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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STOCK AMENDMENT BILL 2018

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

This explanatory statement relates to the *Stock Amendment Bill 2018* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

This explanatory statement provides information about why a Bill is proposed together with an explanation about the proposed legislative amendments.

The Bill proposes amendments to the *Stock Act 2005* (the Stock Act) that update the Act to provide the Director-General, Environment, Planning and Sustainable Development Directorate with more flexible options for dealing with impounded stock and to clarify provisions about permits for moving stock by foot.

Stray stock

Amongst other things, the aim of the Stock Act is to encourage property owners to ensure their livestock are contained securely on their properties. The risks posed by escaped or trespassing livestock include:

- a) collisions with motor vehicles and potential for people to be seriously injured or even killed. This is a real risk in Canberra because of the many high speed roads adjacent to livestock paddocks; and
- b) the impact of straying livestock trespassing onto neighbouring properties which can include the spread of disease, injury of livestock, inseminating stud livestock, consuming fodder and damaging crops.

Presently, under the Stock Act, impounded stock must, in the first instance, be disposed of by selling them at auction. Section 39 in Part 5 of the Act provides that the Director-General must offer the stock for sale at auction if the stock is not released within 14 days of notice of the impounding being given.

The requirement for the Director-General to sell impounded stock by auction works well for situations involving large numbers of stock. However, it has become apparent that the requirement to undertake an auction process is not suitable when small numbers of animals or single animals are involved.

The costs associated with administering the auction process when only a small number of animals is involved is not justified and there may be potential for there to be animal welfare issues associated with keeping social animals in isolation from their normal mob-based social environment.

Travelling stock by foot

Part 4 of the Stock Act deals with travelling stock and has historically been about requiring anyone transporting stock to have a document from the government, or the owner of the stock, that proved ownership of the stock and point of origin of the stock. The permit system was also about tracing stock movements in case of a disease outbreak.

Since the Stock Act was made, there have been changes that affect the movement of livestock in the ACT. Much of the land that was previously rural has been repurposed for urban development with a corresponding decrease in the number of farms and livestock. This and better modes of vehicle transport has resulted in the droving of stock by foot decreasing significantly. Also, the National Livestock Identification System (NLIS), Australia's system for the identification and traceability of stock has expanded and provides a better way of tracing stock movements.

This means that Part 4 of the Stock Act is now only about ensuring the public's safety when stock is being moved by foot in areas accessible to the public. The government needs to be able to review the proposed movement and assess any risk to the public of the proposed movement. This means it is no longer appropriate for an owner of stock to issue a permit as previously allowed under the Stock Act Part 4.

Overview of the Bill

The proposed amendments enable the Director-General to exercise some discretion in implementing solutions in relation to impounded stock that are more cost effective, pragmatic and avoid potential animal welfare issues associated with keeping social animals in isolation away from their normal mob based environment.

Section 39 of the Act presently requires the Director-General to offer impounded stock for sale at auction. If not sold at auction, the stock may be sold in another way.

It is only if the stock cannot be sold that the Director-General can then dispose of the stock as the director-general considers appropriate. This includes disposing of, or destroying the stock.

The Bill amends Part 5, section 39 to provide sale of the stock as one of the options available to the Director-General. New section 39 permits the director-general to dispose of the stock by selling it at auction or other means of sale, or by disposing of the stock including destroying the stock, as the Director-General considers appropriate.

The Director-General can only destroy or dispose of the stock after the 14 day notice period of the impoundment has expired and if it is not practicable or desirable because of cost, animal welfare or other reasons to sell the stock. Notice of impoundment must be given by the Director-General under section 37 to the owner, if identified, or by public notice if the owner is not identified.

The Bill amends Part 4 of the Stock Act to clarify that a person must obtain a permit from the Director-general to travel stock when it involves driving the stock on foot outside the holding where the stock is normally kept. This could be long distance travel by stock walking from one area to another, roadside grazing for a short period of time or routine movements between two or more properties owned or occupied by the same person.

The Stock Act is also amended by the Bill to remove the right of an owner of stock to issue a permit to move stock by foot. An owner was historically able to issue a permit so that the people droving the stock could prove the stock had not been stolen. This is no longer necessary because the *Animal Diseases Act 2005* includes schemes for the identification of stock. It is also not appropriate for an owner to issue a permit because the risk to the public needs to be assessed by the government.

Strict liability offences in the bill

The Bill contains two strict liability offences. These offences are already in the Stock Act and are only amended by the Bill to remove the reference to a permit issued by an owner because an owner will no longer be issuing permits. There has been no change to the maximum penalty.

Section 23 of the Criminal Code provides that if a law that creates an offence provides for strict liability, there are no fault elements for the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, if strict liability applies, the defence of mistake of fact is available where the person considered whether or not facts existed and was under a mistaken but reasonable belief about the facts.

Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context where for reasons such as public safety or protection of the public revenue, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. The rationale is that people engaged in the conduct of, for example, moving animals commercially, can be expected to be aware of their duties.

Strict liability is beneficial where offences need to be dealt with expeditiously to ensure confidence in the regulatory scheme. For example, if someone is doing something that could have a serious effect on community safety, the public would expect effective and quick action to rectify the situation.

The strict liability offences in the bill have a maximum penalty of 50 penalty units in accordance with the Justice and Community Services Guide to Framing Offences.

Implications under the *Human Rights Act 2004*

Because the Bill contains strict liability offences, it could be considered that the bill engages the right to be presumed innocent contained within section 22 of the Human Rights Act (the HR Act).

Section 22 (1) provides that—

Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to the law.

Offences of strict liability engage the right to be presumed innocent under section 22 (1) of the HR Act as they may reverse the onus of proof from the prosecution onto the defendant. While strict liability offences engage the presumption of innocence, they are not inherently incompatible with human rights.

Section 28 (1) of the HR Act provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HR Act then provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. Section 28 (2) further provides five factors that must be considered when determining whether a limit on human rights is considered justified, namely:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

To the extent that the offence provisions in the Bill limit an individual's human rights, any limitation is reasonable and justified.

Strict liability is justified because the conduct proscribed by the offences may pose a grave danger to public health and safety. Stock in public areas could cause car accidents or injure people and it is important that the government is able to assess any risk associated with such activity. The elements of the offences are readily assessed – there is a permit or there isn't and either the permit is produced on request or it isn't. ACT rural land holders can be expected to know their obligations to obtain a permit from the government when they are moving their stock.

Another indication that the strict liability offences are a reasonable limitation under section 28 is the low maximum penalty of 50 penalty units and no imprisonment.

It is considered that the possible restriction on the right to be presumed innocent is reasonable and justified in the circumstances and is the least restrictive means available to achieve the purpose of the legislation.

Scrutiny of Bills Committee Principles

(a) unduly trespass on personal rights and liberties;

The Bill does not unduly trespass on personal rights and liberties previously established by law. The Director-General already has the power to dispose of stray stock and to issue permits to travel stock by foot. The existing strict liability offences in the Act have been amended by the Bill only to remove the reference to a permit issued by the owner of stock because an owner will no longer be issuing permits. It is no longer appropriate for an owner of stock to issue a permit because it is a matter for the government to assess the risk to the public of stock being moved by foot. There has been no change to the maximum penalty for the two offences which is appropriate for strict liability offences (a maximum of 50 penalty units). It is appropriate for the offences of travel stock without a permit and fail to produce permit to be strict liability offences. Strict liability offences are an efficient and cost effective deterrent for breaches of regulatory provisions. They are appropriate when the truth of a matter can be readily assessed. In this case, the elements of the offences are readily assessed – there is a permit or there isn't and either the permit is produced on request or it isn't.

The defendant has an evidential burden in relation to the matters mentioned in s29(2). An evidential burden of proof requires a person to provide evidence of an asserted fact in order to prove that fact to a court. An evidential burden has been placed on defendants in this provision because the conduct proscribed by the offence may pose a grave danger to public safety. Stock wandering in public areas could cause car accidents or injure people and a defendant will be the person with the relevant knowledge to provide evidence of any mitigating circumstance. It would also be significantly more difficult and costly for the prosecution to disprove the facts than the defendant to establish the matter. Once evidence is raised that the matter exists or does not exist, it is then for the prosecution to disprove those matters beyond reasonable doubt.

(b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined powers

The Bill does not make rights liberties and/or obligations unduly dependant upon insufficiently defined powers.

(c) make rights, liberties and/or obligations unduly dependent upon non reviewable decisions;

There are no non reviewable decisions in the Bill.

(d) inappropriately delegate legislative powers;

The Bill does not provide for the delegation of legislative powers.

(e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;

The Bill does not insufficiently subject the exercise of legislative power to parliamentary scrutiny. Specifically, the Bill does not establish new powers to create subordinate legislation or other legislative instruments.

Outline of Provisions

Clause 1 – Name of Act

This clause names the Act as the *Stock Amendment Act 2018*.

Clause 2 – Commencement

This clause provides for the Act to commence on the day after its notification day.

Clause 3 – Legislation amended

This clause provides that the Act amends the *Stock Act 2005*.

Clause 4 – New section 26A

This clause inserts a new section 26A in Part 4 that provides the meaning of **travel** for Part 4 of the Act. It means to drive or transport the stock (other than in a vehicle) outside the holding where the stock is normally kept. The definition needs to be included because the meaning of travel provided in the Dictionary to the Act includes moving stock by vehicle and Part 4 is only about permits to travel stock by foot.

