



Australian Capital Territory

Stock Act 2005

A2005-19

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Australian Capital Territory

Stock Act 2005

A2005-19

An Act about stock, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2003 255B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Stock Act 2005*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*impound*, for part 5 (Impounding stock)—see section 32.’ means that the term ‘impound’ is defined in that section for part 5.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Stock levy

6 Stock units and levy amount

- (1) The Minister may, in writing, determine—
 - (a) for each kind of stock, the number of animals making up a stock unit; and
 - (b) the levy amount per stock unit.
- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

7 Stock-carrying capacity

The chief executive may determine the stock-carrying capacity, in stock units, of land held under a lease permitting the carrying of stock.

8 Occupier to pay stock levy

- (1) This section applies to a person who, in a financial year, is the occupier of land held under a lease permitting the carrying of stock.
- (2) A levy (*stock levy*) is payable for the financial year by the person.
- (3) The stock levy is the greater of the following:
 - (a) the amount worked out as follows—

$$UL \times SCC \times \frac{DO}{365};$$

- (b) the minimum stock levy.

- (4) In this section:

DO means the number of days in the financial year when the person is the occupier of the land.

minimum stock levy means the amount prescribed by regulation for this definition.

SCC means the stock-carrying capacity of the land determined under section 7.

UL means the levy amount determined under section 6 per stock unit.

9 Returns for stock levy

- (1) If a person is liable to pay stock levy under this part for a financial year, the person must give the chief executive a return for the levy for the financial year within 7 days after the end of the year.

Maximum penalty: 10 penalty units.

Note If a form is approved under s 69 for a return, the form must be used.

- (2) An offence against this section is a strict liability offence.

10 Stock levy notice

As soon as practicable after the end of a financial year, the chief executive must give written notice to a person liable to pay stock levy under this part for the year of the amount of stock levy payable.

11 Person to pay levy

- (1) A person liable to pay stock levy under this part for a financial year must pay the levy to the Territory within 90 days after the day the person receives notice under section 10 for the year.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

12 Unpaid stock levy

- (1) A lease permitting the carrying of stock on land is taken to include a covenant by the occupier of the land to pay stock levy payable in relation to the land.
- (2) This section does not limit any right of the Territory to recover any amount of unpaid stock levy as a debt.

Part 3 Marks

13 Registers

The chief executive must keep—

- (a) a register of small stock marks; and
- (b) a register of large stock marks.

14 Application for registration of mark

A person may apply, in writing, to the chief executive for the registration of a mark.

Note 1 If a form is approved under s 69 for an application, the form must be used.

Note 2 A fee may be determined under s 68 for this provision.

15 Further information for registration application

- (1) The chief executive may ask the applicant to give the chief executive additional information or a document that the chief executive reasonably needs to decide the application.
- (2) If the applicant does not comply with a requirement under subsection (1), the chief executive may refuse to consider the application further.

16 Decision about registration of mark approval

- (1) If the chief executive receives an application to register a mark, the chief executive must—
 - (a) register the mark; or
 - (b) refuse to register the mark.
- (2) The chief executive must not register a mark if—

- (a) the design of a mark registered under this Act—
 - (i) is the same as the design of the mark; or
 - (ii) might be confused with the design of the mark; or
 - (iii) may easily be changed to resemble the design of the mark; or
 - (b) the design and proposed method of application of the mark is not suitable for its purpose; or
 - (c) for a mark that is a permanent brand—the mark contains an alphanumeric or symbolic character that is—
 - (i) less than 35mm or more than 75mm in height; and
 - (ii) located less than 10mm from another character.
- (3) If the chief executive registers a mark, the chief executive must—
- (a) give the applicant a certificate of registration of the mark; and
 - (b) enter the mark in the appropriate stock register.

Note If a form is approved under s 69 for a certificate, the form must be used.

17 Effect of registration

- (1) If a mark is registered under section 16, the applicant for registration is the *registered owner* of the mark.
- (2) The registered owner of a mark is entitled to exclusive use of the mark.

