

1991

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STOCK BILL 1991**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Minister of Finance and Urban Services**

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## **STOCK BILL 1991**

The *Stock Act 1934*, which provides for the holding, marking, branding and movement of stock in the Territory, is now outdated and inadequate to provide a suitable statutory basis for Territory authorities to meet their local and national responsibilities in relation to the control of stock and the control of the movement of stock.

The Stock Bill 1991 repeals the *Stock Act 1934*.

The Stock Bill 1991 provides for the appointment of a Controller of Stock, Deputy Controllers of Stock and stock inspectors. The Bill allows the Minister to determine and set levys to be imposed on persons holding land on the basis of the stock carrying capacity of the land occupied.

The Stock Bill 1991 establishes a system of registration for stock marks, regulates the placement of stock marks and provides for the issue of permits for the movement of stock.

Details of the Bill are included in the Attachment.

## **Financial Considerations**

Any costs associated with the introduction of the Bill will be met from existing budgetary allocations.

## ATTACHMENT

STOCK BILL 1991

Clause 1 provides for the short title of the Bill, once enacted, to be the Stock Act 1991.

Clause 2 makes provision for the commencement of the Bill.

Clause 3 repeals the *Stock Act 1934*.

Clause 4 provides for the interpretation of terms used in the Bill.

Clause 5 provides for the appointment by the Minister of a Controller of Stock.

Clause 6 provides that an Acting Controller of Stock may be appointed by the Minister during a vacancy in the office of Controller or during a period when the Controller is absent from office or from the Territory.

Clause 7 provides for the appointment of Deputy Controllers of Stock.

Subclause 7(1) provides that the Minister may appoint Deputy Controllers of Stock.

Subclause 7(2) provides that a Deputy Controller of Stock may exercise any power or perform any function of the Controller under the Bill, subject to any directions of the Controller.

Clause 8 provides that a Controller or Deputy Controller of Stock may resign by delivery of a signed notice in writing to the Minister.

Clause 9 provides for the termination of the appointment of a Controller or Deputy Controller of Stock.

Subclause 9(1) provides that the Minister may terminate the appointment of a Controller or Deputy Controller for misbehaviour or physical or mental incapacity.

Subclause 9(2) provides that the Minister shall terminate the appointment of such an officer if the officer

- becomes bankrupt or insolvent;
- is absent without leave of the Minister for 14 consecutive days or 28 days in any 12 months; or
- is convicted of an offence punishable by imprisonment for 12 months or longer.

Clause 10 provides for the appointment of inspectors.

Subclause 10(1) provides that the Minister may, in writing, appoint a person as an inspector for the purposes of the Bill.

Subclause 10(2) provides that an inspector shall perform such duties as the Minister directs, subject to this Bill and the Regulations.

Clause 11 provides for the issue of an identity card by the Minister to an inspector appointed under the Bill. The identity card is to specify the name and appointment of the person and is to include a recent photograph of the person.

Clause 12 provides that an inspector shall not fail to return his or her identity card to the Minister on ceasing to be an inspector; a penalty of \$100 is imposed for failure to do so.

Clause 13 provides for the determination of the stock levy to be paid for each kind of stock.

Subclause 13(1) provides that the Minister may determine by instrument, the levy for one stock unit, and in respect of each kind of stock, the number of that kind of stock represented by one stock unit. The number of stock which a given piece of land is authorised to carry is used, in the form of stock units, to calculate the stock levy due for that land.

Subclause 13(2) provides that such an instrument is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*. This means that the instrument will be of no effect if it fails to satisfy the notification, tabling and retrospectivity requirements under section 10 of the *Subordinate Laws Act* and that it is subject to scrutiny and disallowance by the Legislative Assembly.

Clause 14 provides that where a lease authorises the carrying of stock on the land, the Controller may determine by instrument the stock carrying capacity of the land in stock units as calculated under subclause 13(1). The Bill also provides for the review of such a determination under clause 40.

Clause 15 provides for the imposition of a stock levy. Any person who, on any day in a financial year was the occupier of land under a lease the terms of which authorised the carrying of stock is liable to pay a stock levy in accordance with a given formula. The levy is calculated by multiplying the amount due for one stock unit by the stock carrying capacity of the land, and, then by the number of days in that year on which the person was the occupier divided by 365.

