided by a veterinarian and the date it was provided.
- (6) A person who is given a notice under subsection (3)(c) or is subject to a requirement under subsection (4) must comply with the notice or requirement.
- (7) A person commits an offence if:
- (a) the person is given a notice under subsection (3)(c) or is subject to a requirement under subsection (4); and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in a contravention of the notice or the requirement, as the case may be, and the person is reckless in relation to that result.
- Maximum penalty: 100 penalty units.
- (8) Strict liability applies to subsection (7)(a).
- (9) If an authorised officer acts under this section, the Territory may recover the reasonable costs incurred in so acting from a person in control of the animal as a debt owed to the Territory.

91 Power to destroy an animal

- (1) Subject to subsection (4), an authorised officer may destroy an animal, or cause it to be destroyed, if the officer believes on reasonable grounds that:
 - (a) the animal is so severely injured, or diseased, or in such poor physical condition that it is cruel to keep it alive; and
 - (b) the animal:
 - (i) would not otherwise be destroyed; or
 - (ii) would be destroyed in a way that is likely to cause or contribute to unnecessary suffering.
- (2) The destruction of the animal must be done in a way that causes the animal to die quickly and without unnecessary suffering.
- (3) Before acting under subsection (1), the authorised officer may first remove the animal to a place the officer considers appropriate for the purpose.
- (4) The authorised officer must not act under subsection (1) unless:
 - (a) a person in control of the animal consents; or
 - (b) a person in control of the animal refuses or fails to consent and the officer believes on reasonable grounds that immediate action should be taken under that subsection; or
 - (c) the officer has been unable to identify, or to make contact with, a person in control of the animal after having taken reasonable steps to do so; or
 - (d) the officer is a veterinarian.
- (5) Before acting under subsection (4)(b) or (c), the authorised officer must first take reasonable steps to contact a veterinarian to obtain:
 - (a) information about the option of a veterinarian attending to destroy the animal within a reasonable period; or
 - (b) advice and guidance on the steps to be taken by the authorised officer to destroy the animal.
- (6) If an authorised officer acts under this section, the Territory may recover the reasonable costs incurred in so acting from a person in control of the animal as a debt owed to the Territory.

92 Animal welfare direction

- (1) An authorised officer may issue a written direction (an **animal welfare direction**) to a person in control of an animal if the officer believes on reasonable grounds that:
 - (a) the person has committed, is committing, or is about to commit, an offence in relation to the animal; or
 - (b) the animal is not being cared for properly; or
 - (c) the animal is experiencing undue suffering; or
 - (d) the animal requires veterinary treatment; or
 - (e) the animal is being used for work when it is not appropriate for it to be used for work; or
 - (f) the animal's welfare is being adversely affected and, in the circumstances, action under this section is reasonably justified.

- (2) An animal welfare direction may require the person to whom the direction is given to do any of the following:
 - (a) care for, or treat, the animal in a specified way;
 - (b) provide the animal with specified rest, exercise, food, drink, shelter or treatment;
 - (c) consult a veterinarian about the animal's physical condition within a specified period;
 - (d) move the animal to another specified place;
 - (e) not move the animal from the place where the animal is at the time that the direction is given;
 - (f) take other specified action, within a specified period, that the authorised officer considers reasonably necessary for the protection or improvement of the animal's welfare.

- (3) Without limiting subsection (2), an animal welfare direction may require the person to whom the direction is given to do any of the following:
 - (a) give the authorised officer a report, within a specified period, about action taken to care for the animal or to comply with a requirement imposed as part of the animal welfare direction;

- (b) be available at a specified time and place to present the animal for inspection by the authorised officer;
 - (c) be available at a specified time and place to answer questions about the welfare of the animal.
- (4) The authorised officer may require the person to include in a report mentioned in subsection (3)(a):
- (a) the name and contact details of any veterinarian who examined the animal; and
 - (b) when the veterinarian provided any treatment to the animal.
- (5) An animal welfare direction may be given in conjunction with any action taken under another provision of this Act.
- (6) A person given an animal welfare direction must comply with the direction.
- (7) A person commits an offence if:
- (a) the person is given an animal welfare direction; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in a contravention of the direction and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units.

