

**2005**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STOCK BILL 2005**

**EXPLANATORY STATEMENT**

Circulated by authority of the  
Minister for Environment  
Mr Jon Stanhope MLA

This Explanatory Statement relates to the *Stock Bill 2005* (the Bill) as introduced into the Legislative Assembly.

## **Overview of Bill**

The purpose of this Bill is to amend, repeal and redraft the *Stock Act 1991* which would update it and include key parts of the *Pounds Act 1928*. Animal health matters which are part of the Stock Act are to be transferred into the Animal Diseases Act. The *Animals Diseases Act 1993* is repealed to take into account developments in animal health issues such as the National Livestock Identification Scheme (NLIS) banning the feeding of swill to livestock and to make a number of administrative reforms.

## **Summary**

The Bill includes key parts of the *Pounds Act 1928*.

The substantive changes in the Bill are:

### **Impounding Stock**

The Bill includes a new impounding provision to ensure that there are more efficient methods for impounding and disposing of impounded stock. It will allow an occupier of land to impound stock that is trespassing on the land. The new provision will also allow the chief executive to impound stock that is on unleased land or uncontrolled on a road. If the chief executive is unable to sell the stock, the chief executive may destroy it and dispose of it in any way the chief executive thinks appropriate.

### **Travelling Stock**

The Bill provides for a more flexible permit system for travelling stock to ensure public safety and to assist in managing disease issues. The Bill will allow for recognition of interstate permits, with appropriate checks.

### **Provision of strict liability to a specific element of the offence**

The Bill includes a number of offences where strict liability applies to a specific element of the offence or to the offence. 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 marking stock, 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 is guilty of an offence. Unless some knowledge or intention ought be required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time is irrelevant.

### **Revenue/Cost Implications**

The fees and charges that arise under the existing Stock Act and Pounds Act will continue.

## **Summary on Clauses**

### **Part 1 -Preliminary**

#### **Clause 1 Name of Act**

This clause sets out the name of the Act '*Stock Act 2005*'

#### **Clause 2 -Commencement**

This clause provides for the Act to commence on a day fixed by the Minister by written notice.

#### **Clause 3 -Dictionary**

This clause states that the Dictionary which is at the end of this Act is part of this Act.

#### **Clause 4-Notes**

This clause states that a note included in this Act is explanatory and is not part of this Act.

#### **Clause 5 - Offences against Act – application of Criminal Code etc**

This clause provides that other legislation applies in relation to offences against this Act.

### **Part 2 – Stock Levy**

#### **Clause 6 – Stock units and levy amount**

This clause provides that the Minister may, in writing determine for each kind of stock, the number of animals making up a stock unit and the levy amount for 1 stock unit. This clause also provides that a determination is a disallowable instrument.

#### **Clause 7 – Stock carrying capacity**

This clause provides that the chief executive may determine the stock carrying capacity, in stock units, of land held under a lease permitting the carrying of stock.

#### **Clause 8 – Occupier to pay stock levy**

This clause applies to a person who in a financial year, is the occupier of land held under a lease permitting the carrying of stock. It also provides that a stock levy is payable for the financial year by the person and provides a formula for the calculation of the stock levy.

### **Clause 9 – Returns for stock levy**

This clause provides that if a person is liable to pay stock levy under Part 2 of the Act, 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 is 10 penalty units.

### **Clause 10 – Stock levy notice**

This clause provides that 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.

### **Clause 11 – Person to pay levy**

This clause provides that a person who is liable to pay stock levy under Part 2 of the Act for a financial year must pay the levy to the Territory within 90 days after the day the person receives notice under clause 9 of this Act for the year. This is a strict liability offence and the penalty units are 10.

### **Clause 12 – Unpaid stock levy**

This clause provides that a lease permitting the carrying of stock on land is taken to include a covenant by the occupier of the land to pay the stock levy payable in relation to the land. This clause does not limit any right of the Territory to recover, as a debt owing, any amount of unpaid stock levy.

## **Part 3 – Marks**

### **Clause 13 – Registers**

This clause provides that the chief executive must keep a register of small stock marks and a register of large stock marks.

### **Clause 14 – Application for registration of mark**

This clause provides that a person may apply, in writing, to the chief executive for the registration of a mark.

