



# Agriculture and Other Legislation Amendment Bill 2019

Report No. 37, 56<sup>th</sup> Parliament  
State Development, Natural Resources and  
Agricultural Industry Development Committee  
October 2019

## **State Development, Natural Resources and Agricultural Industry Development Committee**

|                     |   |
|---------------------|---|
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### **Acknowledgements**

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## Abbreviations

|                 |  |
|-----------------|--|
| ACP Act         | <i>Animal Care and Protection Act 2001</i>   |
| Agforce         | Agforce Queensland Farmers Limited   |
| ALQ             | Animal Liberation Queensland   |
| AMIC            | Australian Meat Industry Council   |
| Bill            | Agriculture and Other Legislation Amendment Bill 2019                                |
| Biosecurity Act | <i>Biosecurity Act 2014</i>  |
| committee       | State Development, Natural Resources and Agricultural Industry Development Committee |
| DAF             | Department of Agriculture and Fisheries  |
| EFA             | Egg Farmers of Australia   |
| FLP             | fundamental legislative principle  |
| GICA            | Goat Industry Council of Australia   |
| LSA             | <i>Legislative Standards Act 1992</i>  |
| Minister        | Hon Mark Furner, MP, Minister for Agricultural Industry Development and Fisheries    |
| NLIS            | National Livestock Identification System   |
| OQPC            | Office of the Queensland Parliamentary Counsel                                       |
| QCCL            | Queensland Council for Civil Liberties   |
| QLS             | Queensland Law Society   |
| SLC             | Scrutiny of Legislation Committee  |
| Standards       | Australian Animal Welfare Standards and Guidelines                                   |

## Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Agriculture and Other Legislation Amendment Bill 2019.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The Bill provides for a number of improvements to the regulation of agriculture, animal management and welfare, forestry, and fisheries. Significant measures will address risks to the biosecurity of farm land and animal production facilities posed by certain protest activities. The Bill will also promote animal welfare and the investigation of companion animal welfare offences. Provisions authorising the use of body worn cameras in various circumstances will assist officers in performing their duties and contribute to greater accountability. The Bill makes amendments to address impediments in legislation in the agriculture, forestry and fisheries sectors and to clarify the arrangements for some statutory bodies and committees.

On behalf of the committee, I thank those individuals and organisations who made submissions and provided evidence on the Bill. I also thank our Parliamentary Service staff and the Department of Agriculture and Fisheries, the Department of Environment and Science, the Queensland Police Service, and the Department of Local Government, Racing and Multicultural Affairs.

I commend this report to the House.



**Chris Whiting MP**

**Chair**

## Recommendations

**Recommendation 1** **3**

The committee recommends the Agriculture and Other Legislation Amendment Bill 2019 be passed.

**Recommendation 2** **4**

The committee recommends that provisions in the Bill that relate to new offences or amend existing offences commence on a date fixed by proclamation.

**Recommendation 3** **10**

The committee recommends that the Minister clarify in his second reading speech how clause 132 will operate.

**Recommendation 4** **11**

The committee recommends that the Department of Agriculture and Fisheries consider increasing the amount of public information available on animal welfare breaches.

**Recommendation 5** **12**

The committee recommends that the Queensland Government work with the Australian Government on coordination of animal welfare policy.

## 1 Introduction

### 1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines and Energy, and
- Agricultural Industry Development and Fisheries.<sup>2</sup>

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles (FLPs).<sup>3</sup>

### 1.2 Inquiry process

The Agriculture and Other Legislation Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 22 August 2019. The committee was required to report to the Legislative Assembly by 8 October 2019.

On 23 August 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Nineteen written submissions were received (a list of submitters is provided at Appendix A).

The committee received a written briefing on the Bill from the Department of Agriculture and Fisheries (DAF), and a public briefing from DAF, the Department of Environment and Science, the Queensland Police Service, and the Department of Local Government, Racing and Multicultural Affairs on 13 September 2019 (a list of officers who appeared at the briefing is provided at Appendix B).

The committee received written advice from DAF in response to matters raised in submissions and the Bill's compatibility with human rights.

The committee held a public hearing in Brisbane on 13 September 2019 (a list of witnesses who appeared at the hearing is at Appendix C).

The submissions, correspondence from DAF, and transcripts of the briefing and hearing are available on the committee's webpage.<sup>4</sup>

### 1.3 Policy objectives of the Bill

The objectives of the Bill, as outlined in the explanatory notes, are to address impediments to the efficient and effective regulation of agriculture, animal management and welfare, forestry, and fisheries. According to the explanatory notes the Bill's provisions:

- address the risks posed by certain protest actions by increasing jail terms and fines for creating a biosecurity risk

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88; Standing Rules and Orders of the Legislative Assembly (Standing Orders) SO 194.

<sup>2</sup> *Parliament of Queensland Act 2001*; s 88, Standing Orders, SO 194, Schedule 6.

<sup>3</sup> *Parliament of Queensland Act 2001*, s 93(1).

<sup>4</sup> <https://www.parliament.qld.gov.au/work-of-committees/committees/SDNRAIDC/inquiries/current-inquiries/AOLAB2019>

- amend biosecurity zones in a timely manner
- clarify the duty of care in regard to animals in hot vehicles
- empower animal welfare inspectors to enter premises without a warrant to help abandoned animals
- facilitate investigation of animal welfare offences through the sharing of motor vehicle registration information
- increase the supply of transfer of ownership forms by suppliers of dogs
- authorise the use of body worn cameras
- expand access to farm business debt mediation
- provide more efficient procedures to remove wild stock and abandoned vehicles from state forest
- ensure timely classification of threatened species under the *Nature Conservation Act 1992*
- clarify the responsibilities of the Queensland Racing Integrity Commission
- make amendments concerning certain boards and committees
- improve traceability of goats.

Also contained in the Bill are provisions which:

- add further exemption to the requirement to return a seized animal
- remove the prohibition on the use of an animal for cosmetic testing
- compel declared dangerous dogs and declared menacing dogs to be fitted with a collar prescribed by regulation
- allow poison baits containing prohibited feed to be fed to pigs for pest control
- change listed Prohibited Matter in Schedule 1 and Restricted Matter in Schedule 2 of the *Biosecurity Act 2014* (Biosecurity Act)
- clarify reporting of chemical residues exceeding maximum residue limits
- clarify that 'waters' includes foreshores and non-tidal land and prohibited acts involving regulated fish
- remove areas from state plantation forest which have been surrendered by the plantation licensee
- alter the conditions and term of sales permits for forest products and quarry material.

#### **1.4 Government consultation on the Bill**

The explanatory notes describe consultation on the Bill as having occurred with RSPCA Qld in relation to amendments to the *Animal Care and Protection Act 2001* (ACP Act) and with the plantation licensee, HQPlantations Pty Ltd, in relation to amendments to the *Forestry Act 1959* and the Forestry Regulation 2015. Stakeholders' views were also obtained as part of the review of the Animal Management (Cats and Dogs) Regulation 2009, in relation to the use of an identifying collar for dangerous dogs and menacing dogs; and during the Companion Animal Welfare Review by the Animal Welfare Advisory Board in relation to dogs left in vehicles.

According to the explanatory notes, the Biosecurity Legislation Reference Group was consulted in relation to some amendments to the Biosecurity Act.<sup>5</sup> DAF advised that there was no consultation with animal welfare groups or animal industries groups on the provisions in the Bill that have been included to address protest actions and trespass on land used for animal production.<sup>6</sup>

The committee heard evidence at its public hearing that the Privacy Commissioner was not consulted in relation to amendments contained in the Bill authorising the use of body worn cameras.<sup>7</sup>

The explanatory notes state that public consultation was not undertaken on the other amendments proposed by the Bill because of their 'minor, non-controversial nature'.<sup>8</sup>

### **1.5 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill and its policy objectives and consideration of the information provided by DAF, the Department of Environment and Science, the Queensland Police Service, the Department of Local Government, Racing and Multicultural Affairs, submitters, and witnesses, the committee recommends that the Bill be passed.

#### **Recommendation 1**

The committee recommends the Agriculture and Other Legislation Amendment Bill 2019 be passed.

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<sup>5</sup> Explanatory notes, pp 26-27.

<sup>6</sup> Public hearing transcript, Brisbane, 13 September 2019, p 34.

<sup>7</sup> Public hearing transcript, Brisbane, 13 September 2019, p 15.

<sup>8</sup> Explanatory notes, p 27.

## 2 Examination of the Bill

The Bill proposes amendments to 17 Acts and four regulations. The provisions are principally directed at addressing biosecurity risks from protest activities, supporting the protection of animals in hot vehicles, abandoned animals and lost dogs, and the investigation of companion animal welfare offences, and authorising the use of body worn cameras in various circumstances.

Other provisions amend several unrelated Acts.

A concern was raised during the inquiry that many of the amendments in the Bill, including offence provisions, are proposed to commence on assent.<sup>9</sup> When legislating offences, this situation creates uncertainty for potential offenders, enforcement agencies, and legal advisers. DAF acknowledged that it may be appropriate to commence some additional provisions of the Bill on a fixed date.<sup>10</sup>

### Recommendation 2

The committee recommends that provisions in the Bill that relate to new offences or amend existing offences commence on a date fixed by proclamation.

In this report the committee has focussed on the key issues raised by stakeholders in submissions and at the public hearing, primarily with regard to the proposed legislation to address protest actions and to authorise the use of body worn cameras, and provisions relating to animal welfare investigations and offences, and the movement of wild goats.

### 2.1 Legislation to address certain protest actions

#### 2.1.1 Amendments to the *Biosecurity Act 2014*, the *Biosecurity Regulation 2016*, *Exhibited Animal Act 2015*, and *Summary Offences Act 2005*

A principle policy objective of the Bill, as outlined by the Hon Mark Furner MP, Minister for Agricultural Industry Development and Fisheries (Minister), in his explanatory speech, is to address unacceptable behaviour by animal activist protestors that poses risks to agricultural and related industries. Unacceptable behaviour includes creating ‘unnecessary welfare risks to animals’ and ‘putting human safety, biosecurity and food safety at risk’ and ‘affecting people’s livelihoods by disrupting production’.<sup>11</sup> The Minister informed the Parliament that the amendments would apply to all Queenslanders, including non-protestors, whose behaviour puts agricultural and related industries at risk.<sup>12</sup>

DAF advised the committee that ‘protest occurrences’ in Queensland have risen from five occurrences in 2017 to 15 in 2018 and 47 in 2019. DAF stated that these protest occurrences included ‘actual protests as well as intelligence reports’. The protest occurrences related to animal production facilities ‘such as feedlots, saleyards, live export loading, poultry processing and abattoirs’.<sup>13</sup>

Amendments to the Biosecurity Regulation 2016 were made in April 2016 to respond to potential biosecurity risks from unauthorised entry to properties involved in animal production by animal welfare protestors. The amendments introduced a new offence for a person entering, present at or leaving a management area to fail to comply with a biosecurity management plan, without a reasonable excuse. The new offence was prescribed as an infringement notice offence under the

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<sup>9</sup> Queensland Law Society, submission 12, p 2.

<sup>10</sup> Department of Agriculture and Fisheries, correspondence dated 12 September 2019, p 21.

<sup>11</sup> Hon Mark Furner MP, Minister for Agricultural Industry Development and Fisheries, explanatory speech, Queensland Parliament, Record of Proceedings, 22 August 2019, p 2479.

<sup>12</sup> Hon Mark Furner MP, Minister for Agricultural Industry Development and Fisheries, explanatory speech, Queensland Parliament, Record of Proceedings, 22 August 2019, p 2479.

<sup>13</sup> Department of Agriculture and Fisheries, correspondence dated 23 September 2019, p 2.

