

CRIMINAL CODE AND ANOTHER ACT (STOCK) AMENDMENT BILL 2014

Explanatory Notes

Short title

The short title of the Bill is the Criminal Code and Another Act (Stock) Amendment Bill 2014.

Policy objectives and the reasons for them

The objectives of the Bill are to:

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

Stock-related offending is a costly aspect of rural crime, with losses for primary producers in the millions of dollars each year and involving significant State resources in crime investigation and prosecution. Queensland’s Criminal Code contains a number of offences relevant to stock including unlawfully using stock; suspicion of stealing stock; illegal branding and stealing.

In January 2012, in response to primary industry calls for law reform on stock-related offending, the then Attorney-General approved the formation of a Stock Working Group to review provisions of the Criminal Code and other Acts relating to stock. The Chair of the working group was Mr John Jerrard QC, former Justice of the Queensland Court of Appeal.

The Stock Working Group reported in March 2012 and made a variety of recommendations which are largely implemented through this Bill.

Subsequent to this, the Department of Justice and Attorney-General conducted a review of the penalty levels for stock offences in the Criminal Code.

Achievement of policy objectives

The Bill achieves the objectives by way of the proposed amendments to existing legislation described below.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the reforms.

Estimated cost for government implementation

Any costs in relation to the amendments will be met from existing agency resources. The future allocation of resources will be determined through the normal budgetary processes.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Retrospectivity

Clause 18 (Insertion of new ch 93) of the Bill potentially breaches the fundamental legislative principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. Clause 18 inserts new section 732 which applies the new stock disposal order regime provisions to proceedings for offences which are already on foot at the time of the commencement of section 732. This means that police officers will be able to seek a stock disposal order for proceedings already commenced. However, the provisions are procedural in nature and therefore it is appropriate they apply retrospectively as necessary. Further, existing sections concerned with disposal of stock animals, namely sections 450E (Animals not tendered in certain cases) and 450G (Identification of animals and return to owners prior to tender in certain cases), which are repealed by the Bill, otherwise continue to apply where an undertaking has already been entered into under those sections as at the date of commencement. Various undertakings operate where arrangements have been able to be made under those sections for the return of the animal to the owner or for the slaughter of the animal. Where that is the case, the existing provisions operate rather than the new provisions.

Increases in minimum fines

The Bill amends the Criminal Code to increase the minimum fine amounts for stock offences – some only marginally owing to the conversion from dollars to penalty

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

New offences

Two new offences are created by the Bill, both relating to forced muster orders in the *Police Powers and Responsibilities Act 2000*. New section 789AG provides that a person managing or controlling the land upon which the muster is to take place, must make available relevant facilities for use in carrying out the order. Contravention of the provision carries a maximum penalty of 50 penalty units or six months imprisonment. New section 789AI provides an offence of frustrating an order for a forced muster or obstructing a person acting under such an order, also punishable by a maximum of 50 penalty units or six months imprisonment. The new offences are necessary to give effect to the court's order. In relation to use of landowner's facilities, it is noted that compensation may be made for damaged facilities under new section 789AH (Compensation for damage) and under existing section 804 (Compensation) *Police Powers and Responsibilities Act 2000* (which concerns damage by police in execution of their powers).

Consultation

The Stock Working Group was made up of the Director of Public Prosecutions and officers from the Queensland Police Service Stock and Rural Crime Investigation Squad; as well as representatives from the Queensland Law Society; AgForce Queensland; the Royal Society for the Prevention of Cruelty to Animals; and Biosecurity Queensland, within the Department of Agriculture, Fisheries and Forestry.

A consultation copy of the Bill was provided to the Chief Judge, the Chief Magistrate, the Director of Public Prosecutions, the Queensland Law Society, the Bar Association Queensland, Legal Aid Queensland, AgForce Queensland, the Royal Society for the Prevention of Cruelty to Animals and the National Farmers Federation.

Consistency with legislation of other jurisdictions

The Bill does not introduce uniform or complementary legislation.

Notes on provisions

Part 1 - Preliminary

Clause 1 establishes the short title to the Act as the *Criminal Code and Another Act (Stock) Amendment Act 2014*.

Clause 2 provides for the commencement of the Act, which is by proclamation.