18 Use of registered mark by personal representative

- (1) This section applies if a person who is the registered owner of a mark dies.
- (2) The person's personal representative is taken to be the registered owner of the mark until the distribution of the part of the person's estate that includes stock bearing the mark is finalised.

- (3) As soon as practicable after the distribution of that part of the estate is finalised, the personal representative must tell the chief executive that the part of the person's estate has been distributed.

19 Cancellation of registered mark

The chief executive may cancel the registration of a mark—

- (a) if the chief executive is satisfied, on reasonable grounds, that—
- (i) the mark is not in use, or needed for use, by its registered owner; or
 - (ii) the registration was obtained by fraud or misrepresentation; or
- (b) if the registered owner asks the chief executive to cancel the registration; or
- (c) if the registered owner is a corporation—on the winding-up of the corporation.

20 Correction of register

The chief executive may correct a mistake, error or omission in a register.

21 Unauthorised use of mark

- (1) A person commits an offence if the person—
- (a) applies a registered mark to stock; and
 - (b) is not—
 - (i) the registered owner of the mark; or
 - (ii) acting with the permission of the owner.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person—

- (a) applies a registered mark to stock; and
- (b) is not—
 - (i) the owner of the stock; or
 - (ii) acting with the permission of the owner.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

22 Use of earmark—large stock

- (1) A person commits an offence if the person—
 - (a) earmarks large stock with a registered mark; and
 - (b) does not have the chief executive's approval to earmark the stock.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

23 Use of earmark—certain small stock

- (1) This section applies to a person if—
 - (a) the person is the owner of a sheep or goat that is at least 6 months old; and
 - (b) the animal is not earmarked.
- (2) The person commits an offence if the animal is not earmarked in accordance with subsection (3) no later than 14 days after the day the animal turns 6 months old or the person becomes its owner (whichever is later).

Maximum penalty: 10 penalty units.

- (3) The animal must be earmarked—

- (a) using an earmark for which the person is the registered owner;
and
 - (b) on the following ear:
 - (i) for a male or desexed animal—the left ear;
 - (ii) for a female animal—the right ear.
- (4) An offence against this section is a strict liability offence.

24 Earmarking—stock kept for fleece etc

- (1) The owner of large stock kept for the commercial value of its fleece or hide may apply, in writing, to the chief executive for approval to place an earmark on the stock.

Note 1 If a form is approved under s 69 for an application, the form must be used.

Note 2 A fee may be determined under s 68 for this provision.

- (2) The chief executive must give the approval if satisfied that the stock is kept for the commercial value of its fleece or hide.

25 Cutting, alteration etc of earmark

- (1) A person commits an offence if—
- (a) in earmarking stock, the person cuts off more than $\frac{1}{4}$ of the ear;
or
 - (b) the person alters or destroys a stock earmark.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) for male or desexed stock—the person earmarks the right ear;
or

(b) for female stock—the person earmarks the left ear.

Maximum penalty: 10 penalty units.

(3) An offence against this section is a strict liability offence.

26 Placement of permanent brands

(1) A person commits an offence if the person applies a permanent brand to large stock in a way that contravenes a regulation.

Maximum penalty: 10 penalty units.

(2) An offence against this section is a strict liability offence.

Part 4 Travelling stock

27 Application for permit

A person may apply, in writing, to the chief executive for a permit.

Note 1 If a form is approved under s 69 for a permit, the form must be used.

Note 2 A fee may be determined under s 68 for this provision.

28 Issue of permits

- (1) A person commits an offence if the person—
 - (a) issues a permit for stock; and
 - (b) is not the chief executive or the owner of the stock.

Maximum penalty: 50 penalty units.

Note The dictionary defines the *owner* of stock to include a person who is in control of the stock for the owner.

- (2) An offence against this section is a strict liability offence.

