



Criminal Code and Another Act (Stock) Amendment Bill 2014

Report No. 38
**Agriculture, Resources and Environment
Committee**
March 2014

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Acknowledgements

The committee thanks departmental officers, and the groups and individuals who provided submissions to the inquiry.

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Abbreviations

JAG	Department of Justice and Attorney-General
QPS	Queensland Police Service
QLS	Queensland Law Society
RSPCA	Royal Society for the Prevention of Cruelty to Animals

Chair's foreword

This report presents the findings from the committee's examination of the Criminal Code and Another Act (Stock) Amendment Bill 2014.

Stock theft and related offences are a blight on the State's hardworking primary producers.

The reforms that the amendments proposed in this Bill will achieve are long overdue. The Bill will significantly increase the deterrent effects of the penalties that apply under the Criminal Code for stock-related offences. The Bill will also restore the rights of stock owners and, through reforms to the *Police Powers and responsibilities Act 2000*, make the work of police on stock-related criminal matters more effective and efficient.

I commend this report to the House.

A handwritten signature in blue ink, appearing to read 'Ian Rickuss'.

Ian Rickuss MP

Chair

March 2014

Recommendation and points for clarification

Point for clarification:	10
The committee invites the Attorney-General and Minister for Justice to liaise with the Minister for Local Government, Community Recovery and Resilience to encourage remaining councils to adopt model animal impoundment laws.	10
Point for clarification:	10
The committee invites the Attorney-General or the Minister for Police to assure the House that police and other authorised officers will meet their general biosecurity obligations when searching for and mustering stock so as to minimise the spread of cattle ticks, invasive weeds, invasive animals and other biosecurity hazards.	10
Point for clarification:	11
The committee invites the Attorney-General or the Minister for Police to assure the House that police will endeavour to execute a forced muster order efficiently so as to minimise inconvenience for the property owner.	11
Point for clarification:	14
The committee invites the Attorney-General to inform the House what briefings his department will provide to officers of the Department of Agriculture, Fisheries and Forestry and other departments, and representatives of bodies representing landholders and stock owners, and what information will be provided to individual landowners, about the provisions contained in the Bill should the Bill be passed.	14
Recommendation 1	14
The committee recommends that the Criminal Code and Another Act (Stock) Amendment Bill be passed.	14

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.¹

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles.²

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of the consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

Fundamental legislative principles are defined in Section 4 of the [Legislative Standards Act 1992](#) as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The referral

On 11 February 2014, the Attorney-General, the Hon Jarrod Bleijie, introduced the Criminal Code and Another Act (Stock) Amendment Bill 2013. The Legislative Assembly referred the Bill to the Agriculture, Resources and Environment Committee for examination. The committee was given until Tuesday 25 March 2014 to table its report to the House, in accordance with SO 136(1).

The committee's processes

In its examination of the Bill the committee:

- identified and consulted with likely stakeholders on the Bill
- invited submissions on the Bill
- sought expert advice on possible FLP issues with the Bill
- Convened a public briefing by the Department of Justice and Attorney-General (JAG) and the Queensland Police Service (QPS)
- Sought further advice from JAG on issues raised in the submissions and possible FLP issues

A list of submitters is at **Appendix A**.

The officers who briefed the committee on 19 March 2014 are listed at **Appendix B**.

Appendix C provides a summary of issues raised in submission and advice on these issues provided by JAG.

¹ Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland as at 12 September 2013.

² Section 93 of the *Parliament of Queensland Act 2001*.

2. Examination of the Criminal Code and Another Act (Stock) Amendment Bill 2014

Policy objectives

According to the explanatory notes, the objectives of the Bill are to:

1. amend the Criminal Code to:
 - a. make improved provision for the disposal of stock which have been seized by police in connection with a charge of a stock offence
 - b. rename the 'Animal Valuers Tribunal' as the 'Animal Valuers Panel' to better reflect the non-judicial nature of animal valuer experts
 - c. increase the minimum fine amounts for certain stock offences
 - d. convert from dollars to penalty units the fine amounts for stock offences, and
2. amend the *Police Powers and Responsibilities Act 2000* to:
 - a. permit a magistrate or judge to make a forced muster order for the retrieval of stray stock in circumstances where the landowner onto whose land the stock have strayed is withholding permission for the stock owner to enter and retrieve the stock, and
 - b. enhance police search warrant powers with respect to investigations of stock offences.³

Background

As outlined in the explanatory notes, the Bill is designed to address the significant costs of stock-related offences to stock owners and costs to the Government through its expenditure on resources for stock-related criminal investigations and prosecutions.

According to the Queensland Police Service's 2011-12 Annual Statistical Review, there were 514 stock-related offences that year, with each offence potentially involving the expensive loss or damage to large numbers of stock.⁴ Others have commented that, during the three years from 2005-07, between 2300 and 4700 head of cattle were reportedly stolen annually, with only about a third of this stock ever recovered.⁵

Interest groups and stakeholders have advocated for change to Queensland's stock theft laws for a number of years. In January 2012, the former Attorney-General approved the formation of a Stock Working Group⁶ to review provisions of the Criminal Code and other Acts relating to stock.⁷ The group, chaired by former Justice of the Queensland Court of Appeal, Mr John Jerrard QC, reported its recommendations in March 2012. The membership of the group included: the Director of Public Prosecutions; officers from the Queensland Police Service Stock and Rural Crime Investigation Squad; and representatives from the Queensland Law Society (QLS), AgForce, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and Biosecurity Queensland.

Prompted by the recommendations of the report, JAG conducted a review of the provisions and penalty levels for stock related offences in the Criminal Code.

³ Criminal Code and Another Act (Stock) Amendment Bill 2014, Explanatory Notes, p.1.

⁴ Queensland Police Service, 2012, *Annual Statistical Review 2011-12*, p.7.

⁵ 'Queensland's \$2m cattle-rustling problem', *The Land*, 15 May 2008 edition. <http://www.theland.com.au/news/agriculture/agribusiness/general-news/queenslands-2m-cattlerustling-problem/770527.aspx>, <accessed 27 February 2014>.

⁶ The report filed by Mr John Jerrard QC on behalf of the Stock Working Group was provided to the committee by the Department of Justice and Attorney-General in correspondence dated 19 February 2014.

⁷ Explanatory Notes, p. 1.

The Criminal Code and Another Act (Stock) Amendment Bill 2014 gives effect to a number of the findings made by the Stock Working Group and JAG's subsequent review.

Following the Government's announcement of the proposed changes, major rural lobby group AgForce commented:

Losses from stock theft annually can be many millions of dollars and are a malicious impost on the rural sector.

We welcome the Government's moves to take a harder line on stock crimes and to give more power to law enforcement to convict perpetrators and protect stock owners.⁸

Key clauses of the Bill

The Bill's three parts (1- Preliminary, 2 - Amendment of Criminal Code, and 3 - Amendment of Police Powers and Responsibilities Act 2000) comprise 24 clauses.

In part 2, **clauses 4, 5, 6, 7, 8, 9, 10, and 11** amend the Criminal Code in order to change the fine references from dollar amounts to penalty units.

Clause 14 omits section 450E (Animals not tendered in certain cases) and replaces it with new chapters dealing with prescribed records, stock disposal orders and other procedural matters.⁹ These chapters include new sections 450E to 450EJ.