### **Clause 15 – Further information for registration application**

This clause provides that the chief executive may ask the applicant to give the chief executive additional information or a document that the controller reasonably needs to make a decision regarding the application. If the applicant does not comply with the requirement under subclause (1), the controller may refuse to consider the application further.

### **Clause 16 – Decision about registration of mark approval**

This clause provides that if the chief executive receives an application to register a mark, the chief executive must register the mark or refuse to register the mark. This clause also outlines the circumstances in which the chief executive must not register a mark.

This clause also provides that if the chief executive registers a mark, the chief executive must give the applicant a certificate of registration of the mark and enter the mark in the appropriate stock register.

### **Clause 17 – Effect of registration**

This clause provides that if a mark is registered under clause 14, the applicant for registration is the registered owner of the mark. The registered owner of a mark is entitled to the exclusive use of the mark.

### **Clause 18 – Use of registered mark by personal representative**

This clause applies if a person who is the registered owner of a mark dies. A person's 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. This clause also provides that 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.

### **Clause 19 – Cancellation of registered mark**

This clause provides that the chief executive may cancel the registration of a mark if the controller is satisfied, on reasonable grounds, that the mark is not in use or needed for use by its registered owner, the registered owner asks the chief executive to cancel the registration or the registered owner is a corporation on the winding up of the corporation.

### **Clause 20 – Correction of register**

This clause provides that the chief executive may correct a mistake or omission in a register.

### **Clause 21 – Unauthorised use of mark**

This clause provides that a person commits an offence if the person places a registered mark on stock and is neither the registered owner of the mark nor acting with the permission of the owner. Maximum penalty is 50 penalty units.

This clause also provides that a person commits an offence if the person applies a registered mark to stock and is neither the owner of the stock nor acting with the permission of the owner. Maximum penalty is 50 penalty units.

### **Clause 22 – Use of earmark – large stock**

This clause provides that a person commits an offence if the person earmarks large stock with a registered mark and does not have the chief executive's approval to earmark the stock. Maximum penalty is 50 penalty units.

### **Clause 23 – Use of earmark – certain small stock**

This clause applies to a person if the person is the owner of a sheep or goat that is at least 6 months old and the animal is not earmarked. This clause provides that the person commits an offence if the animal is not earmarked in accordance with subclause (3), no later than 14 days after the day the animal turns 6 months old or the person becomes the owner (whichever is later). Maximum penalty is 10 penalty units.

This clause also provides that the animal must be earmarked using an earmark for which the person is the registered owner. If the animal is a male desexed animal then the left ear. If the animal is a female animal then the right ear.

### **Clause 24 – Earmarking – stock kept for fleece**

This clause provides that 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. The chief executive must give permission if satisfied that the stock is kept for the commercial value of its fleece or hide.

### **Clause 25– Cutting, alteration etc of earmark**

This clause provides that a person commits an offence if the person alters or destroys a stock earmark or in earmarking stock, the person cuts off more than  $\frac{1}{4}$  of the ear. The maximum penalty is 50 penalty units.

This clause also provides that a person commits an offence if for male or desexed stock, the person earmarks the left ear or for female stock, the person earmarks the right ear. Maximum penalty is 10 penalty units.

### **Clause 26 – Placement of permanent brands**

This clause provides that a person commits an offence if the person places a permanent brand on large stock in a way that contravenes a regulation. The maximum penalty is 10 penalty units. This is a strict liability offence.

## **Part 4 – Travelling Stock**

### **Clause 27 – Application for permit to travel**

This clause provides that a person may apply in writing to the chief executive for a permit to travel stock.

### **Clause 28 – Issue of permits**

This clause provides that a person commits an offence if the person issues a permit for stock and is not the chief executive or the owner of the stock. Maximum penalty is 50 penalty units.

### **Clause 29 – Offence to travel stock without a permit**

This clause provides that a person commits an offence if the person travels stock, the person is not the owner of the stock and the person does not have a permit to travel the stock issued by the chief executive, owner of stock or issued under a corresponding law. The maximum penalty is 50 penalty units.

This clause also provides that if a person in charge of travelling stock (the first drover) delivers stock to someone else, the first drover must give the other person the permit to travel the stock and endorse on the permit the name of the other person. The maximum penalty is 50 penalty units.

