

**THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY  
2006**

**Animal Welfare Legislation Amendment Bill 2006**

**EXPLANATORY STATEMENT**

Circulated by authority of the  
Minister for Environment and Sustainability  
Mr John Hargreaves MLA

This Explanatory Statement relates to the *Animal Welfare Legislation Amendment Bill 2006* (the Bill) as introduced into the Legislative Assembly.

## **Overview of Bill**

The purpose of this Bill is to make amendments to the *Animal Welfare Act 1992* (the Act) and to take into account some of the changes recommended by the Animal Welfare Advisory Committee (AWAC) in its October 2002 Public Discussion Paper entitled *Proposed Amendments to the Animal Welfare Act 1992*.

## **Summary**

The substantive changes in the Bill include:

### **Update Offence Provisions**

The Bill updates animal welfare offence provisions to address current animal welfare issues. For example, the Bill will prohibit a veterinary surgeon performing a medical procedure on an animal where the sole purpose of that surgery is to alter the animal's appearance.

### **Medical and Surgical Procedures – People other than Veterinary Surgeons**

The Bill prohibits veterinary surgeons from giving advice to a third party on how to perform a 'therapeutic' procedure. The Bill will also reduce the timeframe for when a non-veterinary surgeon may remove a dog's dew claws. This will ensure that after this period, the procedure will need to be performed by a veterinary surgeon.

### **Code of Practice**

The Bill will provide that the definition of 'code' for the Act is the *Code of Practice for the Care and Use of Animals for Scientific Purposes* (the Scientific Code).

### **Licences and Authorisations**

The Bill will update requirements for licences, identification certificates, permits and research authorisations.

### **Animal Welfare Regulation 2001**

The Bill will amend the *Animal Welfare Regulation 2001* to prohibit certain types of traps and remove 'electric fight back lure' from Schedule 1 (permitted use of electrical devices on animals) of the Regulation. This will ensure that devices which vibrate to replicate the movement of a live animal are not included in the Regulation as an approved device.

### **Use of Strict Liability**

The Bill includes a number of offences where strict liability applies to a specific element of the offence or to the offence. Strict liability offences are primarily aimed at conduct on the less serious side of the criminal spectrum. Strict liability offences have two essential features. The first is that there is no requirement to prove a fault element, such as intention or recklessness. However, the prosecution is still required to prove the physical elements of the strict liability offence beyond a reasonable doubt and disprove beyond a reasonable doubt any defences that the defendant has put in issue.

Strict liability can be applied to the whole of an offence or to just a particular element of the offence. If strict liability only applies to a particular element of the offence, it means that there is no fault element for that physical element, but there will be a fault element for each other physical element of the offence. In effect, the offence remains a fault element offence, though in relation to one of the physical elements, fault does not have to be proven.

For the purposes of this Bill, the rationale is that people who are engaged in for example managing or conducting a circus, can be expected to be aware of their duties and obligations. The provisions are drafted so that, if a particular set of circumstances exists, a specified person (e.g. a person who is engaged in conducting a circus where there are performing animals) is guilty of an offence. Unless some knowledge or intention is required to commit a particular offence, the defendant's frame of mind at the time is irrelevant.

### **Financial Implications**

Nil

### **Summary on Clauses**

**Clause 1 - Name of Act** – provides that the Act is called the *Animal Welfare Legislation Amendment Act 2006*.

**Clause 2 - Commencement** – provides that the Act commences on the day after its notification day.

**Clause 3 – Legislation amended** – provides that Part 2 amends the *Animal Welfare Act 1992*.

**Clause 4 – Offences against Act – application of Criminal Code etc Section 3A** – provides that this has been renumbered.

**Clause 5 – Section 4 - Animal Welfare Authority** – this amendment removes the requirement that the chief executive must create and maintain an office of the authority in the public service. The Legislation Act, section 207 provides that an appointment may be made by naming the person appointed or by nominating the occupant of a position (however described), at a particular time or from time to time.