The new section 450E (Duty of police officer who seizes an animal connected with a charge) obliges a police officer who seizes an animal connected with a charge to cause an adequate prescribed record of the animal to be made, unless an adequate prescribed record of the animal is already available to the police officer. The police officer may cause the animal to be returned to its owner if the defendant does not object to its return and provided an adequate prescribed record of the animal has been made, or is otherwise available.¹⁰

Section 450EB (Application for stock disposal order) provides that a police officer or a crown prosecutor may apply to the District Court or the Magistrates Court for a stock disposal order for the sale of an animal that has been seized in connection with a charge in a proceeding that is ongoing.¹¹

Section 450EC (Affidavit to accompany application) provides that an application for a stock disposal order must be accompanied by an affidavit or affidavits setting out the information listed in the section.

Section 450ED (When order may be made if party disputes making of order) makes provision for the matters about which the court must first be satisfied before making a stock disposal order in circumstances where a party disputes the making of the order.

Section 450EE (Order if no dispute) provides that if no party disputes the making of the order, the court may make the order unless there is a good reason for not doing so.

Section 450EF (Content of order) provides for what a stock disposal order must contain. The order must identify the animal and direct the commissioner of the police service to sell the animal by

⁸ Smith, H. 2013, *AgForce Welcomes Stronger Stock Laws for Queensland*, Agforce Queensland, Media Release, 21 October. <http://www.agforceqld.org.au/file.php?id=2875&open=yes> <accessed 19 March 2014>.

⁹ Criminal Code and Another Act (Stock) Amendment Bill 2014, Explanatory Notes, p.5.

¹⁰ Explanatory Notes, p.5.

¹¹ Explanatory Notes, p.5.

auction at market value or in another way stated in the order. The order must direct that the net proceeds of the sale are paid into the court.

Section 450EG (Security for costs of keeping animal) provides that the court considering a stock disposal order application may order a party who successfully opposes the order, provide security for the costs of keeping the animal from the day of the application hearing to the conclusion of the criminal proceedings.

Section 450EH (Clear title to animal for sale under order) provides that a stock disposal order is sufficient authority for the commissioner of the police service to sell the animal and convey clear title in the animal.

Section 450EI (Unavailability of animal at trial) provides that a defendant's trial is not unfair merely because an animal is not available as an exhibit for the trial owing to its having been sold under a stock disposal order or returned to its owner under section 450E.

Section 450EJ (Effect of defendant not objecting to animal's return to its owner) provides that in a proceeding on the charge with which a seized animal is connected, the court cannot draw an inference adverse to the defendant from the fact that the defendant did not object to an animal's return to its owner.

Clause 15 amends section 450F (Animal valuers and valuations) under which the chief executive may appoint a person as an animal valuer and provides a regulation making power as to the constitution and operation of tribunals of animal; valuers. This clause also replaces the term 'tribunal' with 'panel' to more accurately reflect the non-judicial nature of the animal valuer experts.

Clause 16 omits section 450G (identification of animals and return to owners prior to tender in certain cases) which is made redundant by the new provisions to be inserted by clause 14.

Clause 17 increases the minimum penalties in section 468 (Injuring animals).

Clause 18 inserts new chapter heading 93 (Transitional provision for Criminal Code and Another Act (Stock) Amendment Act 2014). It also inserts new section 732 (tendering, return or disposal of stock) which applies the new stock disposal order regime provisions to proceedings for offences which are already on foot at the time of commencement of section 732.

Clauses 19-23 in Part 3 deal with the powers of police to deal with stock-related matters including forced muster orders and search warrants.

Clause 23 inserts new chapter 22A (Forced muster orders) containing new sections 789AA to 789AI which provide for a new type of order, namely a forced muster order.

Section 789AA (Application for forced muster order) provides that the owner of stock may apply to the Magistrates Court for a forced muster order for the muster and removal of stock which is on a place managed or controlled by another person.

Section 789AB (Affidavit to accompany application) provides that an application for a forced muster order must be accompanied by an affidavit or affidavits setting out the information listed in the section.

Section 789AC (Police officer wishing to give evidence at hearing) enables a police officer to give evidence and be cross-examined at the hearing of the forced muster application. To do so, the police officer must at least five days prior to the hearing file an affidavit containing information relevant to

the application and provide a copy of the affidavit to the applicant and the person managing or controlling the place. The police officer does not become a party to the proceedings.

Section 789AD (When order may be made) provides that the court may make a forced muster order if it is satisfied as to the matters listed.

Section 789AE (Content of order) provides for what a forced muster order must contain.

Section 789AF (Costs) provides that the court may make an order as to costs, or may reserve costs.

Section 789AG (Facilities at place of muster to be made available) provides that the person managing or controlling the place stated in the order, and who is provided with a copy of the order, must make available to the applicant, their assistants or agents or a police officer, facilities as reasonably needed in management of stock for mustering the stock. Contravention of the section is an offence.

Section 789AH (Compensation for damage) provides that if facilities at the place on which the forced muster takes place are damaged owing to action taken under the forced muster order, the owner of the facility is entitled to compensation from the applicant.

Section 789AI (Frustrating order or obstructing person acting under order) provides that a person who has knowledge of a forced muster order must not do an act or makes an omission with intent to frustrate action under the order, or obstruct a person acting under the order. Contravention of the section is an offence.

Clause 24 amends the dictionary in schedule 6 to insert a new definition of ‘forced muster order’ for the purposes of chapter 22A, and a new definition of ‘stock’ for the purposes of the Act.

Consultation

As indicated above, the provisions of the Bill were developed based on findings of the Stock Working Group which was formed in 2012 with representation from the police, Biosecurity Queensland, legal bodies and peak landholder groups.

A consultation copy of the Bill was provided by JAG to the Chief Judge, the Chief Magistrate, the Director of Public Prosecutions, QLS, the Bar Association of Queensland, Legal Aid Queensland, AgForce, the RSPCA and the National Farmers Federation.

The committee received two submissions on the Bill from QLS and AgForce. Both organisations were generally supportive of the Bill, indicating that the provisions reflected the findings of the Stock Working Group. The QLS submission made particular mention of the extensive review process for the development of this Bill and the opportunities provided by JAG for the society’s input.¹²

¹² Queensland Law Society, *Submission No. 1*, p.1.

Key Issues

The following key issues are discussed below: the new stock disposal order regime; the new forced muster order regime; provisions for the investigation of stock offences; changes to the Animal Valuers Tribunal; the review of penalties for stock offences; and implementation of the Bill.

New stock disposal order regime

The new stock disposal order regime was recommended by the Stock Working Group. The existing provisions enable the return to the owner pending the trial or the return to the owner and slaughter of animal pending trial with agreement from the defendant and complainant; and where an animal is returned by agreement for slaughter, the ears and hide must be kept for production at trial.

The Stock Working Group found that the existing Criminal Code provisions allowing for the return of an animal seized in connection with an offence to be problematic and unworkable. The main issue identified was that agreement of the defendant and complainant is not often forthcoming meaning that the QPS have the cost of agistment of stock, potentially for many years, whilst awaiting the outcome of the trial. Further the value of the animals can deteriorate over that time and, although retained by police for many years, the animals are not ever actually required to be produced at trial for the judge, jury or magistrate or, in fact, rarely required.

The Stock Working Group determined that there should be no requirement that any hide or skin, ear, or other part, be kept and produced for tendering as an exhibit. The group was of the view that rather than requiring the 'onerous' retaining of hides, skins, ears, or live animals for exhibit, a more modern alternative would be to allow for the valuing and photographing of stock for tendering in court as sufficient means of identification of the stolen stock and their markings.¹³ The Bill proposes amendments to the Criminal Code to give effect to these changes.