### **Clause 30 – Production of permit**

This clause provides that a person in charge of travelling stock commits an offence if an authorised person, a police officer or the occupier of land where the stock is being travelled asks the person to produce a permit to travel the stock and the person does not produce the permit. Maximum penalty is 5 penalty units. This is a strict liability offence.

This clause also provides that a person need not comply with this clause if the authorised person does not produce an identity card.

### **Clause 31 – Movement of travelling stock**

This clause provides that a person in charge of travelling stock must travel the stock by the most direct route reasonable in the circumstances. The maximum penalty is 10 penalty units.

## **Part 5 – Impounding of Stock**

### **Clause 32 – Definition for part 5**

This clause defines impound as stock impounded if it is seized and secured, or seized and transported to a place to be secured.

### **Clause 33- Chief executive may impound trespassing stock**

This clause provides that the chief executive of stock may impound stock that is on unleased land or uncontrolled on a road. This clause does not apply if the Territory or the Commonwealth has given a licence to a person to keep stock on the land and the stock is owned by the person or is on the land with the person's permission.



### **Clause 34 – Occupier may impound trespassing stock**

This clause provides that an occupier of land may impound stock that is trespassing on the land. 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.

### **Clause 35 – Person to tell owner and chief executive about impounded stock**

This clause provides that if a person other than the chief executive impounds stock, the person must take reasonable steps to identify the owner of the stock and if the owner is identified tell the owner that the stock has been impounded and ask the owner to remove the stock.

This clause also provides that the person must tell the chief executive that the stock has been impounded if the owner of the stock is not identified or the owner is identified and does not remove the stock within 24 hours after being asked to remove the stock.

### **Clause 36 – Chief executive may impound stock impounded by someone else**

This clause provides that if the chief executive is told that an occupier of land has impounded stock, the chief executive may impound the stock. 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.

### **Clause 37 – Notice to owner of impounded stock**

This clause provides that if the chief executive impounds stock, the chief executive must take reasonable steps to identify the owner of the stock. If the owner is identified, give the owner written notice of the impounding of the stock, location of the stock and fees payable for maintaining or travelling the stock. If the owner is not identified, a publication in the newspaper circulating in the ACT must be made with a notice containing certain information required under this clause.

### **Clause 38 – Release of impounded stock**

This clause provides that the chief executive must release impounded stock to a person, if the chief executive is satisfied that the person is the owner of the stock and the person has paid the fees payable for maintaining or travelling stock. The fees payable for maintaining impounded stock are payable for any period when the chief executive maintains the stock to the Territory and for any period when someone else maintains the stock to the person. Fees payable for travelling impounded stock are payable (if the chief executive travels the stock) to the Territory and (if someone else who has impounded the stock travels the stock) the person.

### **Clause 39 – Selling impounded stock**

This clause provides that if impounded stock is not released within 14 days after the day notice of the impounding is given to the owner or published, the chief executive must offer the stock for sale at auction. If the chief executive is unable to sell the

stock, the chief executive may destroy it and dispose of it any way the chief executive considers appropriate.

#### **Clause 40 – Application of the proceeds of impound sales**

This clause provides that the proceeds of impounded stock must be applied first to the expenses of the sale, second to any amount payable for maintaining or travelling the stock and then the balance to the owner of the stock.

If the amount is to be applied 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. If the amount is not claimed within 1 year after the sale, it becomes public money of the Territory.

Any amount payable to a person or the Territory for maintaining or travelling the stock that exceeds the amount applied under is recoverable from the owner of the stock as a debt to the person or the Territory.

#### **Clause 41 – Application for release of impounded stock**

This clause provides that the owner of stock may apply to the Magistrates Court for an order for the release of stock or damages suffered by the owner because of impounding. An order for damages may include an amount paid by the owner for the release of stock.

#### **Clause 42 - Offence – allowing stock to trespass**

This clause provides that a person commits an offence if the person engages in conduct reckless about whether stock may trespass and as a result of the conduct, stock trespasses. Maximum penalty is 10 penalty units.

#### **Clause 43 – Offences relating to impounded stock**

This clause provides that a person commits an offence if the person releases or interferes with impounded stock or damages a fence or other structure securing impounded stock. The maximum penalty is 10 penalty units for each offence. This is a strict liability offence.

#### **Clause 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**

#### **Clause 45 – Definitions for part 6**

This clause provides for the definition of connected, occupier and offence.