*State Penalties Enforcement Act 1999* allowing biosecurity inspectors and authorised persons to impose immediate fines.<sup>14</sup>

The Bill contains provisions amending the Biosecurity Act, Biosecurity Regulation 2016, *Exhibited Animals Act 2015*, *Summary Offences Act 2005*, and the State Penalties Enforcement Regulation 2014 which ‘will enhance the potential to prosecute persons who trespass or protest in other inappropriate ways for offences under criminal law as well as for biosecurity or exhibited animal offences’ and ‘increase penalties for the offending behaviour’.<sup>15</sup>

These amendments include:

Biosecurity Act 2014

- specifying that ‘carries out an activity’, in s 23(1) which prescribes a general biosecurity obligation, applies to persons entering, being present at, or leaving a place where biosecurity matter or a carrier is present and such persons are therefore liable to the general biosecurity obligation offence provision in s 24<sup>16</sup>
- removing ‘address’ from information held in the biosecurity register that must be published on DAF’s website (s 172)<sup>17</sup>

Biosecurity Regulation 2016

- repealing Chapter 2, Part 10 regulatory provisions introduced in April 2019 and inserting new provisions (Chapter 5, Part 13 Biosecurity management plan regulatory provisions) to allow that a registered biosecurity entity may make a biosecurity management plan, which must be available to be inspected at the place, and that a sign regarding compliance must be conspicuously displayed at the place in each area where there is a biosecurity management plan, and that a person entering, being present at, or leaving a management area must comply with the biosecurity management plan<sup>18</sup>

Summary Offences Act 2005

- replacing s 13 (Unlawfully entering farming land) with a new s 13 (Unlawfully entering and remaining on particular land) which extends the land use types to include holding facility, food production facility, and land for exhibition of animals. The maximum penalty under the new s 13 doubles the penalty under the current s 13<sup>19</sup>
- expanding the scope of s 10A to include specified risks, making a gathering of three or more persons on land (described in the new s 13) unlawful if the conduct of them taken together would cause a person in the vicinity to believe on reasonable grounds that the conduct poses a risk to the health and safety of a person, or a risk to the welfare of an animal, or a biosecurity risk, or is likely to cause an economic loss, or a risk to the safety of food produced for human or animal consumption. An example is given to clarify what is intended by ‘conduct likely to cause economic loss’<sup>20</sup>

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<sup>14</sup> The penalty for the infringement notice offence for an individual is 5 penalty units. The Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2019 sets the value of a penalty unit at \$133.45, as at 1 July 2019; 5 penalty units is equivalent to a penalty of \$667.25.

<sup>15</sup> Department of Agriculture and Fisheries, correspondence dated 30 August 2019, p 1.

<sup>16</sup> Bill, cl 29.

<sup>17</sup> Bill, cl 32.

<sup>18</sup> Bill, cl 49.

<sup>19</sup> Bill, cl 133.

<sup>20</sup> Bill, cl 132.

- extending the offence of opening and leaving open any gate, fence or barrier, to land specified in the expanded definition of agricultural activity<sup>21</sup>

#### Exhibited Animal Act 2015

- inserting a new s 22A requiring a person to take care to not cause or increase a risk and to comply with instructions given by a person responsible for an exhibited animal<sup>22</sup>
- inserting new ss 188A - 188C providing for power to direct a person to leave immediately (private land) or move away (public land), and introduce a new offence of 100 penalty units for failure to comply with a direction<sup>23</sup>

#### State Penalties Enforcement Regulation 2014

- amending schedule 1 to provide that failure to discharge a general biosecurity obligation where a person does not comply with new s 94H(1) of the Biosecurity Regulation 2016 is an infringement notice offence attracting a maximum penalty of 5 penalty units; and amending schedule 1<sup>24</sup> to reflect the increase in the maximum penalty under s 13 of *Summary Offences Act 2005* from 10 penalty units or 6 months imprisonment to 20 penalty units or 1 year's imprisonment.<sup>25</sup>

#### 2.1.1.1 Stakeholders' views

Animal and food industry representative organisations that made submissions about the proposed amendments to deter intrusions on farming land and animal industry supply chain facilities supported the provisions in the Bill.<sup>26</sup>

Agforce Queensland Farmers (Agforce) submitted that the changes to the Biosecurity Regulations 2016 which were introduced in April 2019, establishing on-the-spot fines to people who fail to meet their general biosecurity obligation in order to deter intrusions on farming land and animal industry supply chain facilities, did not provide a sufficiently strong deterrent to activist activity.<sup>27</sup> The Queensland Farmers' Federation also submitted that current laws 'are no longer fit for purpose'.<sup>28</sup>

In its submission, Egg Farmers of Australia (EFA) stated that the organisation supports increasing jail terms and fines for creating a biosecurity risk as a method of deterring trespassers. EFA noted the potential risk to biosecurity which might result from trespass on to agricultural properties and that some egg producers' costs of production have increased because of a need to take additional security measures on farms. EFA stated that in many instances egg farms are also egg producers' or managers' homes and that egg producers have left the industry 'due to the stress and impact of trespasses'.<sup>29</sup>

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<sup>21</sup> Bill, cl 133.

<sup>22</sup> Bill, cl 78.

<sup>23</sup> Bill, cl 79.

<sup>24</sup> Bill, cl 130; the amendment increases the infringement notice penalty for s 13(1) of the *Summary Offences Act 2005* from 1 to 2 penalty units.

<sup>25</sup> Bill, cl 130.

<sup>26</sup> Australian Pork Limited, submission 2; Restaurant & Catering Industry Association, submission 3; Egg Farmers of Australia, submission 8; Australian Livestock and Property Agents, submission 11; Queensland Farmers' Federation, submission 13; Agforce Queensland Farmers Limited, submission 17.

<sup>27</sup> Submission 17, p 8.

<sup>28</sup> Submission 13; public hearing transcript, Brisbane, 13 September 2019, p 3.

<sup>29</sup> Submission 8, p 2.

The Australian Livestock and Property Agents Association and Restaurant & Catering Australia also commented on the likelihood of increased costs for businesses in the food supply chain resulting from the need to change operating procedures in response to protest actions.<sup>30</sup>

Stakeholders objecting to the amendments to address protest actions questioned whether the policy objective was to minimise biosecurity risks that might result from protest activities or limit criticism of industry practices that adversely affect animal welfare.<sup>31</sup> Animal Liberation Queensland (ALQ) submitted that many of the clauses in the Bill are excessive and aimed at further criminalising peaceful protests and silencing debate about animal welfare issues.<sup>32</sup>

Submissions from animal welfare organisations stated that the reason people take part in the protest activities is to highlight poor animal welfare practices in animal industries in Queensland. The situation was summarised by Ms Joanne Webb, Queensland Committee Member, Animal Justice Party, as involving:

- (1) *a lack of transparency and failed self-regulation by animal industries;*
- (2) *broad exemptions of industries that operate within their own code of conduct, rendering most protections useless;*
- (3) *insufficient industry monitoring, law enforcement and punishment for animal cruelty;*
- (4) *failure of a complaints based system that relies on whistleblowers to evidence and report breaches, contrary to their own commercial interests; and*
- (5) *a conflict of interest for the Department of Agriculture and Fisheries and Biosecurity Queensland which are tasked with promoting agricultural efficiency as well as managing reports of animal cruelty.*<sup>33</sup>

Submitters also questioned the need to create new offences and increase penalties when legislation exists currently to address intrusions on to land and premises.<sup>34</sup> The Queensland Law Society (QLS) stated that there is no evidence that the proposed increase to penalties for unlawfully entering farming and associated land to match penalties for unlawful entry to a dwelling will achieve the desired effect or that the current law is inadequate.<sup>35</sup>

#### 2.1.1.2 Departmental responses

In response to the concerns about monitoring and enforcement of farm animal welfare being a motivation for protest activities, DAF advised:

*In some instances, it may be appropriate for livestock production animals to undergo husbandry procedures that would not be appropriate for companion animals. Codes of practice for production animals help identify where such practices are appropriate.*

<sup>30</sup> Australian Livestock and Property Agents Association, submission 11; Restaurant & Catering Australia, submission 3.

<sup>31</sup> Jonathan Peter, submission 1; Farm Animal Rescue, submission 5; Animal Defenders Office, submission 6; Animal Liberation Queensland, submission 7; Animal Justice Party Queensland, submission 9; Mary Ann Gourlay, submission 15.

<sup>32</sup> Submission 7, pp 2, 16.

<sup>33</sup> Public hearing transcript, Brisbane, 13 September 2019, p 9. See also Farm Animal Rescue, submission 5; Animal Defenders Office, submission 6; Animal Liberation Queensland, submission 7; Animal Justice Party Queensland, submission 9; Mary Ann Gourlay, submission 15.

<sup>34</sup> Queensland Human Rights Commission, submission 4; Animal Defenders Office, submission 6; Animal Liberation Queensland, submission 7; Queensland Council for Civil Liberties, submission 19.

<sup>35</sup> Submission 12, p 3.

*... The primary focus of the Department of Agriculture and Fisheries' (department) animal welfare compliance strategy is ensuring the welfare needs of animals are met. A mix of regulatory and non-regulatory tools are used to promote animal welfare, including education about welfare needs and the responsibilities of those who deal with them.*

*All allegations of animal welfare breaches received by the department are reviewed. At an operational level, inspectors have some discretion about their response. Inspectors generally take an educational approach in the first instance and escalate the response if this is unsuccessful.*

*... Generally, the Department's view is that working collaboratively with industry to promote animal welfare is the most effective compliance strategy, as industry has multiple drivers to be concerned for the welfare of the animals on which their livelihood depends.<sup>36</sup>*

In regard to enforcement, DAF advised the committee that 'total animal welfare investigations undertaken by DAF was 1226, 1379 and 1386 in 2015/16, 2016/17 and 2017/18 respectively'.<sup>37</sup> No information about the nature the offences, investigations, or any prosecutions was provided.

Concerns about DAF having responsibility for both animal welfare and supporting growth of the animal industries sector, were addressed by Mr Patrick Bell, General Manager, Strategy and Legislation, Biosecurity Queensland, DAF, who advised the committee:

*This matter came up in a review of the biosecurity capability during 2015. The question of the alignment of animal welfare activities with biosecurity activities was examined. It was considered that, because the skills and capability that are required to understand animal diseases are so very closely aligned with understanding the welfare of animals, it would be a duplication of resources if you were to try to separate those out, given that we have one or two officers in a large number of diversified remote and regional locations. In terms of the industry development side of the department, Biosecurity Queensland is a separate organisational activity to the industry development activities within the department so there is a separation there.<sup>38</sup>*

In response to a range of issues raised by submitters, DAF acknowledged that there were some matters relating to specific provisions in the Bill that required further attention. These matters are outlined below.

QLS noted that that there is no penalty specified for the offence of failing to comply with measures stated a biosecurity management plan in proposed s 94G(4)(c)(ii) of the Biosecurity Regulation 2016.<sup>39</sup> DAF advised:

*Section 23 of the Biosecurity Act 2014 provides (broadly) that a person has a general biosecurity obligation (GBO) to take all reasonable and practical measures to prevent or minimise a biosecurity risk. ... Section 24 of the Act provides that it is an offence to fail to discharge this obligation and the maximum penalty provided is generally 500 penalty units but may be higher as specified. Section 25 of the Act provides that a provision of a regulation may be identified in*

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<sup>36</sup> Department of Agriculture and Fisheries, correspondence dated 18 September 2019, p 4-5. Voluntary Model Codes of Practice for the Welfare of Animals are being replaced over time by mandatory Australian Animal Welfare Standards and Guidelines (Standards) for livestock. The Standards for domestic fowl, pigs, and transport of livestock are legislated in Queensland as compulsory codes under the *Animal Care and Protection Act 2001*.

<sup>37</sup> Department of Agriculture and Fisheries, correspondence dated 23 September 2019, p 1.

<sup>38</sup> Public hearing transcript, Brisbane 13 September 2019, p 35.

<sup>39</sup> Queensland Law Society, submission 12, p 3.

*the regulation as a way of discharging this obligation and that a person fails to discharge their obligation if they contravene the regulation provision.*<sup>40</sup>

Some submitters queried whether the general biosecurity obligation which applies equally to all persons, would also be enforced equally against all persons,<sup>41</sup> and whether agricultural workers would be subject to the proposed penalty for breaching biosecurity management plans.<sup>42</sup>

DAF stated:

*The general biosecurity obligation and the new requirement for compliance with a biosecurity management plan applies equally to all persons. The obligation and requirement also apply whether entry is lawful or unlawful. ... these provisions apply to all workers entering an animal holding facility for which there is a biosecurity management plan.*<sup>43</sup>

and

*... the requirement does not discriminate between different groups and applies equally to a landowner or animal activist who fails to comply with the contents of the plan<sup>44</sup> ... All new and increased penalties within the Bill will apply equally to all persons, including farmers who breach biosecurity requirements.*<sup>45</sup>

The QLS suggested that, as a penal statute, the provision amending s 10A(1)(b) of the *Summary Offences Act 2005*<sup>46</sup> 'likely to cause economic loss to a business carried on the land' needs to relate to an actual rather than a potential consequence.<sup>47</sup> The QCCL was similarly concerned that the level of likelihood or the type of economic loss is not clear in this provision.<sup>48</sup> In response to these concerns DAF stated:

*The department acknowledges that on face value, this could be interpreted as extending to conduct which indirectly causes economic loss. The example given, and the Explanatory Notes at pages 52 and 53, were intended to clarify that this is not the intent. However, an example does not limit the meaning of the provision.*<sup>49</sup>

The QCCL also identified that, in relation to subsections (A), (B) and (E) of proposed s 10A(1)(b)(ii) of the *Summary Offences Act 2005*, which deals with conduct which poses 'a risk' to the health and safety of a person, or the welfare of an animal, or the safety of food produced, 'a risk' is not defined. The QCCL suggested that the risk must be "serious", "significant" or "substantial" for criminal liability.<sup>50</sup>

#### Committee comment

The committee believes that cl 132, amending the s 10A (Unlawful assembly) of the *Summary Offences Act 2005*, needs to be clarified, as acknowledged by DAF.