29 Offence to travel stock without permit

- (1) A person commits an offence if—
 - (a) the person travels stock; and
 - (b) the person is not the owner of the stock; and
 - (c) the person does not have a permit to travel the stock—
 - (i) issued by the chief executive or the owner of the stock; or
 - (ii) issued under a corresponding law.

Maximum penalty: 50 penalty units.

- (2) If a person in charge of travelling stock (the *first drover*) delivers stock to someone else, the first drover must—

- (a) endorse on the permit for the stock the name of the other person; and
- (b) give the other person the endorsed permit.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

corresponding law means—

- (a) a law of a State regulating stock; or
- (b) a law prescribed by regulation as a corresponding law for this definition.

30 Production of permit

- (1) A person in charge of travelling stock commits an offence if—
 - (a) any of the following people asks the person to produce the permit to travel the stock:
 - (i) an authorised person;
 - (ii) a police officer;
 - (iii) the occupier of land where the stock is travelling; and
 - (b) the person does not produce the permit.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) A person need not comply with a request under subsection (1) by an authorised person if the authorised person does not produce his or her identity card when asked by the person.

31 Movement of travelling stock

A person in charge of travelling stock must travel the stock by the most direct route reasonable in the circumstances.

Maximum penalty: 10 penalty units.

Part 5 Impounding stock

32 Meaning of *impound* for pt 6

In this part:

impound—stock is *impounded* if it is seized and secured, or seized and transported to a place to be secured.

33 Chief executive may impound trespassing stock

- (1) The chief executive of stock may impound stock that is—
 - (a) on unleased land; or
 - (b) uncontrolled on a road.
- (2) Subsection (1) (a) does not apply to stock if—
 - (a) a person has a licence from the Territory or the Commonwealth to keep stock on the land; and
 - (b) the stock is owned by the person or is on the land with the person's permission.

Note A fee may be determined under s 68 for maintaining or travelling impounded stock.

34 Occupier may impound trespassing stock

- (1) An occupier of land may impound stock that is trespassing on the land.
- (2) The occupier may return the stock to its owner, whether by sending the stock to a convenient place near land occupied by the owner or otherwise.

Note A fee may be determined under s 68 for maintaining or travelling impounded stock.

35 Person to tell owner and chief executive about impounded stock

- (1) If a person other than the chief executive impounds stock, the person must—
- (a) take reasonable steps to identify the owner of the stock; and
 - (b) if the owner is identified—
 - (i) tell the owner that the stock has been impounded; and
 - (ii) ask the owner to remove the stock.

Example for par (a)

an earmark or brand on the stock may be used to identify the owner

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The person must tell the chief executive that the stock has been impounded if—
- (a) the owner of the stock is not identified; or
 - (b) the owner is identified and does not remove the stock within 24 hours after being asked to remove the stock.

36 Chief executive may impound stock impounded by someone else

- (1) This section applies if the chief executive is told that an occupier of land has impounded stock.
- (2) The chief executive may impound the stock.
- (3) However, the chief executive may agree with the occupier of the land that the stock, although impounded by the chief executive, remain on the occupier's land.

Note A fee may be determined under s 68 for maintaining or travelling impounded stock.

37 Notice of impounded stock

- (1) This section applies if the chief executive impounds stock.
- (2) The chief executive must—
 - (a) take reasonable steps to identify the owner of the stock; and
 - (b) if the owner is identified, give the owner written notice of—
 - (i) the impounding of the stock; and
 - (ii) the location of the stock; and
 - (iii) the fees payable for maintaining or travelling the stock; and
 - (c) if the owner is not identified—publish in a newspaper circulating in the ACT, a notice containing the information mentioned in paragraph (b).

38 Release of impounded stock

- (1) The chief executive must release impounded stock to a person if—
 - (a) the chief executive is satisfied that the person is the owner of the stock; and
 - (b) the person has paid the fees payable for maintaining or travelling the stock.
- (2) Fees payable for maintaining impounded stock are payable to—
 - (a) for any period when the chief executive maintains the stock—the Territory; and
 - (b) for any period when someone else maintains the stock—the person.
- (3) Fees payable for travelling impounded stock are payable to—
 - (a) if the chief executive travels the stock—the Territory; and

- (b) if someone else who has impounded the stock travels the stock—the person.