Part 2 – Amendment of Criminal Code

Clause 3 provides that this part amends the Criminal Code.

Clause 4 amends section 398 (Punishment of stealing) to change the minimum fine references in section 2 (Stealing stock) from ‘\$1000’ to ‘10 penalty units’.

Clause 5 amends section 444A (Killing animals with intent to steal) to change the minimum fine reference in subsection (2) from ‘\$200’ to ‘10 penalty units’; and the maximum fine reference in subsection (3) from ‘\$50000’ to ‘455 penalty units’.

Clause 6 amends section 444B (Using registered brands with criminal intention) to change the minimum fine reference in subsection (2) from ‘\$200’ to ‘4 penalty units’; and the maximum fine reference in subsection (3) from ‘\$50000’ to ‘455 penalty units’.

Clause 7 amends section 445 (Unlawfully using stock) to change the minimum fine reference in subsection (1) from ‘\$200’ to ‘4 penalty units’; and the maximum fine reference in subsection (2) from ‘\$50000’ to ‘455 penalty units’.

Clause 8 amends section 446 (Suspicion of stealing stock) to change the minimum fine reference in subsection (1) from ‘\$200’ to ‘4 penalty units’; and the maximum fine reference in subsection (2) from ‘\$50000’ to ‘455 penalty units’.

Clause 9 amends section 447 (Illegal branding) to change the minimum fine reference in subsection (1) from ‘\$200’ to ‘4 penalty units’; and the maximum fine reference in subsection (2) from ‘\$50000’ to ‘455 penalty units’.

Clause 10 amends section 448 (Defacing brands) to change the minimum fine reference in subsection (1) from ‘\$200’ to ‘4 penalty units’; and the maximum fine reference in subsection (2) from ‘\$50000’ to ‘455 penalty units’.

Clause 11 amends section 448A (Having in possession stock with defaced brand) to change the minimum fine reference in subsection (1) from ‘\$200’ to ‘4 penalty units’; and the maximum fine reference in subsection (2) from ‘\$50000’ to ‘455 penalty units’.

Clause 12 inserts a new chapter division heading for chapter 44A (Special provisions in respect of offences relating to stock).

Clause 13 inserts three new definitions into section 450D (Definition for ch 44A), namely, ‘adequate prescribed record’, ‘prescribed record’ and ‘stock disposal order’. The clause also makes a consequential amendment to the heading of section 450D.

Clause 14 omits section 450E (Animals not tendered in certain cases) and replaces it with a new chapter division 2 (Prescribed records).

New section 450E (Duty of police officer who seizes an animal connected with a charge) obliges a police officer who seizes an animal connected with a charge to cause an adequate prescribed record of the animal to be made, unless an adequate prescribed record of the animal is already available to the police officer. ‘Adequate prescribed record’, and ‘prescribed record’ are defined by the new definitions inserted into section 450D. ‘Animal’ is defined by section 450D of the Criminal Code, for chapter 44A, to mean an animal which is stock. ‘Stock’ is defined in section 1 of the Code as any of the following animals or their young: horse, asses, mules or camels; cattle, oxen or buffalo; sheep; swine; deer; goats.

The police officer may cause the animal to be returned to its owner if the defendant does not object to its return and provided an adequate prescribed record of the animal has been made, or is otherwise available.

Clause 14 also inserts new section 450EA (Admissibility of adequate prescribed record) which provides for how a prescribed record of an animal is to be treated for evidentiary purposes. A prescribed record is evidence of the matters it depicts and no objection can be taken to its admission as evidence of the matters it depicts.

Clause 14 also inserts new chapter division 3 (Stock disposal orders), sections 450EB to 450EH and a new chapter division 4 (Other provisions), sections 450EI and 450EJ. The divisions provide for a new type of order, namely a stock disposal order.

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

An application may only be made if certain matters have been attended to. An adequate prescribed record of the animal must have been made, or be available to a police officer; and either the defendant has objected to the animal’s return to its owner; or the defendant has not so objected, but the owner has declined the animal’s return. These pre-conditions do not apply where the defendant or the owner is unable to be located. The applicant must give notice of the application. Each person having a legal or equitable interest in the animal may be a party to the application.