<sup>40</sup> Department of Agriculture and Fisheries, correspondence dated 12 September 2019, p 22

<sup>41</sup> Animal Defenders Office, submission 6, p 4.

<sup>42</sup> Mary Ann Gourlay, submission 15, p 10.

<sup>43</sup> Department of Agriculture and Fisheries, correspondence dated 12 September 2019, p 11.

<sup>44</sup> Department of Agriculture and Fisheries, correspondence dated 18 September 2019, p 7.

<sup>45</sup> Department of Agriculture and Fisheries, correspondence dated 18 September 2019, p 7.

<sup>46</sup> Bill, cl 132.

<sup>47</sup> Queensland Law Society, submission 12, p 3.

<sup>48</sup> Submission 19, p 3.

<sup>49</sup> Department of Agriculture and Fisheries, correspondence dated 12 September 2019, p 22.

<sup>50</sup> Submission 19, p 3.

**Recommendation 3**

The committee recommends that the Minister clarify in his second reading speech how clause 132 will operate.

**2.1.2 Human rights considerations**

The Queensland Human Rights Commissioner raised concerns about the provisions of the Bill aimed at deterring protest, noting that the explanatory notes identified the following rights as being potentially affected by the Bill:

- equality before the law
- freedom of association
- the right to peaceful assembly
- freedom of movement
- the right to privacy.<sup>51</sup>

The Queensland Human Rights Commissioner advised that the explanatory notes do not provide information on the failure of current trespass laws or justify the need for legislation to limit the right to peaceful assembly, and that ‘the Commission does not support Clause 132 - Amendment of s 10A (Unlawful assembly)’.<sup>52</sup>

The QLS and the QCCL reiterated concerns about compatibility of the protection of the right to peaceful assembly and freedom of association with the provisions in the Bill amending s 10A of the *Summary Offences Act 2005*.<sup>53</sup>

With respect to the potential impacts of provisions in the Bill on the human rights, Senior Sergeant Andrea Reeves, Senior Strategy Officer, Legislation Branch, Queensland Police Service advised:

*I think it is important to note that there was some talk around impinging on people’s right to protest and their human rights. It certainly does not do that. Under the Peaceful Assembly Act, everyone does have the right to peaceful assembly but it also takes into account the right of public order, the right of public safety and the right of other people to enjoy their rights and liberties and their freedoms as well. Protest, yes, but it is not absolute. There still have to be boundaries around it.*

*This legislation goes around unlawful behaviours that are occurring primarily on private land. It is how we manage the rights and freedoms of other people who are being impinged upon by a small group of people and their beliefs. In terms of human rights and those freedoms, it certainly does not, because it is all about unlawful behaviour rather than somebody’s right to protest peacefully.<sup>54</sup>*

DAF provided advice to the committee on the compatibility of the Bill in relation to the right to peaceful assembly, stating that ‘it is arguable that if there is a reasonable risk of economic loss or a risk to the safety of any person, food safety, animal welfare, or a biosecurity risk then the assembly is not

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<sup>51</sup> Submission 4, p 2; explanatory notes, pp 13-19.

<sup>52</sup> Submission 4, p 3.

<sup>53</sup> Submission 12; submission 19. The QCCL was also concerned about the justification for legislation assigning criminal responsibility on the basis of membership of a group rather than personal guilt (submission 19).

<sup>54</sup> Public hearing transcript, Brisbane, 13 September 2019, p 34.

peaceful'.<sup>55</sup> In relation to the effect of provisions on freedom of association, freedom of expression, and equality before the law, DAF stated that the limitation is 'reasonable, necessary and proportionate to the objective of protecting human health and safety, food safety, animal welfare, biosecurity and the rights of farmers'.<sup>56</sup>

DAF also advised that 'the issuing of a biosecurity order will only ever be for the purpose of minimising a biosecurity risk and not for the purpose of stifling protest activity'.<sup>57</sup>

With regard to the impact of the proposed new s 13 of the *Summary Offences Act 2005* on the right to freedom of movement, DAF advised the committee:

*It is justified by community expectations that the State share the burden of enforcing the property and other interests of those who use their land for agricultural and similar purposes. This protection from interference is justified given the value of these activities to the community generally.*<sup>58</sup>

#### Committee comment

The committee considers biosecurity to be an important issue which will be enhanced by the measures in this Bill to deter unlawful entry on to farm land and animal production properties. The committee acknowledges industry concerns about the unlawful entry to places of production.

The committee recognises that community expectations about animal welfare and animal production practices continue to evolve over time. Community concerns can be best managed by greater transparency and access to accurate information about animal production and processing. The committee acknowledges that some animal industry operators have moved towards a more open approach and greater transparency. The committee commends this approach and believes that this will assist industry to demonstrate publicly how animal welfare standards are maintained throughout the animal production supply chain.

It is difficult for the public to obtain accurate information about animal welfare generally. Information and greater detail on animal welfare investigations will support better understanding in the community about practices and standards in Queensland's animal production industries as well as animal welfare in the community more broadly. The committee notes that DAF provides only brief information on investigations by welfare inspectors in its annual reports or elsewhere. The committee sees great value in enhancing transparency in this area.

#### **Recommendation 4**

The committee recommends that the Department of Agriculture and Fisheries consider increasing the amount of public information available on animal welfare breaches.

The committee acknowledges the valuable functions performed by Biosecurity Queensland and RSPCA Qld in monitoring and enforcing animal welfare in Queensland.

The Australian Animal Welfare Standards and Guidelines (Standards) which set minimum acceptable welfare standards for animal industries are being progressively developed and gradually adopted as compulsory codes of practice in Queensland. The committee is disappointed that in July 2014 the federal government ceased support for the Australian Animal Welfare Strategy which commenced the process of developing the Standards. The committee urges the Australian Government to re-establish

<sup>55</sup> Department of Agriculture and Fisheries, correspondence dated 12 September 2019, p 22. Also explanatory notes, p 17.

<sup>56</sup> Department of Agriculture and Fisheries, correspondence dated 12 September 2019, pp 22, 24.

<sup>57</sup> Department of Agriculture and Fisheries, correspondence dated 18 September 2019, p 9.

<sup>58</sup> Department of Agriculture and Fisheries, correspondence dated 12 September 2019, p 23.

its leadership and coordination role in animal welfare to support the implementation of consistent welfare standards throughout Australian production sectors in a timely manner.

**Recommendation 5**

The committee recommends that the Queensland Government work with the Australian Government on coordination of animal welfare policy.

## 2.2 Legislation to authorise the use of body worn cameras

The Bill proposes amendments to authorise the use of body worn cameras by authorised officers and inspectors while exercising powers under the ACP Act, the Biosecurity Act, the *Chemical Usage (Agriculture and Veterinary) Control Act 1988*, the *Exhibited Animals Act 2015*, and the *Drugs Misuse Act 1986*.

Some submitters to the inquiry were concerned about privacy and surveillance implications of the use of body worn cameras.<sup>59</sup> Other submissions expressed support for the use of body worn cameras to monitor compliance and assist the investigation of animal cruelty offences, particularly in relation to failures to comply with relevant codes of practice<sup>60</sup> under the ACP Act.<sup>61</sup>

RSPCA Qld advised the committee that their inspectors have used body worn cameras for some time and that the organisation welcomes the amendments clarifying their lawful use. RSPCA Qld explained that primarily the use of body worn cameras ensures accountability for both persons of interest and inspectors, while also allowing for evidence to be recorded and providing some safety for inspectors conducting their duties under the ACP Act.

Chief Inspector Daniel Young, RSPCA Qld, stated:

*... probably the No. 1 thing is accountability for both persons of interest and inspectors. It allows us to ensure they are performing their roles within the parameters of this act. We want to make it very clear that that is the main thing. Obviously, they are also there to gather evidence. I know there was mention before around fisheries, but we deal with the same clientele as police. Our inspectors are in difficult situations with violent offenders every single day. It certainly helps with that as well. Since the introduction of body worn cameras we have seen a decrease in violent altercations.*<sup>62</sup>

RSPCA Qld informed the committee that the period of time that footage is retained depends on relevance and that data pertaining to a potential offence is retained for as long as necessary to investigate the offence, supporting the ability to obtain warrants and progress the matter.<sup>63</sup>

The QCCL advised that while it supports the use of body worn cameras in some contexts, it does not in the case of inspectors covered by the Bill.<sup>64</sup> The QCCL suggested that safeguards are required if the use of body worn cameras is to be legislated and body worn cameras should only be used when inspectors are exercising their powers under the various Acts.<sup>65</sup>

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<sup>59</sup> Queensland Council for Civil Liberties, submission 19; Queensland Human Rights Commission, submission 4; Animal Justice Party Queensland, submission 9; Mary Ann Gourlay, submission 15.

<sup>60</sup> Compulsory codes of practice for domestic fowl, pigs, transport of livestock, and breeding of dogs, are made under the Animal Care and Protection Regulation 2012. It is an offence under s 15 (3) of the *Animal Care and Protection Act 2001* to fail to comply with these codes.

<sup>61</sup> Animal Liberation Queensland, submission 7; Animal Justice Party Queensland, submission 9.

<sup>62</sup> Public hearing transcript, Brisbane, 13 September 2019, p 21.

<sup>63</sup> Public hearing transcript, Brisbane, 13 September 2019, p 21.

<sup>64</sup> Public hearing transcript, Brisbane, 13 September 2019, p 15.

<sup>65</sup> Submission 19, pp 1-2.

The Queensland Human Rights Commissioner, Mr Scott McDougall, noted that the explanatory notes did not consider recording of sounds and images by body worn cameras, other than for the ACP Act. The Commissioner sought clarification as to whether recordings made by inspectors under other Acts covered by the Bill would also be subject to the provisions of the *Records Act 2002*, *Right to Information Act 2009* and *Information Privacy Act 2009*.<sup>66</sup>

In response DAF acknowledged that this was an oversight and that this information should have been included in the explanatory notes for the equivalent amendment to all the relevant Acts. The *Records Act 2002*, *Right to Information Act 2009* and *Information Privacy Act 2009* will apply in relation to all the proposed uses of body worn cameras under each Act.<sup>67</sup>

With respect to the use of body worn cameras as an accountability mechanism and the need for safeguards for privacy in the handling and storage of recorded information, Ms Marguerite Clarke, Director, Regulatory Policy and Reform Unit, DAF, advised that the provisions in the Bill allowing for body worn cameras were based on precedents in legislation, such as the *Fisheries Act 1994*, and that:

*If footage is required to support a prosecution, the footage will be kept for as long as necessary to support that prosecution; otherwise it is destroyed after six months. We certainly have some protocols we work under in the department already in regard to body worn cameras. Whether they should be something more public is another matter, and I would have to look into exactly the consultation that occurred on developing those protocols.*<sup>68</sup>

#### Committee comment

The committee acknowledges concerns about the use of body worn cameras and privacy issues associated with the collection and retention of the data obtained in this way. The committee considers that body worn cameras contribute to greater accountability and assist officers in performing their roles in regard to compliance.

## **2.3 Legislation relating to animal welfare investigations and offences**

### **2.3.1 Amendments to the *Animal Care and Protection Act 2001***

The Bill amends the ACP Act to include inappropriately confining or transporting an animal in a vehicle as a breach of a person's duty of care to the animal<sup>69</sup> and to provide an example to clarify that confining an animal in or on a vehicle in a way that causes heat stress or pain to the animal is an animal cruelty offence.<sup>70</sup>

The Minister summarised the problem the amendments seek to address in his explanatory speech:

*Animals can quickly begin to suffer due to heat when confined without shade, air movement and access to cool drinking water, such as in a vehicle. Dogs can die in a hot car within minutes because they cool themselves by panting, which is ineffective if the air becomes hot. It takes only minutes for a car to become hot, even if the window is down. It is completely unacceptable that, despite significant publicity to raise awareness, a very significant proportion of animal welfare complaints are still about dogs left in hot cars. Last year the RSPCA reported it rescued 829 animals from vehicles.*

<sup>66</sup> Submission 4, pp 3-4.