39 Selling impounded stock

- (1) If impounded stock is not released within 14 days after the day notice of the impounding is given to the owner, or published, under section 37 (2), the chief executive must offer the stock for sale at auction.
- (2) If the stock is not sold at auction, the chief executive—
 - (a) may sell the stock in another way; and
 - (b) if selling the stock in another way—must take steps to obtain the best price possible in the circumstances.
- (3) If the chief executive cannot sell the stock, the chief executive may destroy it and dispose of it in any way the chief executive considers appropriate.

40 Application of the proceeds of impound sales

- (1) The proceeds of sale of impounded stock must be applied as follows:
 - (a) first, to the expenses of the sale;
 - (b) second, to any amount payable for maintaining or travelling the stock;
 - (c) the balance to the owner of the stock.
- (2) If an amount is to be applied under this section to a person other than the Territory, the chief executive must take reasonable steps to tell the person about the amount as soon as practicable after the day of sale.
- (3) If an amount to be applied under this section is not claimed within 1 year after the day of sale, it becomes public money of the Territory.

- (4) Any amount payable to a person or the Territory for maintaining or travelling the stock that exceeds the amount applied under subsection (1) (b) is recoverable from the owner of the stock as a debt to the person or the Territory.

41 Application for release of impounded stock

- (1) The owner of stock may apply to the Magistrates Court for an order for—
- (a) the release of the stock; or
 - (b) damages suffered by the owner because of the impounding.
- (2) The court may make any order it considers appropriate in relation to the stock if the court is satisfied that the impounding was not in accordance with this part or that an amount paid by the owner under this part was excessive.
- (3) Without limiting subsection (2), an order for damages may include an amount paid by the owner for the release of the stock.

Examples

- 1 maintenance fees
- 2 travelling fees

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

42 Offence—allowing stock to trespass

A person commits an offence if—

- (a) the person engages in conduct reckless about whether stock may trespass; and

(b) as a result of the conduct, stock trespasses.

Maximum penalty: 10 penalty units.

43 Offences relating to impounded stock

- (1) A person commits an offence if the person releases or interferes with impounded stock.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person damages a fence or other structure securing impounded stock.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

44 Part does not affect other rights

This part does not affect any right that a person may have to recover damages or compensation apart from this part.

Part 6 Enforcement

Division 6.1 General

45 Definitions for pt 6

In this part:

connected—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used to commit the offence.

occupier, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

Division 6.2 Authorised people

46 Appointment of authorised people

The chief executive may appoint a public servant to be an authorised person for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

47 Identity cards

- (1) The chief executive must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an authorised person; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

Division 6.3 Powers of authorised people

48 Power to enter premises

- (1) For this Act, an authorised person may—
 - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any time, enter premises with the occupier's consent; or
 - (c) enter premises in accordance with a search warrant.
- (2) For the purpose of checking the accuracy of a return under section 9 (Returns for stock levy), an authorised person may, at any reasonable time, enter premises if the authorised person believes, on

reasonable grounds, that there is stock, or any documents relevant to the return at the premises.

- (3) However, subsection (1) (a) or (2) does not authorise entry into a part of premises that is being used only for residential purposes.
- (4) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (5) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (6) In this section:

at any reasonable time includes at any time—

- (a) for subsection (1) (a)—when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money); and
- (b) for subsection (2)—during normal business hours.

49 Production of identity card

An authorised person must not remain at premises entered under this part if the authorised person does not produce his or her identity card when asked by the occupier.

50 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 48 (1) (b), an authorised person must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and

- (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

51 General powers on entry to premises

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
 - (a) inspect or examine;

- (b) take measurements or conduct tests;
- (c) take samples;
- (d) take photographs, films, or audio, video or other recordings;
- (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

52 Power to require name and address

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

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised person must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the authorised person to produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised person—
 - (a) tells the person the reason for the requirement; and

(b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

(5) An offence against this section is a strict liability offence.