The amendment includes transitional arrangements that operate until a new appointment is made. Proposed section 5(3) ensures that the transitional arrangement will, if necessary, continue to operate after the expiry of proposed section 5(2) to (4). The amendment also inserts standard notes about appointments.

**Clause 6 – Section 6 - Delegation by authority** – this amendment updates the delegation provision and adds a standard note about delegations. The Legislation Act, section 232 requires a delegation to be made by writing and signed by the appointer. The Legislation Act, section 234 allows the delegation of any part of functions that may be delegated.

**Clause 7 – Transport and containment** – provides an example of what containment is, this includes locking a dog in a car.

**Clause 8 – Section 17 - Matches, competitions etc** – provides that a person shall not promote, conduct, take part in or be present in any activity where an animal is released from captivity for the purpose of being hunted, caught, confined, injured or killed by a person or another animal or used to train or exercise another animal. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

This clause also provides that a person shall not without reasonable excuse own, keep, use or manage a premises used for fights between animals or the baiting or maltreating of animals or a match, competition or any other activity in which an animal is released from captivity for the purpose of being hunted, confined, injured or killed by a person or another animal.

This clause also provides that exemptions apply to the rehabilitation of native animals for release into the wild, the keeping and display of animals whose normal diet includes live food, the mustering and working of stock, the hunting or control of animals or the use of a trained animal to train another animal of the same species in accordance with accepted animal husbandry practices.

**Clause 9 – Sections 19 and 19A – Medical and surgical procedures – people other than veterinary surgeons** – provides that a person who is not a veterinary surgeon is not able to carry out a therapeutic procedure. This clause also provides that this section does not apply to a medical procedure of a prophylactic nature, medical or surgical procedure carried out in accordance with accepted animal husbandry practice, medical or surgical procedure carried out in accordance with a licence or authorisation or the removal of a dog’s dewclaws not later than four days after the day the dog was born.

This clause also provides that accepted animal husbandry practice does not include a practice prescribed by regulation. This clause provides that a veterinary surgeon can not (other than for a therapeutic purpose) remove a dogs dewclaws four days after the day the dog was born and can not carry out a medical or surgical procedure on an animal for cosmetic purposes only.

**Clause 10 – Exception – approved code of conduct Section 20(b)** – substitutes section 20(b) of the Act which relates to matches and competitions.

**Clause 11 - Divisions 4.1 and 4.2 – Licences and Authorisations** – provides that it is an offence if a person uses or breeds an animal for research or teaching purposes and does not have a licence. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

This division also updates provisions to applications for licences, decisions by the authority about licence applications, licence conditions, forms of licences, terms of a licence and licence renewals. This division requires a licensee to notify the authority of any changes to their name or address and gives the authority power to amend a licence condition.

This division provides that the authority may amend a licence at any time if it believes on reasonable grounds that the amendment is reasonable or necessary in the interests of animal welfare. The authority may amend a licence on its own initiative or on application by the licensee. This division also outlines the conditions under which the authority may amend a licence on its own initiative and provides that a licence amended under this section must be returned to the authority as soon as practicable but not later than 7 days after the day the notice of the decision to amend is given to the licensee.

This division provides that a licensee may surrender the licence by giving the authority written notice of the surrender and the licence. This division also provides that it is an offence if a person employed or engaged by a licensee conducts a program of research using or breeding animals and does not hold a research authorisation or does not hold a teaching authorisation. The maximum penalty is 50 penalty units, imprisonment for 6 months or both.

This division updates provisions for the issuing of authorisations, decisions by the authority about authorisation applications, authorisation conditions, forms of authorisations e.g. that it must be in writing, terms of an authorisation and authorisation renewals. This division requires an authorised person to notify the animal ethics committee of any changes to their name or address and gives the animal ethics committee the power to amend a licence condition.