<sup>67</sup> Department of Agriculture and Fisheries, correspondence and dated 12 September 2019, p 11.

<sup>68</sup> Public hearing transcript, Brisbane, 13 September 2019, pp 31-32.

<sup>69</sup> Bill, cl 4.

<sup>70</sup> Bill, cl 5.

*... the bill clarifies that a person's duty of care to an animal includes confining or transporting it appropriately. The bill also clarifies that confining an animal in or on a vehicle in a way that causes the animal heat stress or pain is an animal cruelty offence.<sup>71</sup>*

The Bill also contains provisions to hasten the response to abandoned animals by empowering animal welfare inspectors to enter premises without a warrant if they have made reasonable attempts, over a period of two days, to find the animal's owner.<sup>72</sup> Currently an inspector can only enter if an animal is at imminent risk of death or injury. The amendment enables inspectors to act before that point and enable the abandoned animal to be seized and taken into care.

The advantage expected from the amendments in the Bill to help abandoned animals were explained by Chief Inspector Young, RSPCA Qld:

*...we are quite excited about that proposed legislation. Traditionally, in relation to the abandonment of animals we have had to enter properties to provide them relief, and it was believed that we then needed to leave and come back with essentially a higher power, which is a warrant to enter. ... I think this is great, because it really makes it very clear what our powers of entry to obtain evidence are. Abandonments form a large number of our complaints. We receive approximately 19,000 complaints a year and abandonments are quite a large number of those complaints.<sup>73</sup>*

In relation to seizure of animals, the Bill provides for an additional exception to the return of a seized animal if the chief executive has not made a decision under s 154 of the ACP Act about whether an animal is to be forfeited to the state.<sup>74</sup> This is to allow time to make an informed decision about the appropriateness of forfeiture in the circumstances. The Bill also provides that the chief executive must make a decision on whether to forfeit the animal within 14 days of receiving information from an inspector.<sup>75</sup>

Dogs Queensland submitted its concern about the provisions empowering animal welfare inspectors to enter premises where an inspector suspects an animal is abandoned as they 'could be utilised to forego any reasonable inquiries'.<sup>76</sup> Dogs Queensland were opposed to amendment of s 152 (Return of seized animal) of the ACP Act, stating that 'because the CEO has not made a decision under S154 (to forfeit) we feel is not a valid reason to provide an exemption'.<sup>77</sup>

The Bill amends the ACP Act to provide for sharing of motor vehicle registration information between state government departments if an inspector is reasonably satisfied that the information may be useful in an investigation about an animal welfare offence.<sup>78</sup> The QLS submitted that the sharing of vehicle registration details to identify 'a person whom the inspector reasonably suspects committed the offence' in the proposed s 215D(a)(ii) 'is wider than envisaged at page 3 of the Explanatory Note and may have privacy implications'.<sup>79</sup>

Clause 18 of the Bill provides for the omission of s 92(c)(i) of the ACP Act which prohibits the use of an animal for cosmetic testing from 1 July 2020. The explanatory notes state that 'this is because the

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<sup>71</sup> Hon Mark Furner MP, Minister for Agricultural Industry Development and Fisheries, explanatory speech, Queensland Parliament, Record of Proceedings, 22 August 2019, p 2480.

<sup>72</sup> Bill, cls 8, 9.

<sup>73</sup> Public hearing transcript, Brisbane, 13 September 2019, p 20.

<sup>74</sup> Bill cl 10; explanatory notes, p 29.

<sup>75</sup> Bill cl 11; explanatory notes, p 29.

<sup>76</sup> Submission 10, p 1.

<sup>77</sup> Submission 10, p 1-2.

<sup>78</sup> Bill, cls 15, 16.

<sup>79</sup> Submission 12, p 5

Scientific Use Code is proposed to prohibit such testing'.<sup>80</sup> Animal Liberation Queensland suggested that to pass legislation removing the prohibition while the Scientific Use Code does not currently prohibit it is premature.<sup>81</sup> DAF advised that it 'considers that the risk of the Scientific Use Code not being amended is negligible'.<sup>82</sup>

#### Committee comment

The committee considers the amendments to the ACP Act reflect community expectations.

The committee notes the concerns in relation the timing of the amendment removing the prohibition on using an animal for cosmetic testing from the ACP Act, however the committee is satisfied with DAF's advice that amendments to the Scientific Use Code will occur in a timely manner.

#### **2.3.2 Amendments to the *Animal Management (Cats and Dogs) Act 2008***

The Bill amends the *Animal Management (Cats and Dogs) Act 2008* to require suppliers of dogs to provide a change of ownership form for a microchip,<sup>83</sup> to assist dog owners to comply with their obligation to keep microchip details up to date. Up to date microchip details help to reunite lost dogs with their owners and assist with the resolution of ownership disputes.<sup>84</sup>

The Bill also provides for declared dangerous dogs and declared menacing dogs to be fitted with a collar prescribed by regulation to be worn at all times.<sup>85</sup>

Submitters suggested that changes to legislation requiring change of ownership forms be provided for dogs should also apply to cats<sup>86</sup> and that the amendments should be accompanied by 'a targeted community education campaign in English and community languages' as 'such campaigns are crucial in helping to ensure companion animals get home if lost or stolen'.<sup>87</sup>

RSPCA Qld advised, in response to suggestions that the provisions concerning microchip transfer forms that apply to dogs should also apply to cats:

*... when we can positively identify the owner of an animal, particularly in our case when we are investigating offences under the act, it has to help the investigators for sure in hopefully reuniting animals. Many of the animals that come into our care are not necessarily neglected or removed from their owners. Quite often they are removed from people who do not own the animals or they have come to us sick and injured through our animal rescue services. If we can identify those animals and get them back into care or identify the offenders, then obviously that is a positive. A way of doing that would obviously be through up-to-date microchipping.*

DAF advised that the suggestion that the requirement to provide change of ownership forms to update microchip details for dogs should also apply to cats was beyond the scope of the Bill.<sup>88</sup>

#### Committee comment

The committee welcomes the amendments to the *Animal Management (Cats and Dogs) Act 2008*, and sees value in considering amendments to the *Animal Management (Cats and Dogs) Act 2008* to require suppliers of cats to provide change of ownership forms.

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<sup>80</sup> Explanatory notes, p 31.

<sup>81</sup> Submission 7, p 7.

<sup>82</sup> Department of Agriculture and Fisheries, correspondence dated 12 September 2019, p 16.

<sup>83</sup> Bill, cls 20, 21.

<sup>84</sup> Explanatory notes, p 31.

<sup>85</sup> Bill, cls 23-27.

<sup>86</sup> Animal Defenders Office, submission 6; Mary Ann Gourlay, submission 15.

<sup>87</sup> Mary Ann Gourlay, submission 15, p 12.

<sup>88</sup> Department of Agriculture and Fisheries, correspondence dated 18 September 2019, p 9.

## 2.4 Legislation regarding the movement of wild goats

The Biosecurity Act currently allows for a 10 day exemption for the movement of wild (feral) goats from the property of capture to either a processing works or an approved depot without an approved device (National Livestock Identification System (NLIS) device).<sup>89</sup> Wild goats held in a depot for longer than 10 days must be tagged with an approved device. Likewise wild goats moved from a depot to another depot or property must be tagged. The exemption is provided as the locations where the animals were captured, held and processed within a 10 day period is known. The Bill amends s 180 of the Biosecurity Act to remove the exemption for the movement of wild goats in these circumstances, so that moving goats without an approved device would require a travel approval.<sup>90</sup>

The Australian Meat Industry Council (AMIC) and Goat Industry Council of Australia (GICA) and Agforce strongly opposed the amendment of s 180(c) of the Biosecurity Act to remove the exemption for moving goats without an approved device, and advised the committee that the statement in the explanatory notes that the national SAFEMEAT partnership<sup>91</sup> supported the amendment is 'untrue' and 'misleading'.<sup>92</sup> AgForce submitted that it was not consulted on the amendment and that wide consultation of affected stakeholders had been non-existent.<sup>93</sup>

Agforce stated that the amendment contradicts previously agreed *Industry NLIS Standards for operating a goat depot and user manual (Standard Operating Procedures)*<sup>94</sup> accepted by the Queensland Government, Agforce, and the goat industry in Queensland and that further understanding of the need for the proposed amendment is required.<sup>95</sup> Agforce, AMIC and GICA also advised that they are unaware of any evidence of misuse of the current exemptions occurring.<sup>96</sup>

DAF advised the committee that:

*Unfortunately, there seems to have been a misunderstanding about goat harvesting and movements no longer being able to be achieved once this exemption has been considered. That is not the case. The very case of the standard operating procedures that have been worked through at the national level provide for the goats to move under very similar circumstances to how they are at the moment from rangeland property, untagged through to the holding facility or, ... the depot, and then subsequently through to the abattoir. There is not a significant deal of difference other than that section 180E of the act will now be the mechanism under which those activities are regulated.*

*Section 180E provides for what is known as an inspector's approval or a travel approval to be provided to industry participants to manage the movement of rangeland feral goats and other goats from farm through to depot, holding depot and then through to abattoir. We will take some action to clarify that situation, and that is the mechanism through which we will be implementing this national situation.*

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<sup>89</sup> Biosecurity Act 2014, s 180.

<sup>90</sup> Bill, cl 33.

<sup>91</sup> SAFEMEAT is a partnership between the Australian red meat and livestock industry and state and federal governments to promote best practice management systems and direct industry strategies for the safe and hygienic production of red meat and livestock; <http://safemeat.com.au/about-safemeat/overview.htm>.

<sup>92</sup> Australian Meat Industry Council and Goat Industry Council of Australia, submission 16; AgForce Queensland Farmers Limited, submission 17.

<sup>93</sup> Submission 17, p 3.

<sup>94</sup> Goat Industry Council of Australia, 2017, <https://www.goatindustrycouncil.com.au/wp-content/uploads/2019/06/goat-depots-final-270517.pdf>

<sup>95</sup> Submission 17, pp 3-4.

<sup>96</sup> Australian Meat Industry Council and Goat Industry Council of Australia, submission 16; AgForce Queensland Farmers Limited, submission 17.

With respect to criticism about consultation in relation to the proposed amendments, DAF advised the committee that because wild goats cross state borders, consultation about the policy regarding the movement of wild goats was based on the approval of the *Industry NLIS Standards for operating a goat depot and user manual*, which occurred at the national level, by SAFEMEAT in 2017.<sup>97</sup>

Committee comment

The committee acknowledges that the concerns of industry representative organisations is primarily related to consultation about the amendments. The committee suggests that moving forward DAF directly consult stakeholders in Queensland about the arrangements for movement of wild goats.

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<sup>97</sup> Public hearing transcript, Brisbane, 13 September 2019, p 32; Department of Agriculture and Fisheries, correspondence dated 18 September 2019, pp 9-11.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs 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 has examined the application of the FLPs to the Bill. It is considered that cls 8, 13, 16, 17, 23, 24, 25, 29, 31, 37, 38, 49, 71, 72, 75, 76, 78, 79, 80, 81, 114, 115, 116, 118, 125, 132 and 133 contain potential issues of fundamental legislative principle. (The Bill also includes nine offence provisions which are set out at Appendix D.)

The committee brings the following to the attention of the Legislative Assembly.

##### 3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

##### Clauses 13, 16, 29, 31, 37, 38, 49, 71, 72, 75, 76, 78, 79, 80, 81 and 114 - Summary of provisions

###### 3.1.1.1 *Right to Privacy – Use of body worn cameras*

Body worn cameras are increasingly being used by law enforcement agencies or agencies with compliance functions to assist officers in gathering evidence of offences, record verbal orders and directives, assist in investigating complaints and reduce incidents of obstruction.

A number of provisions in the Bill allow the use of body worn cameras by authorised officers or inspectors to record sounds and images while exercising powers on and after entry to a place (other than a vehicle) for investigation and enforcement purposes.<sup>98</sup>

Lawful use of body worn cameras under these provisions includes use that is inadvertent or unexpected or incidental. The provisions also declare the body worn cameras to be authorised listening devices for the purposes of the *Invasion of Privacy Act 1971*.<sup>99</sup>

The explanatory notes advise that:

*Recordings made by inspectors while exercising a power under the Animal Care and Protection Act 2001 are records under the Public Records Act 2002. As a recording is a document of an agency, a person may apply for access to a recording under the Right to Information Act 2009. A person may also apply for access to a recording under the Information Privacy Act 2009 to the extent a recording contains the individual’s personal information. Recordings must be retained*

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<sup>98</sup> See the following mirror provisions authorising use of body worn cameras by authorised officers and inspectors:

- Clause 16 inserting new s 215E into the *Animal Care and Protection Act 2001*
- Clause 37 inserting new s 337A into the *Biosecurity Act 2014*
- Clause 71 inserting new s 20A into the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*
- Clause 75 inserting new s 101A into the *Drugs Misuse Act 1986*
- Clause 80 inserting new s 222A into the *Exhibited Animals Act 2015*.