(6) In this section:

home address, of a person, means the address of the place where the person usually lives.

53 Power to seize things

(1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—

(a) the authorised person is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

(2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.

(3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—

(a) the thing is connected with an offence against this Act; and

(b) the seizure is necessary to prevent the thing from being—

(i) concealed, lost or destroyed; or

(ii) used to commit, continue or repeat the offence.

(4) Having seized a thing, an authorised person may—

(a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or

(b) leave the thing at the place of seizure but restrict access to it.

(5) A person commits an offence if—

(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and

(b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

(6) An offence against this section is a strict liability offence.

Division 6.4 Search warrants

54 Warrants generally

(1) An authorised person may apply to a magistrate for a warrant to enter premises.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 14 days.

- (5) The warrant must state—
- (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person’s powers under this part; and
 - (b) the offence for which the warrant is sought; and
 - (c) the thing that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the day of the warrant’s issue, the warrant ends.

55 Warrants—application made other than in person

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
- (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
- (a) the magistrate must—
 - (i) tell the authorised person the terms of the warrant; and
 - (ii) tell the authorised person the date and time the warrant was issued; and

- (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant’s terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person’s powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

56 Search warrants—announcement before entry

- (1) An authorised person must, before anyone enters premises under a search warrant—
 - (a) announce that the authorised person is authorised to enter the premises; and

- (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—
identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the authorised person or a person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

57 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

58 Occupier entitled to be present during search etc

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
- (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Division 6.5 Return and forfeiture of things seized

59 Receipt for things seized

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 53 (Power to seize things).
- (3) A receipt under this section must include the following:
- (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the authorised person's name, and how to contact the authorised person;
 - (d) if the thing is moved from the place of seizure—where the thing is to be taken.

60 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the

thing at another place and the availability of expert assistance; or

- (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
 - (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
 - (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
 - (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
 - (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

61 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

62 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—
- (a) an infringement notice for an offence relating to the thing is not served on the owner within 90 days after the day of the seizure and—
 - (i) a prosecution for an offence relating to the thing is not begun within the 90-day period; or
 - (ii) a prosecution for an offence relating to the thing is begun within the 90-day period but the court does not find the offence proved; or
 - (b) an infringement notice for an offence relating to the thing is served on the owner within 90 days after the day of the seizure, the infringement notice is withdrawn and—
 - (i) a prosecution for an offence relating to the thing is not begun within the 90-day period; or
 - (ii) a prosecution for an offence relating to the thing is begun within the 90-day period but the court does not find the offence proved; or
 - (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 90 days after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
 - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 that liability is disputed; or

- (ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved.
- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
 - (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the chief executive directs.

Division 6.6 Miscellaneous

63 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and a person assisting, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

64 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person or a person assisting an authorised person.

- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Part 7 Review of decisions

65 Reviewable decisions

The following decisions are *reviewable decisions*:

- (a) determining the stock carrying capacity of land under section 7;
- (b) refusing to register a mark under section 16;
- (c) cancelling a registered mark under section 19;
- (d) refusing to give approval under section 24 to earmark large stock.

66 Review of decisions

- (1) Application may be made to the AAT for review of a reviewable decision.
- (2) A person who makes a reviewable decision must give written notice of the decision to each person affected by the decision.
- (3) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Part 8 Miscellaneous

67 References to particular animals

In this Act, a reference to an animal of a particular kind is a reference to an animal of that kind irrespective of age or sex.

68 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

69 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

70 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may make provision in relation to the destruction of trespassing stock.

- (3) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

Part 9 Transitional

71 Definitions for pt 9

In this part:

commencement day means the day this Act commences.

repealed Act means the *Stock Act 1991*.

72 Register under repealed Act

A register kept under the repealed Act, section 23 is taken to be a register under section 13.