Firstly, the fact that an animal is stock and seized in connection with an offence must be comprehensively visually recorded by police. These visual recordings are then evidence the prosecution may rely on at trial to prove the animal's existence, markings and condition. The animal or its ears and hide would no longer need to be produced as evidence.

Secondly, where all parties agree, the animal may be returned to the person claiming ownership. If the parties do not agree about the return of the animal or if the owner or defendant cannot be located, the police or the Office of the Director of Public Prosecutions will have the option of applying to the court for a stock disposal order. That application might be made to the Magistrates Court or a judge of the District Court depending on where the offence is being dealt with. Notice of the application is given to all interested parties and, if the order is made by the court, it is authority for the Commissioner of Police to sell the animal at auction. The proceeds of the sale, minus the cost of sale, are then paid to the court where they remain until the proceedings for the criminal charges are at an end. The court in its criminal jurisdiction may then make orders under the *Court Funds Act 1973* to pay those funds out, as this is effectively the point at which ownership has been determined.

Issues raised in submissions

The QLS raised in their submission that the *Personal Property Securities Act 2009* and the Personal Property Securities Register may impact on the operation of the Bill, and suggested that that following issues should be considered:

- ensuring the register is checked to ascertain the identity of secure parties
- providing notice to parties regarding any potential order that might be made, and
- whether secured parties have a right to be heard on the order.¹⁴

¹³ Department of Justice and Attorney-General 2014, *Correspondence*, 19 February.

¹⁴ Queensland Law Society, *Submission No. 1*, p.2.

Advice from JAG

Proposed section 450EB requires that interested parties be notified of the application for a stock disposal order. This ensures that parties with an interest in the animal, including a person with a security interest under the Personal Property Securities Act 2009, are made aware of the situation and may be heard upon the stock disposal order application. The QPS affidavit accompanying the application must detail notification of third parties. As part of the process of notifying third parties, QPS procedure would include checking the Personal Properties Securities Register.

By virtue of that process, the QPS and the court are aware that third party interests exist in the animal. The court in making an order for payment out of the funds from the proceeds of sale of the animal is obliged to give priority to interests in the animal which existed at the time of the sale. This information would be advised to the court at the time the payment out of court order is sought, to ensure compliance with that obligation.¹⁵

New forced muster order regime

The Stock Working Group noted that there are currently no legislative provisions that allow either an owner of stock which have strayed onto another property, or police, to enter that property to retrieve the straying stock without the permission of the owner of the property. The group determined that disputes relating to the recovery of stock could be reduced by allowing applications to be made by a stock squad officer for an order for a forced muster of a property.

Consistent with the recommendations of the Stock Working Group, the Bill provides for the insertion of a new chapter 22A in the *Police Powers and Responsibilities Act 2000* which allows for the stock owner to apply for a magistrate for a forced muster order. The magistrate must be satisfied that either the landowner has unreasonably refused the stock claimant entry on to the land or that it is impractical in the circumstances to seek permission to enter the land. There is an opportunity for the QPS to be heard on that application.

A forced muster order permits the stock owner to enter and muster with such equipment as is necessary for up to six months from the date of the order, and it permits a police officer to enter, supervise and direct the muster. The landowner is required to make available facilities such as stockyards, dips and dams which are reasonably needed to be used in the management of the stock, and compensation may be ordered for any damage arising from the muster.

The amendments provided grounds for a magistrate to issue a forced muster order subject to the satisfaction of certain conditions and documentary and evidentiary requirements (including the provision of an affidavit); and also outlines the details and conditions of any forced muster order, together with offences and concordant penalties relating to the execution of an order.

In support of these amendments, the Bill inserts a new definition of ‘forced muster order’ and ‘stock’ into schedule 6 of the Act.¹⁶ In addition, it expands on the Stock Working Group’s proposed amendments to incorporate an additional supporting section (789AC) that explicitly enables a police officer to give evidence and be cross-examined at the hearing for the forced muster applications, and specifies the conditions under which such testimony may be made.

In addition to these provisions for stolen stock, the Stock Working Group’s report included a provision drafted by Chairman Jerrard QC that would allow landholders to apply for the issuing of a stock removal notice where stock owned by another had strayed onto their land, and it was ‘impracticable for the landholder to request the removal of the stock by any other person’.¹⁷

¹⁵ Department of Justice and Attorney-General 2014, Correspondence, 19 March.

¹⁶ Clause 24, Criminal Code and Another Act (Stock) Amendment Bill 2014.

¹⁷ Department of Justice and Attorney-General 2014, Correspondence, 19 February.

Such a notice was to require that the stock be removed within a specified period at the expense of the stock owner, and in cases in which the stock owner failed to comply, the draft amendments specified that 'it will be lawful for the landholder to cause such stock to be impounded, and the stock owner shall be liable for the costs of removing and impounding the stock'. No such provision was incorporated in the Bill.

Issues raised in submissions

In their submission to the committee, the QLS make several suggestions regarding the forced muster orders included in the Bill. Firstly, the QLS notes that it may be beneficial to ensure that a person can apply to the court to have stock removed from his or her land where it has strayed. QLS suggest that a consistent state-wide regime capable of legislative review would be of benefit.

They also suggest that the legislation should make provision for the court's forced muster order to mandate that any horses, dogs or equipment used in a forced muster must be treated for disease or pest. They recommend that this could form a new subsection in proposed section 789AE.

They also note that they believe that the length of a muster order (6 months) is too long, and suggest that it is changed to a default position of 30 days.¹⁸

Further the QLS suggest that the committee look into all the recommendations from the Stock Working Group, and consider the legislative changes proposed in this context.

The committee notes that police and other enforcement officers executing a forced muster order or warrant to retrieve stolen or stayed stock would have a general biosecurity obligation under s.23 of the *Biosecurity Act 2014*. S. 23(2) of the Biosecurity Act requires that all reasonable and practical measures are taken to prevent or minimise the biosecurity risk. Under S.23(3), a person is obliged to prevent or minimise adverse effects on a biosecurity consideration, to minimise the likelihood of causing a biosecurity event or to limit the consequences, and not to do or omit to do things that may exacerbate the adverse effects, or potential adverse effects of the biosecurity matter, carrier or activity on a biosecurity consideration.

The committee considered potential biosecurity risks where police and other enforcement officers enter a property for the purposes of executing search warrants and retrieving stock.

CHAIR: *I am sure Trevor would be aware of this. Some of your stock officers would have very good horses who I am sure would have had Hendra virus vaccinations. What would you do if you went onto a property which is using stock horses that are not vaccinated for the Hendra virus? What would you do in that situation?*

Mr Stephens: *I do not think there are any legislative powers where we can force them to inoculate their horses. All stock squad horses in Queensland are vaccinated and are kept current to cover our side of it. I do not think we have a legislative power as it stands now to force people—*

CHAIR: *That is what I am saying. I think the committee recommended that they have the appropriate vaccinations and you mentioned the 1915 act. If property A and property B do not have their horses vaccinated when you go to muster stock for property A or off property B, you have a chance of infection with your horses or yourselves.*

Ms Ryan: *When we were looking at that recommendation we did look at section 29 of the Stock Act, which has a lot of powers of inspectors which I understand includes the stock squad officers. There are quite a lot of powers about being able to direct people with animals to go elsewhere. I think at that point we had discussed how if someone tried to enter a property under the order with a diseased animal you could use those powers to turn them away.*

Mr Stephens: *I do not think we directly looked at the Hendra side. We mainly looked at tick lines at that time, and with the Stock Act there is already legislation that covers that.*¹⁹

¹⁸ Queensland Law Society, *Submission No. 1*, pp.1-2.