<sup>99</sup> See *Invasion of Privacy Act 1971*, s 43(2)(d); and subsections (2) and (4) of new ss 215E, 337A, 20A, 101A and 222A, listed above in footnote 98.

*in accordance with the obligations under the Public Records Act 2002 and the Information Privacy Principles in the Information Privacy Act 2009.*

*If recordings were to be relied on and used as evidence in a prosecution, they would generally need to be disclosed to a defendant.<sup>100</sup>*

### 3.1.1.2 *Right to Privacy – Use of Confidential Information*

The Bill contains safeguards to prohibit the unlawful use or disclosure of confidential information obtained by an inspector or authorised officer, including information recorded by a body worn camera.

Such provisions apply to persons (a CEO, authorised officer, inspector, public servant etc) who obtain confidential information about another person while administering or performing functions, or exercising powers, under the various Acts. Those persons are prohibited from using or disclosing the confidential information unless the use or disclosure occurs in the authorised performance of a function or exercise of a power under the Act, or has the consent of the person to whom the information relates, or is otherwise required or permitted by law. They attract a maximum penalty of 50 penalty units (currently \$6,672.50) for breach.<sup>101</sup> It is unclear what procedures will be implemented for storage, access, retention etc of body worn camera data obtained under the various Acts.

‘Confidential Information’ is defined to mean – any (non-public) information that could identify an individual or is about a person’s current financial position or financial background or that would be likely to damage the person’s commercial activities.<sup>102</sup>

#### Committee comment

The committee believes that the prohibition on the unlawful use or disclosure of confidential information and the authorised use of body worn cameras when exercising powers, has sufficient regard to individual rights and reasonable expectations of privacy.

### 3.1.1.3 *Freedom of movement*

Clause 29 amends s 23 of the Biosecurity Act to clarify that a person entering, being present at or leaving a place where biosecurity matter or a carrier is present has a general biosecurity obligation, being (broadly) to take all reasonable steps to minimise the biosecurity risks associated with their activities or posed by their movements. A biosecurity officer will also be able to give a biosecurity order to a person who enters, is present at or leaves a place if an inspector believes the person may not be discharging their general biosecurity obligation. For example, the order could require a person to stop certain activities which are exacerbating biosecurity risks or to take certain action in order to minimise the biosecurity risks associated with their activities.

The general biosecurity obligation effectively regulates the behaviour and movement of persons around biosecurity matter and in that sense impacts on their rights and liberties. In respect of this potential FLP, the explanatory notes advise:

*The general biosecurity obligation has the effect of regulating movement of a person entering, being present at or leaving a place. The obligation is limited to requiring persons to take all reasonable steps to minimise the biosecurity risks posed by their movements and is justified by*

<sup>100</sup> Explanatory notes, p 14.

<sup>101</sup> See mirror provisions – cl 13 inserting new s 214B into the *Animal Care and Protection Act 2001*, cl 72 inserting new s 35 into the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, and cl 76 inserting new s 113 into the *Drugs Misuse Act 1986*.

<sup>102</sup> See mirror provisions – cl 13 inserting new s 214B(3) into the *Animal Care and Protection Act 2001*, cl 38 amending s 493(4) of the *Biosecurity Act 2014*, cl 72 inserting new s 35(3) into the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, cl 76 inserting new s 113(3) into the *Drugs Misuse Act 1986* and cl 81 amending s 256(4) of the *Exhibited Animals Act 2015*.

*the potentially very significant consequences on human health, social amenity, the economy and the environment if biosecurity risks are not managed appropriately.*<sup>103</sup>

Similarly, the power of the chief executive to amend a biosecurity zone map<sup>104</sup> in cl 31 potentially offends rights and liberties by restricting activities or movement within, into, or out of, a biosecurity zone. In respect of this potential FLP, the explanatory notes advise:

*Although movement restrictions can be extended or reduced by amending a biosecurity zone map, the restrictions themselves would be imposed by regulation and would be subject to separate consideration of compatibility with the right to freedom of movement, especially following the commencement of the Human Rights Act 2019. Any restrictions would be limited because they must be directed at managing, reducing or eradicating biosecurity matter, such as preventing the spread of pests and diseases. It is very unlikely that they would prevent a person's movement but they may regulate movement to ensure that a person does not carry biosecurity matter.*

Clause 49 also inserts new Chapter 5, part 13 into the Biosecurity Regulation 2016 to provide for biosecurity management plans and compliance with such plans (ss 94F-94H). Section 94H requires a person entering, present at, or leaving, a management area for a biosecurity management plan, to comply with the measures in the plan (subject to limited exceptions such as statutory permission to enter the area or that the person does not know, and could not reasonably have known, that a plan applied to the management area). The explanatory notes advise:

*The provision has the effect of regulating movement of a person entering, being present at or leaving a place. The requirement to comply with the plan is justified because the entity making the plan is in a unique position to know the biosecurity risks that may be posed or exacerbated by the person's activities and how they can best be managed. There are potentially very significant consequences on human health, social amenity, the economy and the environment if biosecurity risks are not managed appropriately.*

A further provision restricting movement is proposed new s 188B of the *Exhibited Animals Act 2015*. Clause 79 inserts new ss 188A-188C into that Act to apply when an inspector is aware, or reasonably believes, a person is contravening new s 22A (Duty of other persons in relation to general exhibition and dealing obligation).

New s 188B provides an inspector with the power to direct a person to leave the land immediately if the contravention is on private land or to move away from the place to within a reasonable distance if on public land. It also provides that when giving the direction, the inspector must give an offence warning for the direction.

New s 188C provides an offence for failing to comply with the inspector's direction (without a reasonable excuse) which carries a maximum penalty of 100 penalty units. An example of a reasonable excuse is if a person does not comply with the direction immediately because it would endanger the person or someone else or cause loss or damage to property and the person complies as soon as it is practicable to do so. The offence does not apply if the inspector did not give the required 'offence warning'.

Proposed s 188B may impact on a person's right to peaceful assembly in a public place as generally protected under the *Peaceful Assembly Act 1992*. In respect of this potential FLP, the explanatory notes advise:

*However, the limitation of a person's right to freedom to move and of assembly is appropriate where the person does not take reasonable care to ensure that their acts or omissions do not*

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<sup>103</sup> Explanatory notes, p 15.

<sup>104</sup> See cl 31 inserting new part 3A (Biosecurity zone maps) into chapter 6 of the *Biosecurity Act 2014*.

*cause or increase a risk associated with exhibiting or dealing with an exhibited animal. Similarly, a failure to follow the instructions to enabling a person exhibiting an animal to comply with that person's general exhibition and dealing obligation could also have very serious animal welfare, biosecurity and public safety consequences.*<sup>105</sup>

#### 3.1.1.4 Unlawful Assembly Offences

Clause 132 amends the offence for unlawful assembly in s 10A of the *Summary Offences Act 2005*.

Section 10A currently makes an assembly of three or more persons unlawful if their conduct taken together would cause a person in the vicinity to reasonably fear that unlawful violence will be used. It carries a maximum penalty of one year's imprisonment or two year's imprisonment if there is violence.

Clause 132 of the Bill amends s 10A to also make a gathering of three or more persons unlawful if the gathering is on land used for a range of purposes related to animal keeping and other agriculture and there is a risk to the safety of a person or food, or a risk to animal welfare or biosecurity or a reasonable risk of economic loss to a business carried out on the land.

Clause 133 replaces s 13 (Unlawfully entering farming land etc.) with a new s 13 (Unlawfully entering or remaining on particular land). It extends the existing offence which prohibits unlawful entry to, and remaining on, farming land, to land used for a broader range of agricultural and animal purposes. The maximum penalty under the new s 13 has been doubled to 20 penalty units or 12 month's imprisonment.

These amendments potentially impact on the right to peaceful assembly, the right to freedom of expression and the right to freedom of movement.

#### Committee comment

The explanatory notes offer several justifications for the amendments in cls 132 and 133:

*The impact on freedom of expression is justified because of the potential adverse effects resulting from their expression on human health and safety, food safety, animal welfare and biosecurity or for a business carried on the land.* (p 19)

*In this way, the amended offence will address a range of risks that may be posed by gatherings of people which are conducted without sufficient regard to the rights of others and the public interest.* (p 52)

*The extension of when 'unlawful assembly' occurs serves to protect the rights of persons who work and live in the areas regulated. It also protects the public from the adverse effects of risks to biosecurity, human safety and to the safety of food produced for human or animal consumption.* (p 21)

*The impact on the right to assembly is justified by the need to balance this right against the rights of persons who work and live on the land. It is also reasonable, necessary and proportionate to the objective of protecting the public interest in human health and safety, food safety, animal welfare, biosecurity and the rights of persons who operate businesses on the land. It is arguable that if there is a reasonable risk of economic loss or a risk to the safety of any person, food safety, animal welfare, or a biosecurity risk, then the assembly is not peaceful.* (p 17)

*The prohibition is limited to unlawful activities. It is justified by community expectations that persons should enjoy privacy in their use of land for agricultural and similar purposes and should be protected from the risks (including to animal welfare, biosecurity, food safety and human health and safety) posed by unlawful entry to their land. The amendment is further justified in*

<sup>105</sup> Explanatory notes, pp 16-17.

*the respect that it serves to promote the privacy rights of land owners who are the subject of an unlawful entry. (p 17)*

The committee is satisfied with the justification provided by DAF in regard to expansion of the unlawful assembly provisions in the *Summary Offences Act 2005*.

#### 3.1.1.5 Stock Musters

Clause 114 amends s 72 (Wild stock) of the *Forestry Act 1959* to change the procedures by which the chief executive must advertise an intention to muster stock that is unlawfully in a State forest, timber reserve, forest entitlement area, or forest consent area.

The chief executive will no longer be required to insert two notices of the intended muster in a newspaper circulating in the district, nor provide notices to the nearest forestry office, every Magistrates Court in the district and every inspector of stock within the district. Instead the amendments require the chief executive to give each landholder adjoining the area where the stock are, a notice advising of the muster and instead of providing this notice 28 days prior, it will only need to be provided to relevant landholders and persons believed to be the owner five days prior to the muster. The notice must state the owner may claim the stock within 14 days after the notice is given.

By reducing the notice period and removing the public notification requirement, these amendments may impact rights and liberties to the extent that they reduce the opportunity for stock owners to be notified that their stock is about to be mustered and reclaim the stock. There is also the potential that a landholder who is the owner of the stock will not receive any notice of the muster if their land is not adjoining the intended muster area and the chief executive is unaware that they might own the stock.

If stock is not claimed by the owner by the end of the 14 day claim period, the chief executive may sell, destroy or otherwise dispose of the mustered stock under s 72(6)(a).

The explanatory notes advise:

*The potential breach is limited because in order to give a notice of intended muster, the chief executive must reasonably believe the stock are unlawfully in and detrimental to the area in the first place. The reduced notice and claim period is justified because the longer stock remain in these areas, the more potential damage they may cause to State forestry assets through land degradation, grazing of flora and seedlings and damage to fences. Stock present in these areas also pose safety concerns to persons and vehicles where they traverse roads and trails. However, given the amended notification procedures are targeted towards relevant landholders and persons likely to be the owners of the stock, the amendments seek to achieve a greater likelihood of having stock claimed by their owners more quickly and with less overall detrimental impact.<sup>106</sup>*

#### 3.1.1.6 Penalties – Proportionality and relevance of the penalty to the offence

As noted above in this report, cl 29 amends s 23 (What is a general biosecurity obligation) of the Biosecurity Act to clarify that a person who enters, is present at, or leaves, a place where biosecurity matter or a carrier is present, has a general biosecurity obligation to take all reasonable and practical measures to prevent or minimise the biosecurity risk. Where persons fail to discharge their general biosecurity obligation, they are liable for a maximum penalty of between 500 penalty units and 3,000 penalty units or three year's imprisonment for an aggravated offence. In respect of this, the explanatory notes advise:

*This high penalty is justified given the extraordinary risks that may be posed by entering, being present at or leaving a place where biosecurity matter or a carrier is present. For example, people can spread serious animal diseases on their skin, footwear, vehicles and equipment if strict*

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<sup>106</sup> Explanatory notes, p 23.