Clause 16 provides for the lodging of returns with respect to the stock run on the land.

Subclause 16(1) requires a person who is liable to pay a stock levy in any financial year, to lodge a return with the Controller of Stock before the next 31 July, and a penalty of \$500 is imposed for non-compliance.

Subclause 16(2) provides that a return shall be in a form approved by the Controller and shall specify details of the land occupied and the stock carried on the land.

**Clause 17 provides for and regulates the use of powers of an inspector to enter and inspect premises for the purposes of clause 16.**

**Subclause 17(1) empowers an inspector to enter land on which the inspector has reasonable grounds for believing there is stock, or records relating to a return, for the purposes of verifying the correctness of a return made under clause 16.**

**Subclause 17(2) provides that an inspector who enters land under subsection (1) is not empowered to remain on the land if, on the request of an occupier of the land, the inspector does not show his or her identity card to the occupier.**

**Subclause 17(3) empowers an inspector who enters land under subclause (1) to inspect, make copies of, or take extracts from any books, documents or records relating to a return made under clause 16.**

**Subclause 17(4) allows an inspector to require the occupier of land to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under the section.**

**Subclause 17(5) imposes a penalty for contravention of subclause (4) of \$1,000 for a natural person and \$5,000 for a body corporate.**

**Subclause 17(6) provides that for the purposes of clause 17 the term "premises" includes land.**

**Clause 18 requires the Controller to give notice, to a person who is liable for the payment of a stock levy under clause 15, of the assessment of the amount of stock levy payable by the person and of the due date for the payment of the levy. The notice must be in writing and must be given as soon as practicable after the end of a financial year.**

**Clause 19 provides for the payment of a stock levy.**

Subclause 19(1) provides that a stock levy imposed by clause 15 is payable to the Territory.

Subclause 19(2) provides that the due date for payment is 28 days after the date of the notice of assessment issued by the Controller under clause 18.

Clause 20 deals with unpaid stock levys.

Subclause 20(1) provides that any lease which authorises the carrying of stock on the land, is deemed to include a covenant by the occupier to pay the stock levy.

Subclause 20(2) provides that such a covenant does not prevent the Territory recovering any unpaid levy as a debt due.

Clause 21 creates two offences in respect of the use of stock marks, and provides a penalty in each case of \$500 for a natural person and \$2,500 for a body corporate.

Subclause 21(1) prohibits an owner of stock from marking that stock or causing it to be marked with a mark of which he or she is not the registered proprietor.

Subclause 21(2) prohibits a person from earmarking large stock with a registered earmark except with the permission of the Controller.

Clause 22 requires the earmarking of certain small stock.

Subclause 22(1) requires a person who is the owner of a sheep or a goat, to, within 14 days of:

- (a) such stock attaining 6 months of age; or
- (b) becoming the owner of stock over 6 months of age,

earmark the left ear of such stock where the stock is desexed or a male, and the right ear where the stock is female, provided the stock has not previously been earmarked. The stock must be marked with the earmark of which the person is the registered proprietor.

Subclause 22(2) provides that non-compliance with clause 22 without reasonable excuse is an offence punishable by a fine of \$500 for a natural person, and a fine of \$2,500 for a body corporate.

Clause 23 requires the Controller to keep a Small Stock Register and a Large Stock Register.

Clause 24 provides that an application made to the Controller for registration of a mark should be:

- . in writing in a form approved by the Controller;
- . signed by the applicant;
- . contain a description of the mark to which the application relates and any other particulars as may be prescribed; and
- . be accompanied by the determined fee.

Clause 25 regulates the registration of a mark by the Controller.

Subclause 25(1) provides the conditions under which the Controller shall approve an application for the registration of a mark. The Controller must have regard to brands and marks registered in New South Wales and the Territory when deciding whether a mark is one which could be confused with or easily modified to resemble an existing mark. The Controller must also be satisfied that the design and method of application of the mark will be suitable for its purpose and in the case of a permanent brand that the mark consists of alphanumeric or symbolic characters which are within a specified size range and not greater than a specified distance apart.