- (8) Strict liability applies to subsection (7)(a).

Division 4 Dealing with seized animals and things

93 Definition

In this Division:

person entitled, in relation to an animal or thing, means any 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 possess the animal or thing.

94 CEO to keep and care for seized animal or thing

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

95 Retention of animal or thing seized under section 88(2)(f)

- (1) If an animal or thing is seized under section 88(2)(f), the CEO must deal with it under this section.
- (2) The CEO 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 being commenced for an offence with which it is connected;
 - (b) the CEO decides that a person should not be prosecuted for an offence with which the animal or thing is connected;
 - (c) a prosecution for an offence with which the animal or thing is connected, and all proceedings and appeals relating to the prosecution, have been finally determined;
 - (d) a court makes a return or disposal order for the animal or thing.
- (3) When the CEO's authority to retain the animal or thing ceases, the CEO must deal with it in accordance with section 97.

96 Retention of animal seized under section 90

- (1) If an animal is seized under section 90(3)(b), the CEO must deal with it under this section.
- (2) However, if the CEO believes on reasonable grounds that the animal is connected with an offence, the CEO may instead deal with the animal under section 95.
- (3) The CEO may retain the animal for as long as the CEO 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 CEO must deal with it under section 97.

97 Animal or thing to be returned to person entitled

- (1) If required by section 95(3) or 96(4) to deal with an animal or thing under this section, the CEO must:
- (a) deal with the animal or thing in accordance with any order made by a court concerning the return or disposal of the animal or thing; or
 - (b) return the animal or thing to a person who the CEO believes on reasonable grounds is a person entitled to it.
- (2) However, the CEO may instead deal with the animal or thing under section 98 if:
- (a) the CEO 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) its owner, or another person with a legal right to sell it, authorises the CEO, in writing, to deal with it under section 98.

98 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 CEO may do any of the following as the CEO considers appropriate:
- (a) sell the animal or thing;
 - (b) give the animal or thing to a charitable organisation;
 - (c) if it is of use to the Agency – retain the animal or thing;
 - (d) if it is of use to another Agency – give the animal or thing 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), a person issued a reimbursement order under section 101 is entitled to be reimbursed, out of the proceeds of sale, for any seizure and management costs incurred by a person for the animal or thing that have not been reimbursed.

- (3) Any balance of the proceeds of sale must be paid:
- (a) to the owner or another person who is legally entitled to those proceeds; or
 - (b) to the Central Holding Authority if:
 - (i) the CEO is unable to find a person mentioned in paragraph (a) after taking all reasonable steps to do so; or
 - (ii) the animal or thing has been forfeited to the Territory.
- (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 CEO must deal with the animal, thing or proceeds in accordance with the order.

99 Return or disposal orders

- (1) This section applies if an animal or thing:
- (a) is seized under this Act; and
 - (b) is not forfeited to the Territory; and
 - (c) has not been sold or disposed of under section 98.
- (2) The CEO or a person entitled to the animal or thing may apply to a court to make a return or disposal order.
- (3) The order may be made by:
- (a) if the person entitled to the animal is a youth and the value of the animal or thing is within its jurisdictional limit – the Youth Justice Court; or
 - (b) if the value of the animal or thing is within its jurisdictional limit – the Local Court; or
 - (c) the court hearing any charge for an offence with which the animal or thing is connected; or
 - (d) in any other case – the Supreme Court .
- (4) An order may be made under subsection (3)(a), (b) or (d) whether or not a person is charged with an offence with which the animal or thing is connected.

- (5) An order may be made under subsection (3)(c):
 - (a) as an interim order or on the determination of the proceedings for the offence; and
 - (b) whether or not a person is found guilty of an offence.
- (6) If a person is charged with an offence against this Act with which the animal or thing is connected:
 - (a) an application for an order may be transferred to the court hearing the charge from another court; and
 - (b) the court has the jurisdiction to hear and determine the matter.

Division 5 Recovery of seizure and management costs

100 Meaning of *seizure and management costs*

- (1) If an animal or thing is seized under this Act, the ***seizure and management 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 that the animal is provided with an appropriate level of care, including:
 - (i) providing food or drink; and
 - (ii) alleviating any suffering;
 - (d) destroying the animal;
 - (e) for a thing – storing or looking after the thing;
 - (f) returning, or selling or disposing of, the animal or thing in accordance with this Act.
- (2) If an authorised officer takes action under section 90 in relation to an animal, other than seizing it under section 90(3)(b), the seizure and management costs for the animal are the reasonable costs incurred in taking the action.