*biosecurity measures are not maintained. Zoonotic diseases (such as swine flu that can infect both humans and animals) can spread by contact between humans and animals.*

*Animal disease transmission has significant economic, environmental and regional community impacts and could devastate Queensland's \$6 billion livestock industry.*

Clauses 78 and 79 insert new sections into the *Exhibited Animals Act 2015* which require that a person not cause or increase a relevant (animal welfare, biosecurity or public safety) risk and comply with reasonable instructions from someone responsible for an exhibited animal to enable them to manage the risk (s 22A); and inserts the offence of failing, without a reasonable excuse, to comply with an inspector's direction to leave or move away from the place where the contravention of s 22A is occurring (s 188C). Non-compliance has a maximum penalty of 100 penalty units.

The explanatory notes state:

*This penalty is justified because of the potential for significant animal welfare, biosecurity and public safety consequences that can result from non-compliance.*<sup>107</sup>

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The OQPC Notebook states 'the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy'.<sup>108</sup>

A penalty should be proportionate to the offence. The OQPC Notebook states, 'Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other'.<sup>109</sup>

#### Committee comment

The committee considers that given the objectives of the Bill there is a public policy justification for the penalties imposed.

#### **3.1.2 Delegation of administrative power**

Section 4(3)(c) of the *Legislative Standards Act 1992* requires that legislation allow the delegation of administrative power only in appropriate cases and to appropriate persons.

#### Clauses 115, 116, 118 - Summary of provisions

Clause 115 amends s 82A (Seizure and forfeiture of vehicles) of the *Forestry Act 1956* and cl 116 inserts new s 82N (Seizure of vehicles by plantation officer) in the *Forestry Act 1956*. These sections provide forest officers (cl 115) and plantation officers (cl 116) with the power to seize, remove and detain a vehicle from a relevant area.

Clause 118 amends s 96B of the *Forestry Act 1956* (Delegation by chief executive—State plantation forests) to provide that the chief executive's function under new s 82O (Chief executive may order forfeiture of particular vehicles to plantation licensee), may be delegated to the plantation licensee to enable the plantation licensee to forfeit seized abandoned vehicles to itself for disposal without having to seek the chief executive's approval in each instance.

<sup>107</sup> Explanatory notes, p 21.

<sup>108</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>109</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

The explanatory notes advise:

*New section 82O provides that if a vehicle has been seized under new subsection 82N(1) and the owner of the seized, abandoned vehicle cannot be found after reasonable enquiries have been made, or it is not reasonable to make enquiries about the owner, the chief executive may order forfeiture of the vehicle to the plantation licensee. The plantation licensee may dispose of the vehicle in the way the plantation licensee decides. As most abandoned vehicles do not have any monetary value, it is intended for expediency that the power of the chief executive under this new section will be delegated to the plantation licensee under section 96B as amended by clause 118. In effect, the plantation licensee will forfeit a seized abandoned vehicle themselves.<sup>110</sup>*

Powers should only be delegated to appropriately qualified officers or employees. The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.<sup>111</sup>

The explanatory notes advise:

*These amendments are justified on the basis that they seek to reduce the fire, safety, public health and environmental risks posed by abandoned vehicles which increase the longer abandoned vehicles remain in State forest. Providing plantation officers with the power to seize and dispose of abandoned vehicles as employees of the plantation licensee, can be justified given the majority of abandoned vehicles likely to be seized would have little to no value and in most instances they are wrecks.*

*Safeguards to the exercise of this power include requiring plantation officers to first establish a reasonable belief the vehicle is abandoned. This will ordinarily require enquiries to be conducted to determine if the owner of the vehicle can be located. Where a proprietary interest in the vehicle is established, the amendments provide that the plantation licensee must return the vehicle to the owner upon providing evidence of ownership.*

*A further safeguard to the exercise of this power will be provided through the development of guidelines for use by departmental officers and the plantation licensee to ensure that the powers are exercised appropriately. The guidelines would be included in the plantation licensee's delegation deed and it will become a condition of the delegation deed that the licensee must act in accordance with the guidelines when exercising delegated powers. Failure to act in accordance with the condition of the licence by not following the guidelines may invoke consequences and or penalties under the Act.<sup>112</sup>*

#### Committee comment

The committee is satisfied with the justification provided in the explanatory notes for the delegations of administrative power to forestry officers and plantation officers in cls 115, 116 and 118 of the Bill.

#### **3.1.3 Power to enter premises**

Section 4(3)(e) of the LSA requires that legislation 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.

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<sup>110</sup> Explanatory notes, p 49.

<sup>111</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.

<sup>112</sup> Explanatory notes, p 24.

Clause 8 – Summary of provisions

Clause 8 amends s 122 (Power of entry) of the ACP Act to provide inspectors with the power to enter premises (other than a vehicle), without consent or having to first obtain a warrant, if an inspector has a reasonable suspicion an animal has been abandoned on the premises.

Legislation should 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.<sup>113</sup> Power to enter premises should generally be permitted only with the occupier's consent or under a warrant. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority. The chief concern of the former Scrutiny of Legislation Committee (SLC) was the range of additional powers that became exercisable after entry without a warrant or consent.<sup>114</sup>

THE OQPC Notebook states, 'FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals'.<sup>115</sup>

Residential premises should not be entered except with consent or under a warrant or in the most exceptional of circumstances.<sup>116</sup>

Committee comment

The entry to premises is likely to impact on an occupant's privacy. To exercise the power the inspector must be reasonably satisfied that the animal is abandoned and must first make reasonable attempts<sup>117</sup> to contact the last known owner or occupier of the premises to seek entry. The explanatory notes advise that guidelines will be developed for inspectors to ensure the expanded power of entry is exercised appropriately and with discretion.<sup>118</sup> The explanatory notes purport to justify the expanded entry power:

*It is justified because otherwise an animal's welfare would have to deteriorate to the point where it would be at imminent risk of death or injury before an inspector could enter premises without a warrant to take reasonable actions to prevent the animal from suffering. In view of the large numbers of abandonment cases reported each year to the RSPCA Qld, it is not practical to obtain warrants for entry in all cases.*<sup>119</sup>

The committee is satisfied that the expanded entry power in s 122 of the ACP Act is justified.

**3.1.4 Rights and liberties**

Section 4(3)(g) of the LSA requires that legislation not adversely affect rights and liberties, or impose obligations, retrospectively.

<sup>113</sup> *Legislative Standards Act 1992*, s 4(3)(e).

<sup>114</sup> Alert Digest 2004/5, p 31, paras 30-36; Alert Digest 2004/1, pp 7-8, paras 49-54; Alert Digest 2003/11, pp 20-21, paras 14-19; Alert Digest 2003/9, p 4, para 23 and p 31, paras 21-24; Alert Digest 2003/7, pp 34-35, paras 24-27; cited in Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

<sup>115</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

<sup>116</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 46.

<sup>117</sup> The inquiries must be made over at least two days to locate the owner or occupier unless it is unreasonable to make inquiries (see cl 9 inserting new subsection 125(4) into the *Animal Care and Protection Act 2001*).

<sup>118</sup> Explanatory notes, p 22.

<sup>119</sup> Explanatory notes, p 22

### Clause 125 – Summary of provisions

Clause 125 inserts a new chapter 9 (transitional and validating provisions) into the *Racing Act 2002*. The explanatory notes advise that these provisions (ss 225 and 226) retrospectively validate the actions of the Queensland Racing Integrity Commission including the actions and penalties imposed by stewards.<sup>120</sup>

New s 225 provides that new s 113A is to apply retrospectively for all purposes under the Act from the expiry of the Racing (Transitional) Regulation 2016 on 1 July 2017. This does not limit the interim standard which was made by the Commission to continue arrangements as if under the expired Regulation. New s 226 (Validation of particular acts and omissions done before commencement) validates any acts or omissions which may have been done prior to commencement of new s 113A to the extent they were invalid or unlawful as if new s 113A was in force at the time.

Clause 125 is intended to avert the possibility of a legal challenge to decisions which were made after the expired Regulation under the interim standard.<sup>121</sup>

The explanatory notes advise:

*The retrospective application is justified to clarify the responsibilities of the Commission in relation to the Racing Rules. The Racing Rules have been administered in accordance with the Racing (Transitional Regulation) 2016 since its expiry on 1 July 2017 and there will not be any additional obligations imposed on the public by validating the Commission's actions retrospectively. Further, during the period since expiration of this Regulation, there has not been any established invalidities relating to the administration of the Racing Rules.*<sup>122</sup>

Section 4(3)(g) of the LSA provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

### Committee comment

The committee is satisfied with the justification for retrospective validation of the actions of the Queensland Racing Integrity Commission, including the actions and penalties imposed by stewards, provided in the explanatory notes and by the Department of Local Government, Racing and Multicultural Affairs.

### **3.1.5 Compulsory acquisition of property**

Section 4(3)(i) of the LSA requires that legislation provide for the compulsory acquisition of property only with fair compensation.

### Clause 115, 116 – Summary of provisions

Clause 115 amends s 82A (Seizure and forfeiture of vehicles) and cl 116 inserts s 82N (Seizure of vehicles by plantation officer) and s 82O (Chief executive may order forfeiture of particular vehicles to plantation licensee) into the *Forestry Act 1956*.

These sections provide forest officers and plantation officers with the power to seize, remove and detain abandoned vehicles in forests and plantations. Section 82O will allow the chief executive to forfeit a vehicle seized under s 82N to the plantation licensee, if the owner cannot be found after reasonable enquiries or it is not reasonable to make enquiries about the owner given the vehicle's value. The plantation licensee may dispose of the vehicle in the way they see fit. As most abandoned vehicles do not have any monetary value, it is intended for expediency that the power of the chief

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<sup>120</sup> Explanatory notes, p 24.

<sup>121</sup> Explanatory notes, p 51

<sup>122</sup> Explanatory notes, p 24

executive will be delegated to the plantation licensee under s 96B, so in effect the plantation licensee will forfeit a seized abandoned vehicle themselves.

Legislation should provide for the compulsory acquisition of property only with fair compensation.<sup>123</sup> The OQPC states, 'A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason'.<sup>124</sup> The SLC noted that it is generally acknowledged that compulsory acquisition of property must only be made with compensation.<sup>125</sup>

#### Committee comment

In respect of the permitted seizure and forfeiture of (presumed) abandoned vehicles, the explanatory notes advise:

*These amendments are justified on the basis that they seek to reduce the fire, safety, public health and environmental risks posed by abandoned vehicles which increase the longer abandoned vehicles remain in State forest. Providing plantation officers with the power to seize and dispose of abandoned vehicles as employees of the plantation licensee, can be justified given the majority of abandoned vehicles likely to be seized would have little to no value and in most instances they are wrecks. If the owner of an abandoned vehicle is found, in circumstances where the vehicle is burnt-out or written-off, then it would be unreasonable to insist the vehicle be returned to its owner unless the owner wished to claim it. In situations where an abandoned vehicle has little to no value, it would be impractical for the legislation to provide a strict application of the principle of fair compensation given its value and the likely expenses to be incurred in removing it. However, if an abandoned vehicle were to have a financial value, in the majority of cases the seizure and disposal would be a police/insurance matter and the chief executive would not have any involvement in the disposal of the vehicle.*<sup>126</sup>

The committee is satisfied with the justification for the forfeiture of abandoned vehicles.

#### **3.1.6 Clear and precise**

Section 4(3)(k) of the LSA requires that legislation be unambiguous and drafted in a sufficiently clear and precise way.

#### Clause 17, 132 – Summary of provisions

A number of words and phrases used in the Bill are arguably vague or ambiguous.

Clause 17 amends the schedule (Dictionary) to insert a definition of the term 'abandon' in regards to an animal, which has application to more than one provision. The definition arguably extends the usual meaning of 'abandon' to include leaving an animal for an unreasonable period. The explanatory notes advise that:

*There is no definition of "unreasonable period" as this would vary depending upon the circumstances.*<sup>127</sup>

Some submitters to the Committee's inquiry on the Bill also took issue with the Bill's use of the term 'likely to cause' in respect of economic loss.

<sup>123</sup> *Legislative Standards Act 1992*, s 4(3)(i).

<sup>124</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 73.

<sup>125</sup> Alert Digest 1996/7, pp 27-28, para 7.13.

<sup>126</sup> Explanatory Notes, p 24.

<sup>127</sup> Explanatory notes, p 30.