Subclause 25(2) requires the Controller, on approving an application for the registration of a mark, to issue the applicant with a certificate of registration for the mark and to register the mark by entering the name of the proprietor and the mark in the Small Stock Register or the Large Stock Register as the case may be.

Subclause 25(3) provides that the certificate of registration shall be in a form approved by the Controller.

Subclause 25(4) requires the Controller to give notice in writing to an applicant whose application for the registration of a mark has been refused. The Bill also provides under clause 40 for the review of a decision by the Controller to refuse the registration of a mark.

Clause 26 provides that the effect of registration of a mark is to give the registered proprietor of the mark exclusive use of the mark.

Clause 27 provides for the use of a registered mark by a personal representative of a deceased person.

Subclause 27(1) provides that where a deceased person was entitled to the exclusive use of a mark immediately prior to his or her death, the personal representative of that person is entitled to use that mark until the completion of the distribution of the estate.

Subclause 27(2) provides that a personal representative who is entitled to use a registered mark under subclause 27(1) shall notify the Controller when the distribution of the estate is completed.

Clause 28 deals with the cancellation of a registered mark.

Subclause 28(1) provides that the Controller may cancel a mark if the Controller is satisfied on reasonable grounds that the registration was obtained by fraud or misrepresentation, or the mark is not being used

by, or not required for the use of the registered proprietor. The Controller may also cancel the mark if he or she is requested to do so by the registered proprietor, or where the registered proprietor is a body corporate, on the winding-up of the body corporate. Clause 40 provides for the review of a decision by the Controller to cancel a mark under this subclause.

Subclause 28(2) requires that where the Controller cancels the registration of a mark he or she shall give notice in writing to the registered proprietor of the mark.

Clause 29 provides that where it is necessary to ensure the integrity of the Register, the Controller shall alter the Register, at the written request of a registered proprietor, or of the Controller's own accord.

Clause 30 provides for the placement of brands on large stock.

Subclause 30(1) requires the owner of large stock, when marking such stock with a permanent brand, to place the brand on the portion of the stock specified in the Schedule for that type of stock.

Subclause 30(2) identifies where brands should be placed when the stock has been previously branded.

Subclause 30(3) provides a penalty for contravention of clause 30 of \$500 where the offender is a natural person and \$2,500 where the offender is a body corporate.

Clause 31 allows for the earmarking of large stock kept for the commercial value of its fleece or hide.

Subclause 31(1) provides that a person who is the owner of large stock kept for the commercial value of its fleece or hide may apply to the Controller for permission to earmark the stock.

Subclause 31(2) provides that an application made under subclause (1) should be in writing, in a form approved by the Controller and accompanied by the determined fee.

Subclause 31(3) provides that the Controller shall grant permission to earmark large stock where he or she is satisfied that the stock is kept for the commercial value of its fleece or hide.

Subclause 31(4) requires the Controller to inform an applicant in writing of his or her decision to grant or to refuse to grant such permission. The Bill also provides under clause 40, that application may be made to the Administrative Appeals Tribunal for review of a refusal to grant permission under clause 31.

Subclause 31(5) specifies that a person who cuts an earmark into large stock pursuant to this clause shall cut the earmark into the left ear of male or desexed stock and into the right ear of female stock.

Subclause 31(6) provides a penalty for contravention of subclause (5), of a fine of \$1,000 where the offender is a natural person and \$5,000 where the offender is a body corporate.

Clause 32 prohibits the unauthorised use of a mark, the alteration or destruction of an earmark, or the removing of more than one quarter of the ear of an animal when cutting an earmark, and provides a penalty of \$1,000 where the offender is a natural person and \$5,000 where the offender is body corporate.

Clause 33 deals with permits to travel stock.

Subclause 33(1) prohibits a person from travelling stock without first obtaining a permit to travel the stock. The permit must be issued either, by the owner of the stock, or by a person authorised to do so by the Controller and signed by the owner of the stock.

Subclause 33(2) requires a drover in charge of travelling stock, when delivering the stock to another drover, to deliver to the other drover the permit issued under subclause (1) endorsed with the name of the drover to whom the permit and the stock are being delivered.

Subclause 33(3) provides that a permit issued under subclause (1) shall be in a form approved by the Controller.