This division also provides that the animal ethics committee may amend an authorisation at any time if it believes on reasonable grounds that the amendment is reasonable or necessary in the interests of animal welfare. This division also outlines the grounds on which the authority may amend a authorisation on its own initiative and the timeframe in which this is to be done.

This division provides that an authorised person may surrender the authorisation by giving the animal ethics committee written notice of the surrender and the authorisation.

**Clause 12 – Division 4.4 - Animal Ethics Committees** – provides that a regulation may make provision in relation to animal ethics committees which includes provisions relating to their establishment, constitution and functions.

**Clause 13 – Part 5 - Circuses and Travelling Zoos** – provides that a person commits an offence if the person conducts a circus with performing animals and does not have a permit to conduct the circus. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

This division also provides that a person commits an offence if the person conducts a circus using a prohibited animal or if the person brings a prohibited animal into the ACT as part of a circus troupe. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

This division provides that a person may apply to the authority for a circus permit and gives the authority power to grant a permit or refuse to grant a permit subject to a

number of conditions which include experience and competency of the applicant and adequacy of the conditions in which the circus animals are to be housed.

This division also provides the conditions to which a circus permit is subject to and the form in which a circus permit must be issued. It is an offence for a circus permit holder to not notify the authority of a change of name or address. The maximum penalty is 10 penalty units. The authority also has the power to amend a circus permit under this division.

This division provides that a person commits an offence if the person conducts a travelling zoo and does not have a permit to conduct a travelling zoo. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

This division also provides that a person commits an offence if the person conducts a travelling zoo using a prohibited animal or if the person brings a prohibited animal into the ACT as part of a travelling zoo. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

This division provides that a person may apply to the authority for a travelling zoo permit and gives the authority power to issue a travelling zoo permit or refuse to issue a travelling zoo permit subject to a number of conditions which include experience and competency of the applicant and adequacy of the conditions in which the animals are to be housed.

This division also provides the conditions to which a travelling zoo permit is subject to and the form in which a travelling zoo permit must be issued. It is an offence for a travelling zoo permit holder to not notify the authority of a change of name or address. The maximum penalty is 10 penalty units. The authority also has the power to amend a travelling zoo permit under this division.

This division also provides that the authority may amend a circus or travelling zoo permit at any time if it believes on reasonable grounds that the amendment is reasonable or necessary in the interests of animal welfare. The authority may amend a circus or travelling zoo permit on its own initiative or on application by the circus or travelling zoo permit holder. This division also outlines the grounds on which the authority may amend a circus or travelling zoo permit on its own initiative and the timeframe in which this is to be done.

**Clause 14 – Trapping – General – Section 62(2) and (3)** – provides that this section does not apply to a trap set on premises other than in relation to a commercial trapping operation by the occupier of the premises, by an employee, agent or relative of the occupier, if the person has written permission of the occupier of the premises to set the trap on the premises or if the person has written permission of an employee or agent of the occupier of the premises to set the trap on the premises.

**Clause 15 – Division 6.2 - Trapping Permits** – provides that a person may apply to the authority for a commercial trapping permit, for the purposes of a commercial trapping operation or a private trapping permit for domestic or private purposes. The authority may request that the applicant give the authority additional information in writing or documents that the authority needs to decide in order to grant a permit.

This division also provides that on application by a person for a trapping permit the authority must grant the permit or refuse to grant the permit. In deciding on whether to grant the permit the authority must consider a number of conditions which include the species of animals to be trapped, the experience and competency of the applicant, the applicants employees and agents and the adequacy of the applicant's traps and other trapping equipment.

This division outlines the form in which a trapping permit can be granted and the period that a trapping permit can be granted for. A trapping permit is granted for a period of not longer than three years. The authority may in writing require a trapping permit holder to give the authority information in writing or documents that the authority needs to exercise to determine an application for a trapping permit.