### **Division 6.2 – Authorised people**

#### **Clause 46– Appointment of authorised person**

This clause provides that the chief executive may appoint a public servant to be an authorised person.

#### **Clause 47- Identity cards**

This clause provides that the chief executive must give an authorised person an identity card stating the person's name and that the person is an authorised person. The identify card must show a recent photograph of the person, the cards date of issue and expiry and anything else prescribed by regulation.

A person commits an offence if the person stops being an authorised person and the person does not return their identity card to the chief executive as soon as possible but no later than 7 days after the person stops being an authorised person. The maximum penalty is 1 penalty unit. This is a strict liability offence.

### **Division 6.3 Powers of authorised people**

#### **Clause 48 – Power to enter premises**

This clause gives an authorised person power at any reasonable time, to enter premises that the public is entitled to use or that are open to public or enter premises with the occupier's consent or enter premises in accordance with a search warrant.

This clause also provides that for the purpose of checking the accuracy of a return under clause 9 (Returns of 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.

#### **Clause 49 – Production of identity card**

This clause provides that an authorised person must not remain on premises under this part of the Act if the authorised person does not produce his or her identity card when asked by occupier.

#### **Clause 50 – Consent to entry**

This clause provides that an authorised person (when seeking entry under clause 48(1)(b) of the Act) must produce his or her identity card, tell the occupier the

purpose of the entry and that anything found and seized may be used as evidence in court and that consent may be refused. If the occupier consents, the authorised person must ask the person to sign a written acknowledgement.

#### **Clause 51 – General powers on entry to premises**

This clause outlines the powers that an authorised person who enters a premises under Part 6 of the Act has, this includes, inspection and examination, taking measurements or conducting tests, taking samples, photographs, films or audio, video or other recordings. This clause also requires the occupier or anyone at the premises to give the authorised person reasonable help to exercise a power under Part 6 of the Act. Maximum penalty is 50 penalty units.

#### **Clause 52 – Power to require name and address etc**

This clause provides that a person may need to provide an authorised person with their name and address if required by an authorised person. The authorised person must tell the person why they are seeking the requirement. If a person does not comply, the maximum penalty is 10 penalty units. This is a strict liability offence.

#### **Clause 53 – Power to seize things**

This provision outlines the powers that an authorised person has when they enter premises with the occupier's consent to seize things. An authorised person who enters premises under a warrant may seize anything at the premises that the authorised person is authorised to seize, may remove things from the premises where it was seized to another place. If a person interferes with a seized thing or the person does not have the authorised person's approval to interfere with the thing, the maximum penalty is 50 penalty units. This is a strict liability offence.

### **Division 6.4 – Search Warrant**

#### **Clause 54 – Warrants generally**

This clause provides that an authorised person may apply to a magistrate for a warrant to enter premises. The application may be sworn and state the grounds on which the warrant is sought. The magistrate may refuse to consider the application until the authorised person gives the magistrate the information the magistrate requires about the application. The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting a particular thing or activity connected with an offence and the thing or activity is or is being engaged in at the premises or may be engaged in at the premises within the next 14 days.

The warrant must state that an authorised person may with any necessary assistance and force enter the premises and exercise the authorised person's powers.

#### **Clause 55 – Warrants – application made other than in person**

This clause provides that 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 urgent circumstances or other special circumstances. This clause also outlines conditions of that application.

#### **Clause 56 – Search warrants – announcement before entry**

This clause provides that an authorised person must before anyone enters premises under a search warrant, announce that the authorised person is authorised to enter the premises, give anyone at the premises an opportunity to allow entry to the premises and 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. The authorised person is not required to comply if the authorised person believes on reasonable grounds that immediate entry to premises is required to ensure the safety of anyone.

#### **Clause 57 – Details of search warrant to be given to occupier etc**

This clause provides that an authorised person may issue a warrant to a person who is representing the occupier if that person is present at the premises while a search warrant is being executed.

#### **Clause 58– Occupier entitled to be present during search etc**

This clause provides that if the occupier or someone else who 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. However, is not entitled to observe the search if to do so would impede the search or the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

This clause does not prevent two or more areas of the premises being searched at the same time.