101 Order for reimbursement of seizure and management costs

- (1) This section applies if:
 - (a) an animal or thing is seized under this Act or an authorised officer takes action under section 90 in relation to an animal; and
 - (b) a person incurs seizure and maintenance costs for the animal or thing.
- (2) The person who incurs seizure and maintenance costs may apply to a court for an order that a person in charge of the animal or thing reimburse the applicant for seizure and management costs incurred by the applicant that have not been paid under another provision of this Act
- (3) The order may be made by the court mentioned in section 99(3) and section 99(4), (5) and (6) apply to the order.
- (4) The court must not make the order unless satisfied that, in the circumstances:
 - (a) the seizure of the animal or thing, or the taking of action under section 90, was reasonable; and
 - (b) it is reasonable to require the person against whom the order is sought to pay the seizure and management costs.
- (5) This section does not limit any other right of recovery that may be available under another provision of this Act.
- (6) In this section:

person in charge, in relation to an animal or thing that was seized or in respect of which action was taken under section 90, also includes:

- (a) for an animal – a person who was in charge of the animal when it was seized or the action was taken; and
- (b) for a thing:
 - (i) an owner of the thing; and
 - (ii) a person who possesses the thing or had possession of the thing when it was seized.

Part 6 Miscellaneous matters

102 Protection from liability

- (1) A designated person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act.
- (2) Subsection (1) does not affect a liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

103 Unauthorised disclosure of confidential information

- (1) A person commits an offence if:
 - (a) the person obtains information in the course of performing functions connected with the administration of this Act; and
 - (b) the information is confidential information and the person has knowledge of that circumstance; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in the disclosure of the information and the person is reckless in relation to that result.

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

- (2) Strict liability applies to subsection (1)(a).
- (3) Subsection (1) does not apply if:
 - (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or

- (b) the information is otherwise available to the public.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code). In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

104 Obstruction of designated persons

- (1) A person commits an offence if:
- (a) the person intentionally obstructs, hinders or resists another person; and
 - (b) the other person is a designated person; and
 - (c) the designated person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Strict liability applies to subsection (1)(b).

105 Misleading information

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person; and
 - (b) the other person is a designated person; and
 - (c) the information is misleading and the person has knowledge of that circumstance; and
 - (d) the designated person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) A person commits an offence if:
- (a) the person intentionally gives a document to another person; and
 - (b) the other person is designated person; and

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- (c) the document contains misleading information and the person has knowledge of that circumstance; and
 - (d) the designated person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (3) Strict liability applies to subsections (1)(b) and (2)(b).
- (4) Subsection (2) does not apply if the person, when giving the document:
 - (a) draws the misleading aspect of the document to the designated person's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the designated person the information necessary to remedy the misleading aspect of the document.

Note for subsection (4)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

- (5) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

106 Falsely representing to be an authorised officer

A person commits an offence if:

- (a) the person intentionally represents, by words or conduct, that the person or another person is an authorised officer; and
- (b) the representation is false and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

107 Criminal liability of executive officer of body corporate

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body corporate commits an offence by contravening a declared provision and the officer was reckless about whether the contravention would happen; and

- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) Strict liability applies to subsection (1)(b).
- (3) In deciding whether the executive officer took, or failed to take, reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the officer took directed towards ensuring the following, to the extent the action is relevant to the contravention:
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's representatives, employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not affect the liability of the body corporate.
- (6) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the offence.
- (7) Without limiting any other defence available to the officer, an executive officer may rely on a defence that would be available to the body corporate if it were charged with the offence with which the executive officer is charged and, in so doing, the officer bears the same burden of proof that the body corporate would bear.

(8) In this section:

declared provision means:

- (a) section 12(3), 40(2), 44(3), 69(1) or (2), 70(2), 75(7), 104(1) or 105(1) or (2); or
- (b) a prescribed provision of the regulations.