Clause 5 – Issue of permits Section 28

This clause omits section 28. The intention was to amend the section by removing the ability for an owner of stock to issue a permit. However, after omitting the owner of stock from the provision, only the Director-General may now issue a permit. The entire section can therefore be omitted because the *Criminal Code 2002*, s360 (Impersonating territory public official) would apply. A *territory public official* includes a public servant (see Criminal Code, s300). The offence previously provided by section 28 need not be included because the offence is provided by s360 of the Criminal Code.

Clause 6 – Offence to travel stock without permit Section 29(1) and (2)

This clause substitutes a new section 29(1) and (2) to remove the reference to a permit being issued by the owner of stock. Because of clause 7 of the Bill, owners of stock are no longer able to issue a permit - only the Director-General can issue a permit. It is not desirable for the owner of stock to be able to issue permits. The Director-General should be able to assess the risk to the public of the proposed movement and decide if a permit to go ahead with the movement is appropriate. Otherwise the offence of travel stock without a permit provided by section 29 remains the same. New section 29(2) clarifies that the section does not apply to a person travelling stock if the stock is restrained by the person, for example, a person walking a horse using a halter and lead. The old section 29(2) is not needed because new section 29(1) provides the offence previously provided by s29(2).

The defendant has an evidential burden in relation to the matters mentioned in s29(2). An evidential burden of proof requires a person to provide evidence of an asserted fact in order to prove that fact to a court. An evidential burden has been placed on defendants in this provision because the conduct proscribed by the offence may pose a grave danger to public safety. Stock wandering in public areas could cause car accidents or injure people and, in each case, a defendant will be the person with the relevant knowledge to provide evidence of any mitigating circumstance. It would also be significantly more difficult and costly for the prosecution to disprove the facts than the defendant to establish the matter. Once evidence is raised that the matter exists or does not exist, it is then for the prosecution to disprove those matters beyond reasonable doubt.

Clause 7 – Production of permit New section 30(1)(aa) and (ab)

This clause inserts new paragraphs (aa) and (ab) before paragraph (a) of section 30(1) to clarify the provision. The new subparagraphs clarify that the offence applies to a person who is travelling stock and does not produce the permit required under section 29 when asked by an authorised officer, a police officer or the occupier of land where the stock is travelling.

Clause 8 – Section 32

This clause substitutes a new section 32 to clarify that stock is impounded if it is seized and secured, or seized and transported to Territory premises, or land owned or controlled by the Territory or any other land if the owner or occupier of the land consents. This expands the options for the government when it impounds stray stock. Rather than being required to take it to the pound, the animal can be housed in alternative places (for example, on the land where it is found) which may be better for the welfare of the animal. Being able to do this may also result in cost savings for the government in terms of transporting and feeding the animal while the owner is found.

Clause 9 – Notice of impounded stock Section 37(2) (b)

This clause substitutes a new section 37 (2) (b) to require the written notice of impoundment provided to the owner of the impounded stock to include not only that the stock has been impounded, the location of the stock and the fees payable but also that the stock must be claimed within 14 days after the day the notice is issued and that if the stock is not claimed within the 14 day period, the Director-General may dispose of the stock in accordance with section 39. A new section 39 is substituted by clause 12 of the Bill.

Clause 10 – Section 39

This clause substitutes a new section 39. Previously section 39 provided that the director-general must offer the stock for sale at auction and if there is no sale by auction then by other means of sale. It was only when the stock could not be sold that the Director-General could then dispose of the stock as the Director-General considered appropriate, including destroying it. New section 39 provides more flexibility in disposing of stray stock while safeguarding the rights of owners and the welfare of the animals. New section 39 permits the director-general to dispose of the stock by selling it at auction or other means of sale, or by disposing of the stock including destroying the stock, as the Director-General considers appropriate. The Bill does not affect the right of a veterinary surgeon to destroy a sick, diseased or injured animal in accordance with section 86 of the *Animal Welfare Act 1992*.

The Director-General can only destroy or dispose of the stock after the 14 day notice period of the impoundment has expired and if it is not practicable or desirable because of cost, animal welfare or other reasons to sell the stock. Notice of impoundment must be given by the Director-General under section 37 to the owner, if identified, or by public notice if the owner is not identified.

Clause 13 – Dictionary, new definition of *impoundment area*

This clause inserts a new definition of *impoundment area* in the Dictionary. This is consequential to the amendment made by clause 8 which introduces the concept of impoundment area.

Clause 14 – Dictionary, definition of *travel*

This clause substitutes a new definition of *travel* in the Dictionary. This is consequential to the amendment made by clause 4 above.