Advice from JAG

JAG has advised that whilst the Stock Working Group recommended a court order regime for removal of stock that has strayed on to applicant's land, this has not been included as local laws on animal impoundment provide for inspectors to enter private property to remove stray animals and impound them and to enact similar laws would be duplication. The department explained that the provision proposed by QLS:

...was not included as when we investigated that matter further it appeared that local laws on animal impoundment provide for inspectors to enter private property to remove stray animals and impound them. Sixty out of 77 local councils have enacted those sorts of laws. To enact similar laws here would be a duplication. There has been no representation made to the Queensland Police Service that this is a particular issue that requires a new legislative scheme.²⁰

Secondly in relation to the Stock Working Group's recommendation for a police power to require a stock owner who is entering a property under a forced muster order to have animal or equipment treated for disease or pest, JAG responded that:

This has not been included as:

- *it is not workable to give a written direction at a muster; and*
- *it is not required as police have similar powers already under the Stock Act 1915 which would apply in these circumstances.*

The QLS' proposal to include this as a part of the court's forced muster order was considered in finalising the Bill, however, it was considered that such a provision would not add anything to existing powers of police to require animals to be treated. It is an offence to fail to comply with a direction under the Stock Act 1915, punishable by a maximum of 400 penalty units.²¹

Committee Comment

The committee notes the department's advice that the majority of local governments have adopted model animal impoundment laws. The committee also accepts that introducing equivalent state laws while the majority of councils have adequate local laws in place to achieve the same end would be unnecessary in most instances.

The committee believes biosecurity is an important issue relevant to the execution of forced muster orders and seeks assurances from the Attorney-General or the Minister for Police that police and other authorised enforcement officers will meet their biosecurity obligations when executing a forced muster order and/or warrant.

Point for clarification:

The committee invites the Attorney-General and Minister for Justice to liaise with the Minister for Local Government, Community Recovery and Resilience to encourage remaining councils to adopt model animal impoundment laws.

Point for clarification:

The committee invites the Attorney-General or the Minister for Police to assure the House that police and other authorised officers will meet their general biosecurity obligations when searching for and mustering stock so as to minimise the spread of cattle ticks, invasive weeds, invasive animals and other biosecurity hazards.

¹⁹ Draft briefing Transcript, 19 March, p.5.

²⁰ Lang, J. 2014, Draft Briefing transcript, 19 March, p.4.

²¹ Department of Justice and Attorney-General 2014, Correspondence, 19 March.

Length of orders

The Bill provides for the expiry of the forced muster order after six months from the date of the order, rather than 21 days as recommended by the Stock Working Group. At the public briefing, JAG explained that the six month duration for the forced muster order was appropriate and considered necessary to take into account the impact of drought and floods:

*The Queensland Police Service Stock and Rural Crime Investigation Squad advises that cattle cannot be mustered in a drought, nor can they be mustered in a flood or even if there has been an excess of rain. So it is a practical issue in terms of implementing that.*²²

With respect to the extent to which the provisions in the Bill align with the original recommendation of the Stock Working Group, the department responded that:

*[The department]... have been greatly assisted by the provisions that Mr Jerrard drafted and put before the Stock Working Group and which were an attachment to the report. The drafting undertaken by the Office of the Queensland Parliamentary Counsel to produce the bill has, as you would naturally expect, resulted in provisions which do not look identical to those that were attached to the draft report or that were drafted for the report.*²³

Committee comment

Notwithstanding the rationale for extending the expiry period for the forced muster order to six months, the committee expressed concern for the impact on property owners where in the execution of a forced muster order the police and other responsible officers enter and re-enter a property over a period of up to six months. Whilst it is acknowledged that this may only occur in a small number of cases, the committee seeks assurance from the Attorney-General or the Minister for Police that this power will not be abused, and that police will endeavour to execute a forced muster order efficiently so as to minimise inconvenience for the property owner.

Point for clarification:

The committee invites the Attorney-General or the Minister for Police to assure the House that police will endeavour to execute a forced muster order efficiently so as to minimise inconvenience for the property owner.

Provisions for the investigation of stock offences

In response to evidence that searches of large properties can sometimes take more than seven days to complete, the Stock Working Group recommended changes to the *Police Powers and Responsibilities Act 2000* to allow search warrants permitting a search of property for stock to be extended to allow for searches extending to 21 days, rather than a seven-day period as generally provided for search warrants in existing provisions. In addition, the Stock Working Group proposed an amendment to provide that police may access the stock management facilities of the person whose land is being searched with a warrant, subject to an obligation to pay compensation for damage.

Both recommendations have been included in the Bill, respectively at:

- clause 21, which amends section 155 of the Act with regards to the time period for search warrants, and
- clause 22, which amends section 157 to enable the police to use and equipment or facilities on the place being searched, as 'reasonably needed to be used in the management of stock'.²⁴

²² Lang, J. 2014, *Draft Briefing Transcript*, 19 March, p.4.

²³ Lang, J. 2014, *Draft Briefing Transcript*, p.4.

²⁴ Clause 22, Criminal Code and Another Act (Stock) Amendment Bill 2014.

Changes to the Animal Valuers Tribunal

An animal valuers tribunal consists of two animal valuers, and is convened if the prosecutor for a charge involving stock decides that a tribunal is needed to either inspect or value the animal. Under the Criminal Code, the chief executive can appoint a person as an animal valuer. There is also a regulation-making power as to the constitution and operation of tribunals of animal valuers, as reflected in the Criminal Code (Animal Valuers) Regulation 1999.

The Stock Working Group was generally of the view that the Animal Valuers Tribunal was working well and had no criticism to offer of the existing system and its provision for the valuing of stock. However, as noted by JAG during the public briefing:

*The role of the valuers is not a tribunal in the normal sense. They do not make a decision or hear and determine disputes between the parties. Their role is really to provide independent expert advice about the value of the animal which then becomes relevant in relation to the penalties and the fine potentially imposed.*²⁵

Accordingly, the Stock Working Group recommended that the tribunal continue but, given that its name is somewhat misleading as to its function, that it be renamed the Animal Valuers Panel to more accurately reflect its role.²⁶

In line with these recommendations, the Bill amends section 450F to replace the term ‘tribunal’ in all instances with the term ‘panel’, as intended to ‘better reflect the non-judicial nature of animal valuer experts’, according to the Explanatory Notes.²⁷ It also incorporates an additional amendment not considered by the Stock Working Group which removes reference to panels being formed ‘according to districts’ or ‘in districts’; as intended ‘to reflect the practice of forming tribunals from a register of appointed valuers’, rather than on such a district basis.²⁸

Review of penalties for stock offences

The Stock Working Group determined that existing penalties and offences are appropriate and should remain unchanged noting that, in the case of a particular tribunal’s imposition of a penalty that is considered to be too lenient, the decision could always be appealed.

In 2013 JAG reviewed the penalties for stock offences in the Criminal Code. As cited by Ms Lang during the public briefing, the review found that for the five-year period between 2007 and 2012, there was a low number of stock offenders when compared with other property offenders.