108 Criminal liability of executive officer of body corporate – evidential burden of proof on defence

(1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) An offence against subsection (1) is an offence of absolute liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
 - (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent commission of the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) In deciding whether the defendant took, or failed to take, reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the defendant took directed towards ensuring the following, to the extent the action is relevant to the contravention:
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);

- (iii) the body corporate's representatives, employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) This section does not affect the liability of the body corporate.
- (7) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the offence.
- (8) Without limiting any other defence available to the officer, an executive officer may rely on a defence that would be available to the body corporate if it were charged with the offence with which the executive officer is charged and, in so doing, the officer bears the same burden of proof that the body corporate would bear.
- (9) In this section:
- declared provision*** means:
- (a) section 24(1), (2), (3), (4), (5), (6) or (7), 25(2), 32(1), (2) or (3) or 33(1); or
 - (b) a prescribed provision of the regulations.

109 Continuing offences

- (1) This section applies if a court has found a person guilty of an offence against this Act.
- (2) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 10 penalty units for each day during which the offence continues after the first day the offence is committed.

110 Aboriginal laws and customs

- (1) This Act recognises the right of Aboriginal communities to conduct cultural practices and hunting and fishing activities in accordance with their traditional laws and customs.

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- (2) It is a defence to a prosecution for an offence against section 24, other than subsection (3), and against section 25 if:
- (a) the person is an Aboriginal person; and
 - (b) the conduct complied with Aboriginal traditional law or custom.

111 Defences

- (1) It is a defence to a prosecution for an offence against this Act if the conduct constituting the offence, or an element of the offence, was:
- (a) engaged in to alleviate the suffering of an animal; and
 - (b) reasonable in the circumstances.
- (2) Subject to section 110, it is not a defence to a prosecution for an offence against this Act that the conduct constituting the offence, or an element of the offence, was in accordance with cultural, religious or traditional practices.

112 Alternative verdicts

The court may find a person not guilty of an offence for which the person was prosecuted but guilty of an alternative offence if:

- (a) the person was charged with an offence against a provision mentioned in the following Table; and
- (b) the court is not satisfied beyond reasonable doubt that the person committed the prosecuted offence; and
- (c) the court is satisfied beyond reasonable doubt that the person committed the offence specified in the Table as the alternative offence for the prosecuted offence.

Table Alternative offences

Prosecuted offence	Alternative offence
section 24(1) to (7)	23(1)

113 Immediate forfeiture in certain cases

- (1) An animal is forfeited to the CEO if:
- (a) a court finds a person guilty of an offence against this Act; and
 - (b) the offence was committed in relation to the animal; and

- (c) the person was a person in control of the animal at the time of the offence.
- (2) The CEO may do any of the following in relation to the forfeited animal as the CEO considers appropriate:
- (a) allow the owner to retain the animal, or return the animal to the owner, and cancel the forfeiture, subject to conditions as the CEO considers appropriate;
 - (b) sell the animal;
 - (c) give the animal to a charitable organisation;
 - (d) if it is of use to the Agency – retain the animal or thing;
 - (e) if it is of use to another Agency – give the animal or thing to that Agency;
 - (f) if it is not reasonable or practicable to do any of the things mentioned in paragraphs (a) to (e) – destroy the animal.
- (3) A person commits an offence if:
- (a) the person possesses an animal subject to a condition under subsection (2)(a); and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in a contravention of the condition and the person is reckless in relation to that result.
- Maximum penalty: 100 penalty units or imprisonment for 12 months.
- (4) Strict liability applies to subsection (3)(a).
- (5) If an animal is sold under subsection (2)(b), the CEO is entitled to be reimbursed out of the proceeds of sale for any seizure and management costs.
- (6) Any balance of the proceeds of sale under subsection (2)(b) must be paid to the Central Holding Authority.
- (7) This section does not limit the operation of section 114 in relation to the same offence.

114 Additional orders on finding of guilt – seizure of animals

- (1) The court may order that an animal be seized from a person if:
 - (a) it finds the person guilty of an offence against this Act; and
 - (b) the person is in control of the animal, whether or not the animal is connected with the offence.
- (2) If it makes the order, the court:
 - (a) may, on its own initiative, make a return or disposal order for the animal; and
 - (b) may make such other orders as it considers appropriate for the payment by the person of the seizure and management costs for the animal.