This division also provides that a trapping permit holder may apply to the authority for a renewal of the trapping permit and sets out the conditions in which this can be done. For example, the application must be made no later than 14 days before the permit ends. It is an offence for a trapping permit holder to change their name and address without telling the authority. The maximum penalty is 10 penalty units.

This division provides that the authority may amend a trapping permit at any time if it believes on reasonable grounds that the amendment is reasonable and necessary in the interests of animal welfare. The authority may amend a trapping permit on its own initiative or on application by the trapping permit holder. This division also outlines the grounds on which the authority may amend a trapping permit on its own initiative and the timeframe in which this is to be done.

**Clause 16 – New Part 6A – Regulatory Action** – provides a definition of approval for the purposes of this section which includes an authorisation, a circus permit, a licence, a trapping permit or a travelling zoo permit. This part also defines what an approved person and regulatory body means.

This part outlines the grounds for regulatory actions against an approved person. This includes; a person giving information to the regulatory body in relation to the application for the grant or renewal of the person's approval that was false or misleading, the person contravened a condition of the person's approval, the person failed to return an approval as required under the relevant provision or if the regulatory body believes on reasonable grounds that it would refuse an application by the person for an approval of the kind held by the person on the grounds mentioned in this part.

This part also outlines a regulatory action when taken against an approved person to include putting a condition on, or amending a condition put on the person's approval, suspending the person's approval for a stated period or until a stated thing happens, cancelling a person's approval, cancelling the person's approval and disqualifying the person from applying for an approval of that kind for a stated period or until a stated thing happens.

This part provides that if the regulatory body proposes to take regulatory action in relation to an approved person, the regulatory body must give the person a written

notice outlining the following: details of the proposed regulatory action, grounds for the proposed regulatory action and must advise the person that the person may, not later than 14 days after the day the person is given the notice, give a written response to the regulatory body about the proposed regulatory action. This part also outlines the regulatory action that the authority may take once the proposed regulatory action has been established in relation to the approved person. This includes cancellation of a person's approval, suspension of a person's approval or may put a condition on the person's approval.

This part provides that if the regulatory body gives or has given a regulatory notice to an approved person and the regulatory body believes on reasonable grounds that the person's approval should be suspended immediately in the interests of animal welfare then the regulatory body has power to immediately suspend a person's approval. This part also outlines when the suspension of an approved person's approval ends.

This part provides that a suspended approval does not authorise the carrying on of any activity under the approval during the suspension. An approved person commits an offence if the person's approval is amended, suspended or cancelled. It is an offence for an approved person to not return the approval to the regulatory body as soon as practicable but not later than 7 days. The maximum penalty is 10 penalty units.

This part also outlines the action that a regulatory body can take in relation to a amended or suspended approval. For an amended approval, the regulatory body must return the amended approval to the approved person or give the person a replacement approval that includes the amendment. If an approval is suspended and the suspension ends before the end of the term of the approval, the regulatory body must return the approval to the approved person.

**Clause 17 – Section 76 and 77 – Inspectors** - removes the requirement that the chief executive must create and maintain offices of an inspector and authorised officer in the public service. The Legislation Act, section 207 provides that an appointment may be made by naming the person appointed or by nominating the occupant of a position (however described), at a particular time or from time to time.

The amendment includes transitional arrangements that operate until new appointments are made. Proposed section 76 (3) and section 77 (3) ensure that these transitional arrangements will, if necessary, continue to operate after the expiry of proposed section 76 (3) to (5) and section 77 (3) to (5). The amendment also inserts standard notes about appointments.

**Clause 18 – Right to compensation – Section 94(1)** – this amendment updates language. *Exercise* a function is defined in the Legislation Act, dictionary, part 1 to include perform the function. It is the drafting term that is now used in relation to functions.

**Clause 19, Clause 20 and Clause 21 - Certificate evidence – Sections 98(1)(a), 98(1)(b) to (d) and 98(2)** – omits the words 'circus permit or a', and substitutes it with the words 'circus permit, travelling zoo permit or'. Omits the words 'circus permit' and substitutes it with the words 'circus permit, travelling zoo permit'. Omits



the words ‘ethics committee’ and substitutes it with the words ‘animal ethics committee’.