73 Travelling stock permits made under repealed Act

- (1) This section applies to a travelling stock permit issued under the repealed Act, part 4 in force immediately before the commencement day.
- (2) The permit is taken to have been issued under part 4.

74 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

75 Expiry of pt 9

This part expires 2 years after the day it commences.

Part 10 Consequential amendments and repeals

76 Legislation repealed

This Act repeals the following legislation and instruments:

- *Pounds Act 1928* A1928-10
- *Pounds Act 1928-Form 3* AF2002-123
- *Pounds Act 1928-Form 4* AF2002-124
- *Pounds (Fees) Determination 2004* DI2004-111
- *Pounds Regulation 1929*
- *Stock Act 1991* A1991-10
- *Stock Act 1991 Determination of Fees* DI1991-50
- *Stock (Fees) Determination 2004* DI2004-112
- *Stock (Levy) Determination 2004* DI2004-113.

77 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Consequential amendments

(see s 77)

Part 1.1 Animal Welfare Act 1992

[1.1] Section 17 (3) (c)

omit

Stock Act 1991

substitute

Stock Act 2005

Part 1.2 Environment Protection Act 1997

[1.2] Schedule 1, section 1, definition of *stock*

substitute

stock—see the *Stock Act 2005*, dictionary.

Part 1.3 Uncollected Goods Act 1996

[1.3] Section 3 (2) (d)

omit

or the Pounds Act 1928

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- contravene
- exercise
- financial year
- function
- public servant
- State.

at premises includes in or on the premises.

authorised person means an authorised person under section 46.

bovine means any animal of the bovine group of animals within the bovidae family.

Examples of bovine

- 1 bison (genus *Bison bison*)
- 2 Brahman (genus *Bos indicus*)
- 3 buffalo (genus *Bubalus bubalis*)
- 4 Hereford (genus *Bos taurus*)

Note 1 A reference to an animal of a particular kind is a reference to an animal of that kind irrespective of age or sex (see s 67).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

connected, for part 6 (Enforcement)—see section 45.

earmark means a shape cut into the ear of an animal.

engage in conduct means—

- (a) do an act; or

(b) fail to do an act.

equine means a horse, donkey, mule or hinny.

Note A reference to an animal of a particular kind is a reference to an animal of that kind irrespective of age or sex (see s 67).

holding means any parcel or parcels of land worked as a single property, whether held under the same or different titles.

impound, for part 5 (Impounding stock)—see section 32.

large stock means an equine, bovine, alpaca, or any other animal declared by regulation to be large stock.

maintenance fee, for impounded stock, means the fee determined under section 68 for maintaining the stock.

mark means an earmark or permanent brand.

occupier, of premises, for part 6 (Enforcement)—see section 45.

offence, for part 6 (Enforcement)—see section 45.

owner, of stock, includes a person who is in control of the stock for the owner.

premises includes land or a structure or vehicle and any part of an area of land or a structure or vehicle.

permanent brand means a mark made on the skin of an animal by burning or freezing.

permit means a permit to travel stock.

register means a register of stock marks kept under section 13.

registered mark means a mark registered under section 16.

registered owner, of a mark—see section 17.

reviewable decision—see section 65.

road means any road, street, lane, thoroughfare or footpath open to, or used by, the public.

small stock means a sheep, goat, pig, or any other animal declared by regulation to be small stock.

stock means large stock or small stock.

stock levy—see section 8.

stock unit means a stock unit determined under section 6.

travel, for stock, means drive or transport the stock outside the holding where they are normally kept.

travelling fee, for impounded stock, means the fee determined under section 68 for travelling the stock.

vehicle—

- (a) see the *Road Transport (General) Act 1999*, dictionary; and
- (b) includes a boat or aircraft.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 17 March 2005.

2 Notification

Notified under the Legislation Act on 13 April 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Stock Bill 2005, which was passed by the Legislative Assembly on 7 April 2005.

Clerk of the Legislative Assembly

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