*There were 85 in total in that period. The most common offences were stealing stock, which involved 28 offenders, and killing stock with intention to steal, which involved 29 offenders. Between 2007 and 2012 there were no cases for two of the offences, which were using registered brands with criminal intention and having in possession stock with a defaced brand, which is contained in section 448A.*²⁹

The review also found that whilst maximum fines and maximum imprisonment levels for stock offences had not changed since 2002, they remained on par with penalties in other jurisdictions. However, minimum fine amounts for most of the offences were found not to have increased for some time.

The minimum fine for injuring animals was inserted in 1989 and has not been increased since that time. The minimum fine for stealing stock was increased in 1997. For the

²⁵ Lang, J. 2014, *Public briefing transcript*, 19 March, p.3.

²⁶ Department of Justice and Attorney-General 2014, *Correspondence*, 19 February.

²⁷ Criminal Code and Another Act (Stock) Amendment Bill 2014, Explanatory Notes, p. 6.

²⁸ Explanatory Notes, p. 6.

²⁹ Lang, J. 2014, *Public briefing transcript*, 19 March, p.3.

*remainder of the stock offences, the minimum fines were inserted in 1996, so they have not been increased since that time.*³⁰

Accordingly the Bill increases the minimum fine amounts for stock offences. The Bill also takes the additional step of amending the Criminal Code to convert the fine amounts from dollars to penalty units for consistency with the rest of the Criminal Code. This has resulted in a slight increase in the overall maximum penalty amount from \$50,000 to \$50,500.³¹

Issues raised in submissions

In their submission the QLS notes two issues with the changes to penalty amounts.

Firstly, the proposed minimum fines are double or more than the current minimum fines, and secondly, the *Penalties and Sentences (Indexation) Amendment Bill 2013* could affect the actual value of the fine amounts. This could affect larger penalties, and may not be in line with the expectation of the penalty to be imposed as was envisioned in the drafting of the maximum penalty unit.³²

Advice from JAG

The department advised the committee in response to the society's submission:

The expression of monetary penalties as penalty units rather than as set dollar amounts reflects the Government's approach to prescribing monetary penalties. As a result, the Government's policy on indexation of monetary penalties will apply to the penalties in the Bill. As stated in the Explanatory Notes to the Penalties and Sentences (Indexation) Amendment Bill 2013:

"The penalty for an offence is set at a level that reflects the seriousness of the offence to provide a level of deterrence or punishment considered necessary at the time. Over time the value of the penalty unit reduces relative to measures of inflation, effectively reducing the level of punishment and deterrence. As a result, Queensland is required to periodically increase the penalty unit value to ensure that all monetary penalties across the statute book maintain the intended deterrent or punishment effect.

Since 2000 when the State Penalties Enforcement Act 1999 came into effect, the value of the penalty unit applicable to most state government laws has been increased twice; in 2009 and 2012.

A legislative mechanism that allows for an annual increase in the value of the penalty unit ensures that the deterrent and punishment effect of fines and penalty infringement notices is maintained; and provides a level of certainty in relation to potential changes."³³

With respect to maximum penalties, in accordance with section 48 of the Penalties and Sentences Act 1992, the court, when determining the amount of a fine to impose on a person found guilty of an offence, must, as far as practicable, take into account the financial circumstances of the offender; the nature of the burden that payment of the fine will have on the offender and give more importance to restitution or compensation.

Implementation of the provisions in this Bill

The committee notes the provisions in the Bill will have impacts on stock owners and landholders and the work of officers of departments other than JAG and the QPS, particularly officers in the Department of Agriculture, Fisheries and Forestry (DAFF). The explanatory notes however, do not

³⁰ Lang, J. 2014, *Public briefing transcript*, 19 March, p.3.

³¹ Criminal Code and Another Act (Stock) Amendment Bill 2014, Explanatory Notes, p. 6.

³² Queensland Law Society, *Submission No. 1*, p.3.

³³ Department of Justice and Attorney-General 2014, Correspondence, 19 March.

discuss how the provisions would be implemented should the Bill be passed. The department may for example, provide briefings for officers of DAFF and other departments and peak bodies for landholders and stock owners to explain the provisions and how they will be implemented.

The committee invites the Attorney-General to explain this during his second reading speech for the Bill.

Point for clarification:

The committee invites the Attorney-General to inform the House what briefings his department will provide to officers of the Department of Agriculture, Fisheries and Forestry and other departments, and representatives of bodies representing landholders and stock owners, and what information will be provided to individual landowners, about the provisions contained in the Bill should the Bill be passed.

Should the Bill be Passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examining the form and policy intent of the Bill, the committee determined that the Bill should be passed.

Recommendation 1

The committee recommends that the Criminal Code and Another Act (Stock) Amendment Bill be passed.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee sought advice from the Department of Justice and Attorney-General in relation to a number of possible fundamental legislative principles issues. The following sections discuss the issues raised by the committee and the advice provided by the department.

Right and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992

Does the bill have sufficient regard to the rights and liberties of individuals?

- Increases to mandatory minimum penalties and maximum penalties

Under clause 5, the \$200 minimum penalty will increase to 10 penalty units. Given the current value of penalty units, this amounts to a penalty of \$1100. This represents a 450 per cent increase on the current penalty. The \$50,000 cap set in section 444A(3) will also increase marginally under this Bill to 455 penalty units, which currently has a value of \$50,050. This represents a monetary increase of 0.1 per cent.

Clauses 6-11 show increases of more than double to the minimum (default) fine amount of \$200 (for offences against sections 444B, 445, 446, 447, 448 and 448A of the Code respectively) to 4 penalty units (currently with a monetary value of \$440). The maximum penalties payable under those sections rise from \$50,000 to 455 penalty units (\$50,050). Again this represents an increase of only 0.1 per cent at today’s penalty unit value.

In respect of the increases in penalty values the Explanatory Notes state, at pp.2-3:

The Bill amends the Criminal Code to increase the minimum fine amounts for stock offences – some only marginally owing to the conversion from dollars to penalty units; others more significantly. Increased minimum fine amounts will affect the rights and liberties of some individuals. The mandatory minimum amounts apply where the court chooses to fine (as opposed to any other order such as imprisonment) and where the amount specified is lower than the animal’s value. The amendments are justified on the basis that they apply to an existing regime and the minimum amounts, where significantly increased, have not been increased since the 1980s. The High Court recently affirmed that minimum mandatory penalties are not inconsistent with the institutional integrity of the courts (Bonang Darius Magaming v The Queen [2013] HCA 40).

Request for advice:

The committee asked the department if it could explain how it arrived at the new penalties proposed in clauses 5 and 6-11. While the committee noted that fine amounts have not increased since the 1980s, they sought assurances that increases proposed in the Bill which are equivalent to 450 per cent for some penalties, based on the current value of penalty units, are reasonable and justified.

The committee also asked the department to explain why only small increases (0.1 per cent) are proposed in the maximum penalty amounts in sections 44A(3), 444B, 445, 446, 447, 448 and 448A given the substantial increases proposed to minimum penalties.