115 Additional orders on finding of guilt – future possession of animals

- (1) Subsection (2) applies if a court finds a person guilty of an offence against this Act.
- (2) The court may, subject to such conditions as the court considers appropriate, order that the person must not for the period specified in the order:
 - (a) own, possess or be in control of an animal; or
 - (b) allow an animal onto premises occupied by the person.
- (3) A person commits an offence if:
 - (a) the person is subject to an order under subsection (2); and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in a contravention of the order and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (4) Strict liability applies to subsection (3)(a).

116 Automatic ban for multiple offences

- (1) This section applies to a person who is found guilty of 3 or more offences against Part 3 within a period of 5 years or less.

- (2) Two or more offences joined in one complaint are taken to constitute one offence for the purpose of subsection (1).
- (3) Subject to subsection (4), the person is banned from being a person in control of an animal for a period of 5 years from the date of the finding of guilt in relation to the third offence, whether or not the person is found guilty of other offences on the same day charged on other complaints.
- (4) The court that finds the person guilty of an offence that gives rise to a ban under subsection (3) may, on application by the person, grant an exemption to the person in relation to the operation of that subsection.
- (5) The court may, subject to such conditions as the court considers appropriate, grant an exemption that applies:
 - (a) as a complete exemption; or
 - (b) in relation to a specified animal or animals, or a specified class or classes of animals.
- (6) A person commits an offence if:
 - (a) the person is subject to a ban under subsection (3) or a conditional exemption under subsection (5); and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in a contravention of the ban or the condition, as the case may be, and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (7) Strict liability applies to subsection (6)(a).

117 Time for commencing prosecutions

A prosecution under this Act must be commenced within 2 years after the date on which the offence is alleged to have occurred.

118 Authority to prosecute

- (1) Proceedings for an offence against this Act must not be commenced without the approval of:
 - (a) the CEO; or
 - (b) a person authorised by the CEO.

- (2) An approval may be given in relation to:
 - (a) a particular case; or
 - (b) a particular class of case.
- (3) A document purporting to be the approval of the CEO, or person authorised, is evidence of that approval.
- (4) Subsection (1) does not apply to a prosecution started by the Attorney-General or Director of Public Prosecutions.

119 Enforcement of orders to pay

An order under section 101 or 114 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.

120 Evidentiary certificate

In proceedings for an offence against this Act, a certificate purporting to be signed by the CEO and stating any of the following matters is evidence of the matter:

- (a) a specified person was an authorised officer having specified powers under this Act at a specified time;
- (b) a specified document was made, or a specified notice was given, at a specified time;
- (c) a specified person was not registered under this Act at a specified time;
- (d) a specified document was not given to the CEO within a specified period.

121 Power to conduct post-mortem examination

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

122 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may:
 - (a) prescribe fees for this Act; or

- (b) provide for the enforcement of a code of practice, including by providing that a contravention of the code is an offence against a regulation; or
- (c) provide for an offence against a regulation to be an offence of strict or absolute liability; or
- (d) subject to paragraph (e), provide for a fine not exceeding 200 penalty units for an offence against a regulation; or
- (e) for an offence against a regulation that is an offence of strict or absolute liability, provide for a fine not exceeding 100 penalty units; or
- (f) provide for the application, adoption or incorporation (with or without changes) of the whole or part of a document as in force or existing at a particular time or from time to time; or
- (g) exempt a person or class of person from complying with this Act or a specified provision of this Act; or
- (h) provide that this Act or a specified provision of this Act does not apply to or in relation to an animal or class of animal.

Part 7 Repeals and transitional matters

Division 1 Acts repealed

123 Acts repealed

The Acts specified in Schedule 2 are repealed.

Division 2 Transitional matters for Animal Protection Act 2018

124 Definitions

In this Division:

Authority means the Authority under the repealed Act (as constituted immediately before the commencement).

commencement means the commencement of section 123.

repealed Act means the *Animal Welfare Act* as in force immediately before the commencement.