The QLS submitted:

*Thirdly, as currently drafted, the provisions around economic loss need to be more clearly drafted and confined to the conduct to which the Bill seeks to address. A suggested amendment may be “causes economic loss, reasonably arising in the circumstances”, as opposed to “likely to cause”. The phrase “likely to cause” is too broad and vague. Given it is a penal statute, there needs to be an actual not a potential consequence, particularly given the potentially broad meaning of “economic loss”.<sup>128</sup>*

In its appearance before the committee, the QCCL expressed similar reservations about the clarity of language employed by cl 132 of the Bill in its amendment of s 10A of the *Summary Offences Act 2005* (‘is likely to cause economic loss to a business carried out on the land’) noting:

*In relation to the proposed subsections A, B and E, the question [that] must be asked is what is meant by the words “a risk”. Surely, to be criminally liable, the risk must be a “serious”, “significant” or “substantial” one. The present formulation sets too low a bar.*

*In relation to subsection D we are concerned about the vagueness of this clause as well. What level of likelihood is required under the section? What type of economic loss is going to be sufficient?<sup>129</sup>*

Legislation should be unambiguous and drafted in a sufficiently clear and precise way.<sup>130</sup>

#### Committee comment

In section 2.1 of this report, the committee discusses its concerns regarding the imprecise and subjective language in these provisions. Although the use of such terms is not uncommon in legislation, any vagueness or ambiguity in respect of their application becomes particularly significant when they are integral to establishing that ‘offending conduct’ has occurred under the Bill. As such, the committee has recommended cl 132 be clarified.

#### **3.1.7 Institution of Parliament**

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

##### *3.1.7.1 Scrutiny of the Legislative Assembly*

Section 4(4)(b) of the LSA requires that the exercise of a proposed delegated legislative power (instrument) be sufficiently subject to the scrutiny of the Legislative Assembly.

#### Clause 31, 49 – Summary of provisions

Clause 31 inserts new Chapter 6, Part 3A (Biosecurity zone maps) into the Biosecurity Act which will enable the chief executive to amend a biosecurity zone map to which biosecurity zone regulatory provisions apply for particular regulated biosecurity matter.

Clause 49 inserts new s 94G of the Biosecurity Regulation 2016 which provides that a registered biosecurity entity or a holder of an exhibited animal authority may make a biosecurity management plan stating reasonable measures to prevent, control or stop the spread of biosecurity matter from a designated place or a place where an exhibited animal is kept under the authority, respectively. This sub-delegation of legislative power has the biosecurity plans made by registered biosecurity entities or exhibited animal authority holders being used to determine whether there has been an offence against s 94H.

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<sup>128</sup> Submission 12, p 3.

<sup>129</sup> Queensland Council for Civil Liberties, tabled paper, public hearing, Brisbane, 13 September 2019.

<sup>130</sup> *Legislative Standards Act 1992*, s 4(3)(k).

A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.<sup>131</sup>

The OQPC Notebook states,

*For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.*

*... The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.<sup>132</sup>*

The SLC commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- The importance of the subject dealt with
- The practicality or otherwise of including those matters entirely in subordinate legislation
- The commercial or technical nature of the subject matter
- Whether the provisions were mandatory rules or merely to be had regard to.<sup>133</sup>

The SLC also determined if a document that is not subordinate legislation is intended to be incorporated into subordinate legislation, then an express provision should require the tabling of the document at the same time as the subordinate legislation.<sup>134</sup> Similar considerations apply when a non-legislative document is required to be approved by an instrument of subordinate legislation.<sup>135</sup>

#### Committee comment

In respect of cl 31, the explanatory notes advise:

*The proposed amendments are justified because it is not practical nor timely to constantly amend the Biosecurity Regulation 2016 as the distribution, presence or absence of regulated biosecurity matter changes. Delays in making appropriate changes to accurately show the distribution of regulated matter to which biosecurity zone regulatory provisions apply could significantly exacerbate the serious risks that pests and diseases may pose to agriculture, human health, social amenity, the economy and the environment.*

*Safeguards to the indiscriminate amendment of biosecurity zone maps through the exercise of this power are provided in new section 130B which allows the chief executive to amend a biosecurity zone map only if the chief executive becomes aware the regulated biosecurity matter is present or absent in a particular area or is otherwise satisfied there has been a change in the distribution of the regulated biosecurity matter.*

*To ensure that persons likely to be affected by the biosecurity zone changes are fully informed of the biosecurity zone regulatory provisions which will apply to them and their activities, the Bill*

<sup>131</sup> Legislative Standards Act 1992, s 4(4)(b).

<sup>132</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, pp 154, 155.

<sup>133</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 155.

<sup>134</sup> Alert Digest 2001/8, p 16, para 7; Alert Digest 1996/5, p 9, para 3.8.

<sup>135</sup> Alert Digest 2003/11, p 23, paras 33-40.

*inserts new section 130C (Requirements in relation to identification of particular biosecurity zones). New section 130C ensures the chief executive must, as soon as practicable after the biosecurity zone map is published on the department's website, take all reasonable steps to ensure that persons likely to be directly affected by the change of area are made aware of the amended map.*<sup>136</sup>

In respect of cl 49, the notes advise:

*These provisions are justified because the person making the biosecurity management plan has unique knowledge about what activities occur at the place including which activities might pose a risk and what would be reasonable and practical measures to prevent, control or stop the spread of biosecurity matter into, at or from the place. It is not mandatory that a biosecurity management plan be made, but where the person develops a plan it will also assist others at the place to comply with the general biosecurity obligation which applies to everyone.*

*Further, the offence will only apply if the registered biosecurity entity or holder of an exhibited animal authority making a biosecurity management plan alerts the public that the place is subject to a biosecurity management plan and that it is an offence not to comply with the plan without a reasonable excuse. To enable a person to comply with the plan, the registered biosecurity entity or holder of an exhibited animal authority must keep the biosecurity management plan as a separate document and make it available for inspection on request during ordinary business hours.*<sup>137</sup>

The committee is satisfied with the justification given by DAF for the need for delegated powers to amend a biosecurity zone map or make a biosecurity management plan.

### 3.1.7.2 Amendment of an Act only by another Act

Section 4(4)(c) of the LSA requires that the Bill allow or authorise the amendment of an Act only by another Act.

#### Clause 23, 24, 25 – Summary of provisions

Clause 23 amends s 81 (Obligation to comply with permit conditions under schedule 1), cl 24 amends s 97 (Declared dangerous dogs) and cl 25 amends s 98 (Declared menacing dogs) of the *Animal Management (Cats and Dogs) Act 2008*. Each of these clauses provide that a person must comply with permit conditions in relevant sections of the Act as well as any relevant conditions prescribed by regulation. Non-compliance attracts a maximum penalty of 75 penalty units in each instance (\$10,008.75).

Clauses 23-25 therefore enable regulations to prescribe additional conditions which can enliven an offence under the Act if they are not complied with. This is arguably an inappropriate delegation of power as the clauses allow a regulation to effectively amend the operation of the Act. Ideally Acts should be the vehicle by which other Acts are amended as they are subject to a higher level of Parliamentary scrutiny during their passage through the House.

A Bill should only authorise the amendment of an Act by another Act.<sup>138</sup> A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. The SLC's approach to Henry VIII clauses was that if an Act purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SLC would voice its opposition by requesting that Parliament disallow the part of the instrument

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<sup>136</sup> Explanatory Notes, p 25.

<sup>137</sup> Explanatory Notes, p 26.

<sup>138</sup> *Legislative Standards Act 1992*, s 4(4)(c).

that breaches the FLP requiring legislation to have sufficient regard for the institution of Parliament.<sup>139</sup> The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:

- To facilitate immediate executive action
- To facilitate the effective application of innovative legislation
- To facilitate transitional arrangements
- To facilitate the application of national scheme legislation.<sup>140</sup>

The OQPC Notebook explains that the existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause does not fall within any of the above situations, the SLC classified the clause as 'generally objectionable'.<sup>141</sup>

The explanatory notes justify this use of a Henry VIII clause on grounds of flexibility and expediency:

*...the delegation is appropriate to provide sufficient flexibility to impose additional conditions relatively quickly when a need is identified to ensure these categories of dogs are managed appropriately given the fear and risks they may pose to human safety.*<sup>142</sup>

#### Committee comment

The committee notes the limited circumstances in which these clauses apply and is satisfied with the justification.

### **3.2 Explanatory notes**

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

There are a number of minor section referencing errors in the notes (eg. the notes refer to s 215B Confidentiality of information when it is actually s 214B). These errors have presumably occurred when sections have been added or removed and the explanatory notes still refer to an earlier version of the Bill.

<sup>139</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159.

<sup>140</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159.

<sup>141</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159; Alert Digest 2006/10, p 6, paras 21-24; Alert Digest 2001/8, p 28, para 31.

<sup>142</sup> Explanatory Notes, p 25.

## Appendix A – Submitters

| <b>Sub #</b> | <b>Submitter</b>  |
|--------------|---|
| 001          | Jonathan Peter  |
| 002          | Australian Pork Limited   |
| 003          | Restaurant & Catering Industry Association                                  |
| 004          | Queensland Human Rights Commission  |
| 005          | Farm Animal Rescue  |
| 006          | Animal Defenders Office Inc   |
| 007          | Animal Liberation Queensland  |
| 008          | Egg Farmers of Australia  |
| 009          | Animal Justice Party Queensland   |
| 010          | Dogs Queensland   |
| 011          | Australian Livestock and Property Agents                                    |
| 012          | Queensland Law Society  |
| 013          | Queensland Farmers' Federation  |
| 014          | Lawyers for Companion Animals   |
| 015          | Mary Ann Gourlay  |
| 016          | Australian Meat Industry Council and the Goat Industry Council of Australia |
| 017          | AgForce Queensland Farmers Limited  |
| 018          | Rebecca Smith   |
| 019          | Queensland Council for Civil Liberties                                      |

## **Appendix B – Witnesses at public briefing**

### **Department of Agriculture and Fisheries**

- Marguerite Clarke, Director, Regulatory Policy and Reform Unit
- Patrick Bell, General Manager, Strategy and Legislation, Biosecurity Queensland

### **Department of Environment and Science**

- Karen Hopper, Director, Conservation Policy and Planning Branch

### **Queensland Police Service**

- Acting Detective Inspector Jim Lacey, Major and Organised Crime Squad (Rural)
- Senior Sergeant Andrea Reeves, Senior Strategy Officer, Legislation Branch

### **Department of Local Government, Racing and Multicultural Affairs**

- Michael Duff, Principal Policy Officer

## **Appendix C – Witnesses at public hearing**

### **AgForce Queensland Farmers**

- Mike Guerin, Chief Executive Officer
- Marie Vitelli, Biosecurity Policy Officer
- Michael Allpass, Livestock Policy Officer

### **Queensland Farmers' Federation**

- Travis Tobin, Chief Executive Officer

### **Animal Justice Party Queensland**

- Joanne Webb, Queensland Committee Member

### **Animal Liberation Queensland**

- Chay Neal, Executive Director

### **Farm Animal Rescue**

- Brad King, President

### **Queensland Council for Civil Liberties**

- Michael Cope, President

### **RSPCA Qld**

- Daniel Young, Chief Inspector

### **Queensland Law Society**

- Brittany White, Member, Criminal Law Committee
- Matt Dunn, General Manager, Policy, Public Affairs and Governance
- Kerryn Sampson, Policy Solicitor

### **Department of Agriculture and Fisheries**

- Marguerite Clarke, Director, Regulatory Policy and Reform Unit
- Patrick Bell, General Manager, Strategy and Legislation, Biosecurity Queensland

### **Department of Environment and Science**

- Karen Hopper, Director, Conservation Policy and Planning Branch

### **Queensland Police Service**

- Acting Detective Inspector Jim Lacey, Major and Organised Crime Squad (Rural)
- Senior Sergeant Andrea Reeves, Senior Strategy Officer, Legislation Branch