Response from JAG:

In 2013 the Department of Justice and Attorney-General reviewed the penalties for stock offences in the Criminal Code (the Code). The maximum penalties were found to be on par, or higher, than other jurisdictions. It was also found that maximum fines and maximum imprisonment levels for stock offences were significantly increased in 2002 (apart from injuring animals (section 468) which was not amended):

- *Stealing stock (section 398.2) – The circumstances of aggravation was introduced, lifting the penalty from five to ten years imprisonment where the item stolen is stock valued at more than \$5000.*
- *Killing animal with intent to steal (section 444A) – Maximum fine was increased from \$25 000 to \$50 000. The circumstances of aggravation was introduced, lifting the penalty from five to ten years imprisonment where the animal killed is stock valued at more than \$5000.*
- *Using registered brands with criminal intention (section 444B) – Maximum fine increased from \$25 000 to \$50 000. Maximum imprisonment increased from three years to five years.*
- *Unlawfully using cattle (section 445); suspicion of stealing cattle (section 446); illegal branding (section 447); defacing brands (section 448); having in possession an animal with defaced brand (section 448A) – Maximum fines increased from \$5000 to \$50 000. Maximum imprisonment increased from one to five years.*

In contrast, the minimum fine amounts for most of the offences had not been increased since their insertion in the 1980s. The minimum fine for stealing had been increased in 1997 from \$200 (as inserted in 1986) to \$1000. As a result, an increase in the maximum fine and imprisonment levels was not considered warranted, but an increase in the minimum fine amounts was recommended.

The most prevalent offences were found to be stealing stock (section 398.2) and killing an animal with intent to steal (section 444A). The minimum penalty for the latter was recommended to be increased to match that of stealing, for two reasons. Firstly, given the prevalence of the offences of killing an animal with intent to steal, a rise in the minimum penalty would act to deter the offender or other persons from committing the offence. Secondly, owing to the conduct involved in the offence of killing an animal with intent to steal, the outcome is the same, if not worse, for the complainant stock owner in terms of loss of property.

The minimum fine in section 468 for injuring an animal other than stock is proposed to be increased from \$440 to \$880. This amount has not been increased since its insertion in 1989 and an increase was considered warranted.

A higher increase is proposed for injuring an animal which is stock, under section 468, from \$440 to \$1100. This higher increase was recommended for two reasons:

- *Section 468 differentiates stock from other animals and currently provides a higher maximum fine and imprisonment for injuring stock – a higher minimum fine is consistent with that approach.*

- *The killing or injuring of stock is economically commensurate with stock stealing (section 398.2) and killing with intention to steal (section 444A), both of which are proposed to have a minimum fine of 10 penalty units (\$1100).*

The remaining minimum fine amounts were increased to take account of the significant period of time elapsed since they were inserted, in 1986, and the undoubted increase in stock values since that time.

In recommending the increases, regard was had to the ranges of values of cattle and horses (the animals most commonly the subject of offending) including small cattle, large cattle, horses for human consumption and horses for recreational use.

The expression of minimum and maximum fine amounts for stock offences in dollar amounts is an anomaly within the Code.

For consistency with the rest of the Code and to allow for annual indexation in accordance with the Penalties and Sentences (Indexation) Amendment Act 2014, all dollar amounts in the stock offences are proposed to be expressed as penalty units.

In doing so the maximum amounts increase marginally, for example the \$50 000 maximum fine for illegal branding would become 455 penalty units or \$50 050. This was preferred to decreasing the amounts, that is, from \$50 000 to \$49 940 or 454 penalty units.

Committee comment:

The committee notes and is satisfied by the department's advice.

Power to enter premises – Section 4(3)(e) Legislative Standards Act 1992

Does the bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?

Clause 21 amends section 155 (which currently provides that a search warrant ends 3-7 days after its issue) to provide that a search warrant issued in relation to stock (whether or not the warrant is also for anything else) ends 21 days after issue (all other warrants continue to end 3-7 days after their issue). The Explanatory Notes state that this extension to 21 days for stock-related warrants is to reflect the fact that searches of large properties can take more than 7 days.

Under the *Police Powers and Responsibilities Act 2000*, section 196, where a police officer is at a public place or lawfully enters a place (such as when executing a search warrant) and finds at the place a thing the officer reasonably suspects is evidence of the commission of an offence, the officer may seize the thing, whether or not as evidence under a warrant, and if the officer is acting under a warrant, whether or not the offence is one in relation to which the warrant is issued. This would mean for example that where an officer was lawfully at a property because they are executing a search warrant for stock, evidence of the commission of an unrelated offence (eg. drug paraphernalia or stolen vehicle parts) may also be seized.

In the case of executing stock warrants it seems likely that officers might camp or stay at the property over the course of several days (or up to the maximum 21 days if necessary) until the required evidence is collected. It is probable (unless the terms of the warrant stated otherwise) that the officers would not be permitted to enter and re-enter the property at different times over the course of the three weeks as generally speaking once a property is entered and a warrant executed,

the authority it gives officers to enter the subject property lapses, and an extended warrant period probably wouldn't give the officers licence to enter and re-enter at will during that time (although they could do so with the owner's consent).

Request for advice:

The committee asked the department to clarify the entry and search powers of police officers during the 21 day stock warrant period, and to confirm whether police would be able to enter re-enter a property during the 21 day period without the consent of the landholder.

Response from JAG:

The proposed amendment to section 155 of the Police Powers and Responsibilities Act 2000 will authorise police to enter and re-enter the property named in the warrant at any time over a 21 day period. However, section 157 of the Police Powers and Responsibilities Act 2000 limits section 155. In this regard, police may enter and stay only for the time that it is reasonably necessary for police to exercise the powers stated in the warrant.

Committee comment:

The committee notes and is satisfied by the department's advice.

Rights and liberties – Section 4(3)(g) Legislative Standards Act 1992

Does the bill adversely affect rights and liberties, or impose obligations, retrospectively?

Clause 14 inserts, inter alia, section 450EA which relates to the admissibility into evidence of a prescribed record made in relation to a particular animal. Pursuant to section 450EA(3), no objection can be taken to, or allowed to, the admission as evidence of matters depicted by the adequate prescribed record. That applies in relation to a proceeding whether it was started before or after the commencement of section 450EA (see section 450EA(4)).

Effectively therefore section 450EA(4) has some retrospective operation in that it makes sections 450EA(1) and 450EA(3) apply in relation to a proceeding even when the proceeding was started before section 450EA commenced.

Clause 18 inserts new chapter 93 containing section 732 which relates to the tendering, return or disposal of stock. The combined effect of section 732(3) and 732(4) means that chapter 44A, chapter divisions 1 and 3; sections 450E(1)(b) and 450EA; and sections 450EI and 450EJ apply to an animal seized before the commencement (other than one for which an undertaking under former sections 450E or 450G was given).

Request for advice:

The committee noted the elements of retrospectivity in clause 14 in relation to section 450EA and asked the department to advise whether any individuals would be disadvantaged by this provision?

Response from JAG:

The potential disadvantage to the defendant is that the proposed regime results in the animal not being available as an exhibit for trial or sentence. This will be the case for proceedings commenced after the commencement of section 732 and for proceedings already on foot.

There are, however, advantages to the scheme. The scheme addresses the current issues with retention of animals pending the conclusion of criminal proceedings. Sections 450E and 450G of the Code currently set out processes for police dealing with stolen stock. Both provisions are problematic and are proposed to be replaced by the stock disposal order regime contained in the Bill. The existing provisions only permit return to the owner or slaughter where there is no dispute as to ownership and essentially the defendant agrees to the process. This frequently does not occur. This results in the police being required to hold stock for long periods prior to the completion of criminal proceedings. This in turn impacts on producers and their business vitality and also places considerable burden and expense upon police in terms of keeping stock alive. In one example, cattle were agisted for eight years awaiting a court case finalisation, at the cost to the police of hundreds of thousands of dollars.