**Clause 22 – Spur trap offences – Court Orders (general) - Section 103(3)**- this amendment updates language and remakes the subsection to bring it more closely into line with current drafting practice.

**Clause 23 – Review of Decisions – Part 8** – provides the definition of a reviewable decision and outlines that an application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision. This clause also provides that if the authority or animal ethics committee makes a reviewable decision, it must give a written notice of the decision to each person affected by the decision. The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*.

**Clause 24 – Establishment and Functions – Section 109(1)** – this amendment is consequential on the amendment below providing for the establishment of the animal welfare advisory committee to be a notifiable instrument. The Legislation Act, section 42 (2) requires notifiable instruments to be in writing.

**Clause 25 – New section 109(4)** – this amendment inserts a requirement that the establishment of the animal welfare advisory committee is a notifiable instrument to bring the section more closely into line with current drafting practice.

**Clause 26 - Approved forms – Section 110A(2) New note** - this amendment inserts a standard note to assist users of the legislation.

**Clause 27 – Regulation-Making Power – New section 112(2)(h)** - provides that the Executive may make regulations for the Act in relation to medical or surgical procedures on animals, including animal husbandry practices in relation to framing and grazing activities.

**Clause 28 – New Part 11 – Transitional – Section 113 – 118** - provides the transitional provisions for the Bill. Includes definitions of ‘amended Act’ and ‘unamended Act’.

This part also provides that existing licences, existing authorisations and existing permits under the unamended Act are taken to be licences, authorisations and permits under the amended Act.

**Clause 29 – New Schedule 1** – outlines all the reviewable decisions under Schedule 1 of the Act.

**Clause 30 – Dictionary** – contains definitions.

## **Animal Welfare Regulation 2001**

**Clause 31 – Legislation amended – pt3** - provides that this part amends the *Animal Welfare Regulation 2001*.

**Clause 32 – Section 3** – this amendment inserts a standard dictionary provision consequent on the insertion of a new dictionary by another amendment. A definition based on existing section 3 is included in the new dictionary.

**Clause 33 – Sections 4 and 4A** – this renumbers sections 3 and 4 of the Regulation.

**Clause 34 – New Sections 6A and 6B** – provides that a licence is subject to certain conditions and a licensee must establish and maintain an animal ethics committee, have appropriate arrangements with an existing animal ethics committee for that committee to exercise the functions of an animal ethics committee in relation to the licensee’s activities or if the authority asks the licensee for information or a document, the licensee must give the information or document to the authority and must comply with any direction given by the animal ethics committee.

This section also provides that an authorisation is subject to certain conditions. That being that if the animal ethics committee asks the authorised person for information or a document under the Act, the person must give the information or document to the committee and the authorised person must comply with any direction of the animal ethics committee issued under the Act.

**Clause 35 – Section 7 – Animal Ethics Committees Act - s50 and dict** – provides that an animal ethics committee established in accordance with a code is an animal ethics committee for the Act. The constitution and functions of the animal ethics committee are the constitution and functions set out in the code. This section also outlines the reporting requirements for an animal ethics committee.

**Clause 36 – New section 7A – 7D** – outlines the conditions that a circus permit, travelling zoo and trapping permit is subject to. This section also provides what traps are prohibited for the Act. This includes a glue trap and metal-toothed rodent trap.

**Clause 37 – Schedule 1 – Item 4** – omits item 4 from the Schedule.

**Clause 38 – Dictionary** - This amendment inserts a new dictionary in accordance with current drafting practice.

**Clause 39 – Part 4 – Domestic Animals Act 2000** – this clause substitutes the dictionary definition of ‘animal welfare offence’ in paragraph (n) of the *Domestic Animals Act 2000*.