125 Acts of Authority

- (1) A power exercised or action taken by the Authority under the repealed Act before the commencement is taken, after the commencement, to have been exercised or taken by the CEO.
- (2) The CEO may, for any process or proceeding commenced under the repealed Act and carried out or continuing after the commencement:
 - (a) exercise any power or take any action that the Authority would have been able to take; and
 - (b) adopt any findings, decisions or determinations of the Authority; and
 - (c) set aside any findings, decisions or determinations of the Authority

126 Offence provisions – before and after commencement

- (1) The offence provisions of the repealed Act continue to apply in relation to offences committed before the commencement.
- (2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (3) In this section:

offence provision means the provisions that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

127 Permits

- (1) A permit in force under Part 5, Division 3 of the repealed Act immediately before the commencement is taken to be a program approval granted by an accredited animal ethics committee under Part 4, Division 3 of this Act.
- (2) Subject to Part 4, Division 3 of this Act, the program approval remains in operation for the balance of the period for which the permit was granted under the repealed Act.

128 Officers

Persons holding office as animal welfare inspectors or animal welfare officers under the repealed Act immediately before commencement are taken to be authorised officers appointed under this Act.

129 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature:
 - (a) to address a matter arising because of the enactment of this Act; or
 - (b) to otherwise allow or facilitate the transition from the operation of the repealed Act to this Act.
- (2) The regulation may operate and have effect on a day earlier than the date the regulation commences but not earlier than the commencement of section 123.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expires 1 year after the commencement.

Part 8 Consequential amendments**130 Laws amended**

Schedule 3 amends the laws mentioned in it.

131 Expiry of Part

This Part expires on the day after it commences.

Schedule 1 Reviewable decisions and affected persons

section 76

Reviewable decision	Affected person
A decision of the CEO to refuse an application for registration under section 43	The applicant
A decision of the CEO on the conditions to be imposed in relation to a registration under section 44	The registered person
A decision of the CEO to refuse an application for the renewal of a registration under section 45	The registered person
A decision of the CEO to refuse an application for the variation of a registration or condition of a registration under section 46	The registered person
A decision of the CEO to vary, suspend or cancel a registration under section 47	The registered person
A decision of the CEO to refuse an application for accreditation under section 52	The applicant
A decision of the CEO on the conditions to be imposed in relation to an accreditation under section 53	The applicant
A decision of the CEO to refuse an application for the renewal of an accreditation under section 54	The applicant
A decision of the CEO to refuse an application for the variation of an accreditation or condition of an accreditation under section 55	The applicant
A decision of the CEO to vary, suspend or cancel an accreditation under section 56	The person holding the accreditation

Reviewable decision	Affected person
A decision of an authorised officer to issue an improvement notice under section 75, including any requirements contained in an improvement notice	The registered person and, if the case requires, another person to whom the notice was issued

Schedule 2 Repealed Acts

section 123

<i>Animal Welfare Act 1999</i>	Act No. 44 of 1999
<i>Animal Welfare Amendment Act 2004</i>	Act No. 24 of 2004
<i>Animal Welfare Amendment Act 2012</i>	Act No. 31 of 2012

Schedule 3 Laws amended

section 130

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Fines and Penalties (Recovery) Act</i>		
section 5, definition <i>law enforcement officer</i> , paragraph (g)	whole paragraph	(g) an authorised officer under the <i>Animal Protection Act</i> ;
<i>Fines and Penalties (Recovery) Regulations</i>		
Schedule 1	<i>Animal Welfare Act</i>	<i>Animal Protection Act</i>
<i>Firearms Act</i>		
section 11(2)(g)	welfare	protection
<i>Firearms Regulations</i>		
regulation 8, heading	welfare	protection
regulations 8 and 12(1)(a)(ii)	welfare (<i>all references</i>)	protection
<i>Livestock Regulations</i>		
Part 4A, heading	welfare	protection
<i>Veterinarians Act</i>		
section 26(1)(e) and Schedule 1, clause 3(1)(c)	<i>Welfare</i>	<i>Protection</i>
<i>Veterinarians Regulations</i>		
regulation 7(1)(e)	whole paragraph	(e) veterinary services carried out under a project under Part 4 of the <i>Animal Protection Act</i> ; or

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Schedule 2, clause 24	whole clause	
Schedule 2, clause 28(c)	<i>Welfare</i>	<i>Protection</i>