There are also inbuilt safeguards. The defendant may dispute the order for sale. In all instances a thorough visual record of the animal is required to be made by police and is available at trial or sentence. Anecdotally, officers of the Queensland Police Service Stock and Rural Crime Investigation Squad could only recall one instance in which a jury requested to view an animal during a trial.

It is noted that the Queensland Law Society, the Bar Association Queensland and Legal Aid Queensland were consulted on the Bill and did not raise objections to the retrospective operation of the provisions.

Committee comment:

The committee notes and is satisfied by the department's advice.

Appendix A – List of submitters

1. Queensland Law Society
2. Agforce Queensland Industrial Union of Employers

Appendix B – Briefing officers 19 March 2014

Department of Justice and Attorney General

- Ms Jenny Lang, Assistant Director-General
- Ms Louise Shephard, Director
- Ms Alison Ryan, Principal Legal Officer

Queensland Police Service

- Mr Trevor Stephens, Detective Senior Sergeant

Public Safety Business Agency

- Ms Andrea Greeves, Senior Sergeant

Appendix C – Summary of submissions

This summary compiled by committee staff includes advice provided by the Department of Environment and Heritage Protection on issues raised by submitters.



Agriculture, Resources and Environment Committee

**Inquiry into the
Criminal Code and Another Act (Stock) Amendment Bill 2014**

**Summary of Submissions 1 & 2
Prepared by AREC secretariat 14 March 2014**

This Summary is designed to be read in conjunction with the submissions.

Comments in clause order

Sub No.	Submitter
1	Queensland Law Society
2	Agforce

Cl.	Sub and Submitter	No.	Section/[Issue]	Key Points	Departmental response
General					
	2 Agforce			The Bill in its current form reflects the findings of the Stock Working Group, an industry government initiative that prepared these recommendations for reform in 2012. AgForce Cattle is therefore pleased to endorse the Bill and proposed transitional arrangements.(Sub 2, p.1)	Noted.
	1 QLS			"The Society suggests that the Parliamentary Committee may wish to review all the recommendations from the Stock Working Group, and consider the legislative changes proposed in this context." (sub 1, p.3)	<p>The Bill largely implements the recommendations of the Stock Working Group.</p> <p>The Department of Justice and Attorney-General and the Office of the Parliamentary Counsel were greatly aided by the provisions drafted by Mr John Jerrard QC which are an attachment to the Report. It is noted, however, that the drafting exercise results in provisions which do not look identical to those drafted for the Report.</p> <p>With respect to the stock disposal order regime proposed for the Criminal Code and the additional police powers under the <i>Police Powers and Responsibilities Act 2000</i>, it is the Department's view that there were no departures in policy from that recommended by the Stock Working Group.</p> <p>With respect to the forced muster regime proposed for the <i>Police Powers and Responsibilities Act 2000</i>, the Government has implemented the working group's recommendations with four departures from policy which arose during drafting.</p> <p>Firstly, as to who was recommended to be the applicant for a forced muster order. While the Working Group recommended that a police officer may apply for a forced muster order, the Bill provides that it is the stock owner who may apply for the following reasons:</p> <ul style="list-style-type: none"> • The facts upon which an application is based are primarily within the stock owner's knowledge. Police are merely informed of the stock owner's knowledge. • Police are still involved in the forced muster regime in two important ways. Firstly, despite not being a party, police are still given a role in assisting the court – a police officer may give

Cl.	Sub and Submitter	No.	Section/[Issue]	Key Points	Departmental response
					<p>evidence orally and/or by affidavit as to their knowledge of facts relevant to an application, and the affidavit must be served in advance of the hearing on the stock owner and the land owner. Secondly, the forced muster order is authority for the stock owner <i>and</i> a police officer or officers to enter the property. The police officer's roles are to direct and supervise the muster and generally keep the peace.</p> <ul style="list-style-type: none"> • Vexatious applications by stock owners will be deterred by provision in the Bill enabling costs to be specifically awarded against a stock owner applicant where the application was inappropriately made. To this end, the court may reserve costs until the results of the muster are known. <p>Secondly, as to the recommendation for a court order regime for removal of stock that has strayed on to applicant's land. This is the reverse situation of a forced muster order, that is, stock has strayed on to a person's land and they seek a court order to have the animals removed. This has not been included as local laws on animal impoundment provide for inspectors to enter private property to remove stray animals and impound them. Sixty out of 77 local councils have enacted such laws. To enact similar laws would be duplication. There have been no representations made to the Queensland Police Service (QPS) Stock and Rural Crime Investigation Squad that this is a particular issue requiring a new legislative scheme.</p> <p>Thirdly, as to the recommended time for expiry of the forced muster order. This is six months from the date of the order, rather than 21 days. This change takes into account droughts and floods. The QPS Stock and Rural Crime Investigation Squad's advice is that cattle cannot be mustered in a drought nor can they be mustered in a flood or even if there has been an excess of rain.</p> <p>As an example, if an order is made in November for the Gulf area (which is the wet season) it may be impossible to commence a muster until April.</p>

Cl.	Sub and Submitter	No.	Section/[Issue]	Key Points	Departmental response
					<p>Fourthly, the Stock Working Group recommended a power for police to require by notice that a stock owner who is entering with horses, dogs or equipment to muster stray stock under a forced muster order to have animal or equipment treated for disease or pest.</p> <p>This has not been included as:</p> <ul style="list-style-type: none"> it is not workable to give a written direction at a muster; and it is not required as police have similar powers already under the <i>Stock Act 1915</i> which would apply in these circumstances.
Consultation					
	1 QLS			"The Society has long advocated that good legislation is the product of good consultation. We are grateful to the Government for the opportunity to contribute our views through this extensive review process." (sub 1, p.1)	Noted.
	1 QLS			"Given the timeframe available for making submissions and the commitments of our Committee members, it has not been possible to conduct an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended consequences or fundamental legislative principles which have not been identified." (sub 1, p.1)	<p>A draft Bill was provided to the QLS by the Attorney-General and Minister for Justice. A letter of response was received, the comments in which were taken into account in finalising the Bill.</p> <p>Possible breaches of fundamental legislative principles (FLPs) were identified in the Explanatory Notes.</p> <p>In response to the Committee's letter of request of 13 March 2014 for advice on three possible FLP breaches, the Director-General has provided further information.</p>
Part 2 Amendment of Criminal Code - clause 3-18					
Various	1 QLS		Amendments to monetary penalty amounts for stock offences	<p>QLS notes that, for some offences, the proposed minimum penalties are double or more than the current minimum fines.</p> <p>QLS also notes that the Penalties and Sentences (Indexation) Amendment Bill 2013 (recently passed by Parliament) could affect the actual value of the fine amounts (particularly those for high prescribed maximum penalty units). QLS notes, as an example, the offence of 'unlawfully using stock' under s 445 (clause 7) will now prescribe a maximum penalty of 455 penalty units which, combined with a 3.5% (per annum) increase over 10 years, will raise the penalty from \$50,000 to approximately \$70,000.</p> <p>QLS suggest that this could have substantial effect on larger</p>	<p>Advice as to how the proposed increases in minimum fine amounts were arrived at is set out in the Director-General's response to the Committee's letter of 13 March 2014 regarding possible FLP breaches.</p> <p>The expression of monetary penalties as penalty units rather than as set dollar amounts reflects the Government's approach to prescribing monetary penalties. As a result, the Government's policy on indexation of monetary penalties will apply to the penalties in the Bill. As stated in the Explanatory Notes to the Penalties and Sentences (Indexation) Amendment Bill 2013:</p>