### **Department of Local Government, Racing and Multicultural Affairs**

- Michael Duff, Principal Policy Officer

## Appendix D – Proposed new or amended offence provisions

[NOTE: ONE PENALTY UNIT = \$133.45]

| Clause | Offence   | Proposed maximum penalty |
|--------|---|--------------------------|
| 13     | <p><b>Insertion of new s 214B</b></p> <p>After section 214A—</p> <p><i>insert—</i></p> <p><b>214B Confidentiality of information</b></p> <p>(1) This section applies to a person who—</p> <p>(a) is, or has been, any of the following—</p> <p>(i) the chief executive;</p> <p>(ii) an inspector;</p> <p>(iii) another person involved in administering this Act, including, for example, a public service employee;</p> <p>and</p> <p>(b) obtains confidential information about another person in administering, or performing functions or exercising powers under, this Act.</p> <p>(2) The person must not use or disclose the confidential information unless the use or disclosure is—</p> <p>(a) in the performance of a function or exercise of a power under this Act; or</p> <p>(b) with the consent of the person to whom the information relates; or</p> <p>(c) otherwise required or permitted by law.</p> <p>Maximum penalty—50 penalty units.</p> | \$6,672.50               |
| 21     | <p><b>Amendment of s 43ZF (Supplier of dog must give particular details)</b></p> <p>(1) Section 43ZF, heading, after ‘details’—</p> <p><i>insert—</i></p> <p style="text-align: center;"><b>and form</b></p> <p>(2) Section 43ZF(1)—</p> <p><i>omit, insert—</i></p> <p>(1) A person who supplies a dog to another person must, unless the person has a reasonable excuse, give the other person—</p> <p>(a) a notice stating—</p>  |                          |

|    |  |            |
|----|--|------------|
|    | <p>(i) the name of the supplier of the dog; and</p> <p>(ii) the relevant supply number for the dog;</p> <p>and</p> <p>(b) a change of ownership form that is completed and signed by the supplier of the dog.</p> <p>Maximum penalty—50 penalty units.</p>   | \$6,672.50 |
| 69 | <p><b>Replacement of ss 15 and 15A</b></p> <p>Sections 15 and 15A—</p> <p><i>omit, insert—</i></p> <p><b>15 Duty to report chemical residues in or on relevant thing</b></p> <p>(1) This section applies to a person if the person becomes aware that the residue of a chemical in or on a relevant thing is more than the maximum residue limit prescribed for the thing.</p> <p>Examples of persons to whom this section may apply—</p> <ul style="list-style-type: none"> <li>• a person conducting an analysis of a relevant thing</li> <li>• a veterinary surgeon who treats a trade species animal</li> <li>• a person who monitors the residue of chemicals on agricultural produce for a supermarket or grocery store</li> <li>• a farmer who receives a report of an analysis of agricultural produce from a laboratory based outside Queensland</li> </ul> <p>(2) As soon as practicable but within 24 hours after becoming aware, the person must—</p> <p>(a) advise the standards officer that the residue of a chemical in or on the relevant thing exceeds the maximum residue limit prescribed for the thing; and</p> <p>(b) give the standards officer the required information for the relevant thing.</p> <p>Maximum penalty—40 penalty units.</p> | \$5,338.00 |
| 72 | <p><b>Insertion of new ss 35 and 36</b></p> <p>After section 34—</p> <p><i>insert—</i></p> <p>35 Confidentiality of information</p> <p>(1) This section applies to a person who—</p> <p>(a) is, or has been, any of the following—</p> <ul style="list-style-type: none"> <li>(i) the chief executive;</li> <li>(ii) an inspector;</li> <li>(iii) an analyst;</li> <li>(iv) a standards officer;</li> <li>(v) a deputy standards officer;</li> </ul>   |            |

|    |  |            |
|----|--|------------|
|    | <p>(vi) another person involved in administering this Act, including, for example, a public service employee; and</p> <p>(b) obtains confidential information about another person in administering, or performing functions or exercising powers under, this Act.</p> <p>(2) The person must not use or disclose the confidential information unless the use or disclosure is—</p> <p>(a) in the performance of a function or exercise of a power under this Act; or</p> <p>(b) with the consent of the person to whom the information relates; or</p> <p>otherwise required or permitted by law.</p> <p>Maximum penalty—50 penalty units.</p>  | \$6,672.50 |
| 76 | <p><b>Insertion of new s 113</b></p> <p>After section 112—</p> <p><i>insert—</i></p> <p><b>113 Confidentiality of information</b></p> <p>(1) This section applies to a person who—</p> <p>(a) is, or has been, any of the following—</p> <p>(i) the chief executive;</p> <p>(ii) an inspector;</p> <p>(iii) another person involved in administering this Act, including, for example, a public service employee; and</p> <p>(b) obtains confidential information about another person in administering, or performing functions or exercising powers under, this part.</p> <p>(2) The person must not use or disclose the confidential information unless the use or disclosure is—</p> <p>(a) in the performance of a function or exercise of a power under this Act; or</p> <p>(b) with the consent of the person to whom the information relates; or</p> <p>(c) otherwise required or permitted by law.</p> <p>Maximum penalty—50 penalty units.</p> | \$6,672.50 |
| 78 | <p><b>Insertion of new s 22A</b></p> <p>After section 22—</p> <p><i>insert—</i></p>  |            |

|           |   |                    |
|-----------|---|--------------------|
|           | <p><b>22A Duty of other persons in relation to general exhibition and dealing obligation</b></p> <p>(1) This section applies to a person (a relevant person) on private land or at a public place where a responsible person for an exhibited animal is discharging a general exhibition and dealing obligation in relation to the animal.</p> <p>(2) The relevant person must—</p> <p>(a) take reasonable care that the relevant person’s acts or omissions do not cause or increase a relevant risk associated with exhibiting or dealing with the exhibited animal; and</p> <p>(b) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the responsible person to allow the responsible person to comply with that person’s general exhibition and dealing obligation in relation to the exhibited animal.</p> <p>Maximum penalty—100 penalty units.</p>  | <p>\$13,345.00</p> |
| <p>79</p> | <p><b>Insertion of new ch 6, pt 3, div 3A</b></p> <p>After section 188—</p> <p><i>insert—</i></p> <p><b>Division 3A Power to give direction to move</b></p> <p><b>188A application of division</b></p> <p>This division applies if an inspector reasonably believes, or is aware, that a person is contravening section 22A on private land or at a public place.</p> <p><b>188B power to direct person to move</b></p> <p>(1) The inspector may, to stop the contravention, direct the person—</p> <p>(a) if the person is on private land—to leave the land immediately; or</p> <p>(b) if the person is at a public place—to move immediately away from the place where the contravention of section 22A is happening to a place within a reasonable distance.</p> <p>(2) When giving the direction under subsection (1), the inspector must—</p> <p>(a) tell the person the reasons for giving the direction; and</p> <p>(b) give the person an offence warning for the direction.</p> <p><b>188C failure to comply with direction</b></p> <p>(1) The person to whom a direction is given under section 188B must comply with the direction unless the person has a reasonable excuse.</p> <p>Maximum penalty—100 penalty units.</p> | <p>\$13,345.00</p> |

|            |   |  |
|------------|---|--|
| <p>133</p> | <p><b>Replacement of s 13 (Unlawfully entering farming land etc.)</b></p> <p>Section 13—<br/>omit, insert—</p> <p>13 Unlawfully entering or remaining on particular land</p> <p>(1) A person must not unlawfully enter, or remain on, land used for—</p> <ul style="list-style-type: none"> <li>(a) an agricultural activity; or</li> <li>(b) an animal husbandry activity; or</li> <li>(c) a holding facility; or</li> <li>(d) a food production facility, including, for example, a facility that produces food for animal consumption; or</li> <li>(e) the exhibition of animals. <ul style="list-style-type: none"> <li>• Examples for paragraph (e)—</li> <li>• wildlife park or zoo</li> </ul> </li> </ul> <p>Maximum penalty—20 penalty units or 12 months imprisonment.</p> <p>(2) Subsection (1) applies whether or not the person lawfully entered the land.</p> <p>(3) A person must not unlawfully open, and leave open, any gate, fence or other barrier that encloses all or part of enclosed land used for—</p> <ul style="list-style-type: none"> <li>(a) an agricultural activity; or</li> <li>(b) an animal husbandry activity; or</li> <li>(c) a holding facility; or</li> <li>(d) a food production facility, including, for example, a facility that produces pet food; or</li> <li>(e) the exhibition of animals. <ul style="list-style-type: none"> <li>• Examples for paragraph (e)—</li> <li>• wildlife park or zoo</li> </ul> </li> </ul> <p>Maximum penalty—10 penalty units or 6 months imprisonment.</p> | <p>\$2669.00 or 12 months imprisonment</p> <p>\$1334.50 or 6 months imprisonment</p> |
|------------|---|--|

## Statement of reservation

### AGRICULTURE AND OTHER LEGISLATION AMENDMENT BILL STATEMENT OF RESERVATION

Whilst the LNP will not be opposing the bill there are some aspects of the bill that the non-government members have reservations with.

This is yet again a large omnibus bill that amends seventeen acts and four regulations which once again raised concerns with Queensland Law Society (QLS) regarding the reporting timeframe to properly scrutinize this wide-ranging bill.

In their submission QLS stated:

*“We note that we have been somewhat disadvantaged in the preparation of the submission as a result of the constrained timetable and the commitments of our volunteer committee members. As there has been only a very brief opportunity to review the amendment to the various Acts, an in-depth analysis has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified.”*

In relation to dealing with animal extremists, we welcome some action from the Palaszczuk Labor Government on this issue – which is a serious issue impacting on Queensland farming families and businesses. The increased penalties for existing offences in the *Summary Offences Act 2005* are significantly weak in comparison to the LNP’s tougher approach. We believe strong deterrents are needed to dissuade these extremists, who are well resourced and well organised.

The non-government members would additionally like assurance from the Minister that amendments to the *Biosecurity Act 2014* will not have unintended consequences for farmers and graziers in their day to day farm management and activities.

The government and in particular the Minister needs to outline how provisions in this Bill do not conflict with the *Human Rights Act 2019*, which commences from 1 January 2020. This was an issue raised in the public hearing by the Queensland Council for Civil Liberties. While we do not necessarily agree with their opposition to provisions in the Bill that could cause a conflict with the Human Rights Act, it is important for the government to clearly outline how these relevant provisions do not offend the Human Rights Act.

The amendment to the *Biosecurity Act 2014* that removes the exemption to move feral goats without a NLIS device fitted has raised concerns in the industry which have not been fully explained. This will lead to undue stress on the animals for no apparent purpose. The relevant stakeholder groups have stated that they were not consulted regarding this amendment. The non-government members suggest this amendment not be enacted until full and meaningful consultation with the industry.

This also applies to the amendment to the *Forestry Act 1959* in relation to the removal of wild stock from state forests. Both AgForce and the QLS raised concerns with this amendment which is not mentioned in the main body of the

report but is in the Fundamental Legislative Principles section, in which it states in part:

*“The chief executive will no longer be required to insert two notices of the intended muster in a newspaper circulating in the district, nor provide notices to the nearest forestry office, every Magistrates Court in the district and every inspector of stock within the district. Instead the amendments require the chief executive to give each landholder adjoining the area where the stock are, a notice advising of the muster and instead of providing this notice 28 days prior, it will only need to be provided to relevant landholders and persons believed to be the owner five days prior to the muster. The notice must state the owner may claim the stock within 14 days after the notice is given.”*

QLS stated in their submission:

*“In addition to reducing the notice period and removing the public notification requirement, the amendments proposed to section 72 mean that another landholder who may be the owner of the stock will not receive notice of the muster if:*

*Their land does not adjoin the area; or the chief executive is not otherwise aware that they might own the stock. There are significant consequences if an owner of stock is not notified, for example, under new section 72(6A(b)), the chief executive may sell, destroy or otherwise dispose of the stock.”*

QLS also suggests that the public notification requirement be amended to require notification of a proposed muster on the Department's website.

AgForce stated:

*“Having had no discussion of this Bill with the Department prior to introduction, AgForce seeks to clarify the proposed disposal of stock guidelines under this Bill. Following discussions with our northern members who have utilised the Cape York mustering process, it is recommended that the proposed five Business Days' notice of the actual date of a muster, be extended to ten. AgForce recommends at least a 14-day notice period to claim the stock from the date of the actual muster, with such information published on the Department's website.”*

The non-government members support this position.

The LNP members of the Committee support the increased focus on animal cruelty offences.

We are pleased to see that the Palaszczuk Labor Government have adopted the LNP plan to increase penalties for people who leave animals locked in hot vehicles.

This was a policy the LNP announced in April 2018.

The Queensland RSPCA receives more than a thousand reports of animals trapped in hot vehicles every year which is why the LNP proposed a new offence to tackle the problem. A dog can die in just six minutes in a hot vehicle, but those responsible rarely face prosecution. While we support this specific offence, we think the penalties should align with cruelty offences under the *Animal Care and Protection Act 2001*.

This is another large omnibus Bill addressing not only agriculture, animal management and welfare, forestry and fisheries but two unrelated matters concerning the Racing Integrity Commission and threatened species

classification, with not enough time to adequately examine the content of this extensive bill.



**Pat Weir MP**  
**Member for Condamine**  
**Deputy Chair SDNRAID**



**Brent Mickelberg MP**  
**Member for Buderim**  
**Shadow Assistant Minister for Tourism Industry Development**



**David Batt MP**  
**Member for Bundaberg**  
**Shadow Assistant Minister for State Development**