### **Division 6.5 – Return and forfeiture of things seized**

#### **Clause 59 – Receipt of things seized**

This clause provides that an authorised person must provide a receipt to the person from whom it was seized as soon as practicable after seizure. If the authorised person cannot issue the receipt to the person for any reason, the authorised person must leave the receipt secured conspicuously at the place of seizure. This clause also outlines what should be included in a receipt.

### **Clause 60 – Moving things to another place for examination or processing under search warrant**

This clause provides that a thing found at premises 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 there are reasonable grounds for believing that the thing is or contains something to which the warrant related and 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 the occupier of the premises agrees in writing.

This clause also provides that the thing may be moved to another place for examination or processing no longer than 72 hours. An authorised person may apply for an extension to a magistrate if they believe that the thing cannot be examined or processed within 72 hours. If the thing is moved to another place, the authorised person must tell the occupier of the premises the address of the place where and time when the examination or processing will be carried out and allow the occupier or the occupier's representative to be present during the examination or processing.

### **Clause 61 - Access to things seized**

This clause provides that a person who would apart from the seizure be entitled to inspect a thing seized under this part may inspect it and if it is a document, take extracts from it or make copies of it.

### **Clause 62 – Return of things seized**

This clause provides that a thing seized must be returned to its owner or reasonable compensation must be paid to the owner by the Territory for the loss of the thing if a prosecution for the offence relating to the thing is not served on the owner within 90 days after the day of the seizure and a prosecution for an offence relating to the thing is not begun within the 90 day period or 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 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 a prosecution is either not begun within 90 days or begun within the 90 day period but the court does not find the offence proved.

## **Division 6.6 – Miscellaneous**

### **Clause 63 – Damage etc to be minimised**

This clause provides that that an authorised person or anyone assisting an authorised person must ensure that they do as little damage as possible in the exercise of their inspection. If damage does occur, written notice must be provided of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.

## **Clause 64 – Compensation for exercise of enforcement powers**

This clause provides that 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 undertaken by an authorised person.

This clause also outlines the claims that can be made for compensation.

## **Part 7 – Review of decisions**

### **Clause 65 – Reviewable decisions**

This clause provides that determining the stock carrying capacity of land under clause 7, refusing to register a mark under clause 16, cancelling a registered mark under clause 19 and refusing to give approval under clause 24 to earmark large stock.

### **Clause 66 – Review of decisions**

This clause provides that a person may apply to the administrative appeals tribunal for review of a reviewable decision. A reviewable decision must give written notice of the decision and 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**

### **Clause 67 – References to particular animals**

This clause provides that a reference to an animal of a particular kind is a reference to an animal of that kind irrespective of age or sex.

### **Clause 68 - Determination of fees**

This clause provides that the Minister may in writing determine fees for the Act.

### **Clause 69 – Approved forms**

This clause provides that the Minister may in writing approve forms for this Act.

### **Clause 70 – Regulation-making power**

This clause provides that the Executive may make regulations for this Act. A regulation may create offences and fix maximum penalties of not more than 10 penalty units.

## **Part 9– Transitional**

### **Clause 71 – Definition for pt 9**

This clause provides that commencement day means the day this Act commences and that repealed Act means the *Stock Act 1991*.

### **Clause 72 – Register under repealed Act**

This clause provides that a register kept under the repealed Act, clause 31, is taken to be as a register under clause 13.

### **Clause 73 – Travelling stock permits made under repealed Act**

This clause applies to a travelling stock permit issued under the repealed Act, part 4 in force immediately before the commencement day.

### **Clause 74 – Transitional regulations**

This clause provides that regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act. This clause also provides that a regulation may modify Part 9 of the Act 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.

### **Clause 75 – Expiry of pt 9**

This clause provides that Part 9 expires 2 years after the day it commences.

## **Part 10 – Consequential amendments and repeals**

### **Clause 76**

This clause provides that the Act repeals the *Pounds Act 1928*, *Pounds Regulations 1929* and the *Stock Act 1991*.

### **Clause 77 – Legislation amended – Schedule 1**

This Act amends the legislation mentioned in schedule 1 of the Act.

### **Schedule 1 – Legislation amended**

Schedule 1 amends section 17(3)(c) of the *Animal Welfare Act 1992*, Schedule 1, clause 1, definition of stock, section 3(2)(d) of the *Uncollected Goods Act 1996*.

### **Dictionary**

The Act provides a dictionary that contains definitions for the purposes of this Act.