Cl.	Sub and Submitter	No.	Section/[Issue]	Key Points	Departmental response
				penalties, and may not be in line with the expectation of the penalty to be imposed, and not envisaged in the drafting of the maximum penalty unit.	<p><i>"The penalty for an offence is set at a level that reflects the seriousness of the offence to provide a level of deterrence or punishment considered necessary at the time. Over time the value of the penalty unit reduces relative to measures of inflation, effectively reducing the level of punishment and deterrence. As a result, Queensland is required to periodically increase the penalty unit value to ensure that all monetary penalties across the statute book maintain the intended deterrent or punishment effect.</i></p> <p><i>Since 2000 when the State Penalties Enforcement Act 1999 came into effect, the value of the penalty unit applicable to most state government laws has been increased twice; in 2009 and 2012.</i></p> <p><i>A legislative mechanism that allows for an annual increase in the value of the penalty unit ensures that the deterrent and punishment effect of fines and penalty infringement notices is maintained; and provides a level of certainty in relation to potential changes."</i></p> <p>With respect to maximum penalties, in accordance with section 48 of the <i>Penalties and Sentences Act 1992</i>, the court, when determining the amount of a fine to impose on a person found guilty of an offence, must, as far as practicable, take into account the financial circumstances of the offender; the nature of the burden that payment of the fine will have on the offender and give more importance to restitution or compensation.</p>
14	1 QLS		Replacement of s 450E (Animals not tendered in certain cases) S 450EF Content of order	<p>QLS notes that the <i>Personal Property Securities Act 2009</i> and the Personal Property Securities Register may impact on the operation of the Bill which provides that the court must give priority to any amount owing, immediately before the sale, to an entity under a security interest for the animal under the <i>Personal Property Securities Act 2009</i>. The QLS suggests these issues should be considered:</p> <ul style="list-style-type: none"> - ensuring that the Register is checked to ascertain the identity of secured parties 	Proposed section 450EB requires that interested third parties be notified of the application for a stock disposal order. This ensures that parties with an interest in the animal, including a person with a security interest under the <i>Personal Property Securities Act 2009</i> , are made aware of the situation and may be heard upon the stock disposal order application. The QPS affidavit accompanying the application must detail notification of third parties. As part of the process of notifying third parties, QPS procedure would include checking the Personal Properties Securities Register.

Cl.	Sub and Submitter	No.	Section/[Issue]	Key Points	Departmental response
				<ul style="list-style-type: none"> - providing notice to parties regarding any potential order that might be made, and - whether secured parties have a right to be heard on the order. <p>QLS suggest that this is a matter that needs to be investigated and addressed in the legislation to ensure there is a mandatory process for secured parties to be notified of proceedings.</p>	By virtue of that process, the QPS and the court are aware that third party interests exist in the animal. The court in making an order for payment out of the funds from the proceeds of sale of the animal is obliged to give priority to interests in the animal which existed at the time of the sale. This information would be advised to the court at the time the payment out of court order is sought, to ensure compliance with that obligation.
14	1 QLS		Replacement of s 450E (Animals not tendered in certain cases) S 450EH Clear title to animal for sale under order	<p>QLS suggest that stock disposal order for an animal is sufficient authority for the Commissioner of the Police to convey clear title of the animal to any buyer under the order.</p> <p>QLS seeks clarification as to how this will impact interests of secured parties.</p>	<p>Proposed section 450EH ensures that the Commissioner of Police when selling the animal under authority of a stock disposal order, conveys clear title to the animal. The net proceeds of sale (that is the proceeds of sale minus the costs of sale) are paid into court. In making an order about paying these funds out of court, the court must give priority to interests existing at the time of sale.</p> <p>This mechanism is proposed to ensure the buyer takes on the animal unencumbered and third party interests are covered.</p> <p>The mechanism takes into account the process under the <i>Police Powers and Responsibilities Act 2000</i> for the sale of an impounded vehicle, whereby the vehicle is forfeited to the State and rights under the <i>Personal Property Securities Act 2009</i> are extinguished, however, in applying the proceeds of sale, priority is given to the costs of sale, followed by interests under the <i>Personal Property Securities Act 2009</i>.</p>
				Part 3 Amendment of Police Powers and Responsibilities Act 2000 – clauses 19-24	
23	1 QLS		Insertion of new ch 22A – proposal for new section dealing with removal of stock to a person's land	<p>QLS notes that it may be beneficial to ensure a person can apply to the courts to have stock removed from his or her land where it has strayed. Local laws may deal with this to an extent, but not uniformly.</p> <p>The QLS state it would be beneficial to introduce a consistent state-wide consistent state-wide regime that is capable of legislative review. The society also suggest that this would address any</p>	<p>The Stock Working Group recommended a court order regime for removal of stock that has strayed on to applicant's land. This is the reverse situation of a forced muster order, that is, stock has strayed on to a person's land and they seek a court order to have the animals removed.</p> <p>As set out above, this has not been included as local laws on animal impoundment provide for inspectors to enter private property to</p>

Cl.	Sub and Submitter	No.	Section/[Issue]	Key Points	Departmental response
				jurisdictional conflicts that may be created by having separate regulations and rules and also provide the opportunity to be amended, if required.	remove stray animals and impound them. Sixty out of 77 local councils have enacted such laws. To enact similar laws would be duplication. There have been no representations made to the QPS Stock and Rural Crime Investigation Squad that this is a particular issue requiring a new legislative scheme.
23	1 QLS		Insertion of new ch 22A - proposal for new section dealing with treatment of animal or equipment for disease or pest	<p>QLS suggest that the Bill should provide for the court's forced muster order to mandate that any horses, dogs or equipment used to muster stray stock must have the animal or equipment treated for disease or pest.</p> <p>The QLS suggest this could form a new subsection in proposed s789AE.</p>	<p>The Stock Working Group recommended a power for police to require by notice that a stock owner who is entering with horses, dogs or equipment to muster stray stock under a forced muster order to have animal or equipment treated for disease or pest.</p> <p>As set out above, this has not been included as:</p> <ul style="list-style-type: none"> • it is not workable to give a written direction at a muster; and • it is not required as police have similar powers already under the <i>Stock Act 1915</i> which would apply in these circumstances. <p>The QLS' proposal to include this as a part of the court's forced muster order was considered in finalising the Bill, however, it was considered that such a provision would not add anything to existing powers of police to require animals to be treated. It is an offence to fail to comply with a direction under the <i>Stock Act 1915</i>, punishable by a maximum of 400 penalty units.</p>
23	1 QLS		Insertion of new ch 22A- Length of order	<p>QLS submit that the six months default expiration period for orders provided for in s789AE(h) may be too long.</p> <p>QLS have proposed a shorter period (perhaps 30 days) and to provide for the stock owner to be able to make submissions to request further time (up to six months) where necessary.</p>	<p>The proposed time for expiry of the forced muster order is six months from the date of the order, rather than 21 days as recommended by the Stock Working Group. As stated above, this change takes into account droughts and floods. Advice from the QPS Stock and Rural Crime Investigation Squad is that cattle cannot be mustered in a drought nor can they be mustered in a flood or even if there has been an excess of rain. As an example, if an order is made in November for the Gulf area (which is the wet season) it may be impossible to commence a muster until April. As regards, the QLS' suggestion, the unpredictability of the weather means that although there may be a good outlook for mustering at the time of the hearing, this could subsequently be affected by flood or cyclone.</p>