Subclause 33(4) provides that subclause (1) does not apply to stock being moved between 2 parts of the same holding situated not more than 16 kilometres apart, or to or from a shearing shed or dip.

Subclause 33(5) provides a penalty of \$1,000 for a natural person and \$5,000 for a body corporate for non-compliance with the clause.

Clause 34 prohibits a person from issuing a permit to travel stock unless the person is the owner of the stock or is a person authorised by the Controller for that purpose and provides a penalty of \$1,000 where the offender is a natural person and \$5,000 where the offender is a body corporate.

Clause 35 deals with the production of a permit by a drover.

Subclause 35(1) requires a drover to produce a permit to travel stock to a police officer, or an inspector or the occupier of any land on which the stock is being travelled, on request by that person.

Subclause 35(2) provides that if an inspector fails to produce to the drover his or her identity card, the drover is not required to comply with subclause (1) in relation to the inspector.

Clause 36 prohibits a person from travelling stock except by the most direct route reasonable in the circumstances, and imposes a penalty for non-compliance of \$1,000 for a natural person and \$5,000 for a body corporate.

Clause 37 provides that it is an offence to obstruct the Controller or Deputy Controller or an inspector in the exercise of his or her powers under the Bill, and provides a penalty of \$1,000 or imprisonment for 6 months, or both.

Clause 38 provides that a certificate, purporting to be signed by the Controller and giving details relating to registration, is evidence of the matters so stated in the certificate.

Clause 39 identifies the requirements for notification of decisions made under the Bill.

Subclause 39(1) provides that a notification of a decision by the Controller under clause 18 or subclauses 25(4), 28(2), or 31(4) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates, and, except where subsection 26(11) of that Act applies, the notification should include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of the Act.

Section 26 of the *Administrative Appeals Tribunal Act 1989* provides that where a person is entitled to apply to the Tribunal for a review of a decision, he or she may in writing request the person who made the decision to give him or her a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision. The person who made the decision shall, within 28 days after receiving the request, prepare and give such a statement to that person.

Subsection 26(11) of the *Administrative Appeals Tribunal Act 1989* provides that a person is not entitled to make a request under section 26 if he or she has already been given a statement of reasons.

Subclause 39(2) provides that the validity of a decision referred to in subclause (1) shall not be taken to be affected by a failure to comply with that subclause.

Clause 40 provides that application may be made to the Administrative Appeals Tribunal for a review of a decision of the Controller

- . determining the stock carrying capacity of the land under section 14;
- . refusing to approve an application under section 25;
- . cancelling a registered mark under subsection 28(1); or
- . refusing to grant permission under section 31.

Clause 41 provides that where 2 or more persons are occupiers of the same land, a notice required by the Bill to be given to the occupier shall be deemed to be duly given if given to one of those persons.

Clause 42 provides that the Minister may, by notice in the Gazette, determine fees for the purposes of the Bill.

Clause 43 provides for the furnishing of an annual report to the Minister.

Subclause 43(1) provides that the administrative head shall furnish to the Minister an annual report relating to the activities of the Controller during each financial year.

Subclause 43(2) provides that the report shall be furnished within 3 months of after the end of the financial year.

Subclause 43(3) provides that the report is to be presented to the Legislative Assembly within 6 sitting days after the day on which the Minister received the report.

Clause 44 allows the Executive to make regulations, not inconsistent with the Bill, prescribing all matters required or permitted by the Bill or necessary or convenient to be prescribed for carrying out or giving effect to the Bill and providing for penalties not exceeding \$1,000, for offences against the regulations.

Clause 45 provides for transitional arrangements for the continuity of the recognition of the registration of stock marks and brands registered either in New South Wales or in the Territory.

Subclause 45(1) provides that an earmark recorded under the *Stock Act 1934* or registered under the *Rural Lands Protection Act 1989* of the State of New South Wales being a record or a registration having effect immediately before the commencement of this Bill, shall be deemed to have been registered under this Bill.

Subclause 45(2) provides that a brand registered under the *Rural Lands Protection Act 1989* of the State of New South Wales, being a registration recognised in the Territory and having effect immediately before the commencement of this Bill shall, for a period of 12 months after commencement be deemed to have been registered as a permanent brand under this Bill.

The Schedule specifies the placement of brands on horses and large stock other than horses.