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

New section 450ED (When order may be made if party disputes making of order) makes provision for the matters about which the court must first be satisfied before

making a stock disposal order in circumstances where a party disputes the making of the order.

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

New section 450EF (Content of order) provides for what a stock disposal order must contain. The order must identify the animal and direct the commissioner of the police service to sell the animal by auction at market value or in another way stated in the order. The order must direct that the net proceeds of the sale are paid into the court.

The section also provides that at the conclusion of the criminal proceedings for the charge with which the animal is connected, the prosecutor or the defendant may apply for, or the court on its own initiative may order, the payment out of court of the net proceeds of the sale. The section provides that the court must give priority to any amount owing to a person in relation to the animal under a security interest registered under the *Personal Property Securities Act 2009* (Cwlth). The section also makes provision for when the order for payment out of court is to have effect, taking into account appeal rights, and that an appeal court may vary an order about payment out of court of the net proceeds of the sale.

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

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

New section 450EI (Unavailability of animal at trial) provides that a defendant's trial is not unfair merely because an animal is not available as an exhibit for the trial owing to its having been sold under a stock disposal order or returned to its owner under section 450E. The section makes clear that where an adequate prescribed record is available to the prosecutor for the trial, the animal is not required at trial.

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

Clause 15 amends section 450F (Animal valuers and valuations) under which the chief executive may appoint a person as an animal valuer and provides a regulation making power as to the constitution and operation of tribunals of animal valuers. To better reflect the non-judicial nature of animal valuer experts, the term 'tribunal' is replaced by the term 'panel'. Section 450F is also amended to reflect the practice of forming tribunals from a register of appointed valuers, rather than from panels in districts.

Clause 16 omits section 450G (Identification of animals and return to owners prior to tender in certain cases), as the return or disposal of animals will be provided for by new sections 450E to 450EJ.

Clause 17 amends section 468 (Injuring animals) to change the minimum fine reference in subsection (4) from '4 penalty units' to 'the prescribed penalty units'. The prescribed penalty units are set out in new subsection (6) and for stock are set as 10 penalty units, and for all other animals, are set as 8 penalty units.

Clause 18 inserts new chapter heading 93 (Transitional provision for Criminal Code and Another Act (Stock) Amendment Act 2014) and new section 732 (Tendering, return or disposal of stock). Section 732 is a transitional provision which sets out the application of existing sections 450E and 450G and new sections 450E to 450EJ. Section 732 applies the new stock disposal order regime provisions to proceedings for offences which are already on foot at the time of the commencement of section 732. This means that a police officer or crown prosecutor will be able to seek a stock disposal order for proceedings already commenced. However, existing sections concerned with disposal of stock animals, namely sections 450E and 450G, which are repealed by the Bill, otherwise continue to apply where an undertaking has already been entered into under those sections as at the date of commencement.

Part 3 – Amendment of Police Powers and Responsibilities Act 2000

Clause 19 provides that this part amends the *Police Powers and Responsibilities Act 2000*.

Clause 20 amends section 5 (Purposes of Act) to insert a new subsection (g) which provides a new purpose for the Act, namely to provide for the forced muster of stray stock.

Clause 21 amends section 155 (When search warrant ends) which currently provides that search warrants end seven days after their issue. The amendment provides that for a search warrant issued in relation to stock (whether or not the warrant is also for anything else), the warrants ends 21 days after issue – to reflect that searches of large rural properties can take more than seven days. All other warrants continue to end seven days after their issue.

Clause 22 amends section 157 (Powers under search warrant), which sets out a police officer's powers under a search warrant. A further power is added where a police officer is searching for stock, namely the power to use facilities reasonably needed to be used in stock management.

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

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

‘Stock’ is defined by a new definition inserted into schedule 6 of the Act by clause 24 of the Bill. The applicant must give notice of the application to the commissioner of the police service and the person managing or controlling the place on which the stock is situated. The person managing or controlling the place is a party to the application.

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

New section 789AC (Police officer wishing to give evidence at hearing) enables a police officer to give evidence and be cross-examined at the hearing of the forced muster application. To do so, the police officer must at least five days prior to the hearing file an affidavit containing information relevant to the application and provide a copy of the affidavit to the applicant and the person managing or controlling the place. The police officer does not become a party to the proceedings.

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

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

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

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

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

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

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