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

ANIMAL DISEASES AMENDMENT BILL 2018

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

This explanatory statement relates to the *Animal Diseases 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.

Livestock identification in the ACT is presently done through the *Animal Diseases Act 2005* (the Act) part 4, the *Animal Diseases Regulation 2006* (the regulation) and the *Stock Act 2005*.

Section 41 of the Act provides that a person may apply to the Chief Veterinary Officer for a tag number for stock. Stock is defined as any horse, cattle, sheep, alpaca, swine, goat or other animal declared by regulation (section 37). Tagable stock are those stock declared by the Minister by disallowable instrument (see DI2005-37) to be tagable stock (section 38). Section 47 of the Act provides that a person commits an offence if the person travels tagable stock and the stock is not tagged. The identification of stock and the recording of information about NLIS tagable stock is currently provided for in part 2 of the regulation.

The National Livestock Identification System

The National Livestock Identification System (NLIS) is Australia's permanent whole-of-life identification system which aims to ensure individual cattle, sheep, pigs and goats can be traced from property of birth to slaughter for biosecurity, food safety, product integrity and market access purposes. The NLIS is endorsed by major producers, feedlots, agents, saleyards and processor bodies. The NLIS combines three elements to enable the lifetime traceability of animals:

- an animal identifier
- identification of a physical location by means of a Property Identification Code (PIC)
- a web- accessible database to store and correlate movement data and associated details.

The NLIS facilitates the traceability of animals in accordance with the [National Traceability and Performance Standards](#).

In the ACT, only cattle are required by legislation (section 15 of the regulation) to be fitted with a NLIS device and have their movements documented. Documenting movement is important if, for example, chemical or antibiotic residues are detected in meat at an abattoir. By knowing all of the properties on which animals resided, and when, the source of the residue can be investigated and the problem more quickly addressed.

It is presently not mandatory in the ACT for sheep, goats and pigs to be fitted with a NLIS device. This means, for example, a mob of sheep can be moved within the ACT from a property to a new property without that movement being recorded in the NLIS database. In such a situation tracing the movements of these stock could be very difficult in the event of a disease outbreak etc.

Updating of the Act is needed to put in place the legislative framework for the operation of the NLIS for cattle sheep goats and pigs and to implement the Nationally Agreed Traceability Performance Standards endorsed by the Primary Industries Ministerial Council (PIMC) in May 2004. The ability to effectively trace stock is critical in an emergency animal disease response to ensure food safety and to reassure our traders about the integrity of our animals.

Effective animal biosecurity and welfare is insurance to maintain market access for livestock producers, now and in the future. Australia is free from most agricultural and aquatic pests and diseases and its 'clean and green' reputation provides a major trading advantage, so an animal disease epidemic or chemical residue incident could cripple the industry and lead to the collapse of export markets.

Grazing of sheep and cattle is the primary activity conducted on rural land in the ACT. There are currently about 48,000 sheep, 7000 cattle, 17 goats, 2 pigs, 1500 horses, 54 alpacas and 195,000 chickens located in the ACT. There are currently no feedlots, abattoirs or piggeries in the ACT. The ACT Government is responsible for monitoring Canberra saleyards and approximately 400 cattle pass through the saleyards each month.

The bill affects a variety of livestock industry stakeholders, including:

- Primary producers: Primary producers (including hobby producers and people who own livestock as pets) breed and raise livestock such as cattle, sheep, goats, pigs, chickens, horses, and alpacas.
- Stock and station agents: Stock and station agents act as brokers for primary producers and sell livestock via private sales, from farm to farm, private auctions, directly to abattoirs, or through saleyards.
- Saleyards: Primary producers and stock agents use saleyards to buy and sell livestock.
- Abattoirs/knackereries: Abattoirs and knackereries slaughter livestock and process animal carcasses into meat and meat-related products. There are currently no abattoirs operating in the ACT.

- Operators of agricultural shows.

Property Identification Codes

Property information helps build a Territory-wide biosecurity picture about agricultural use and livestock numbers.

Property Identification Codes (PICs) underpin the NLIS. They are fundamental to the operation and integrity of the NLIS because they provide traceability to specific properties which is important in the event of disease control or residue problems.

PICs also enable property occupiers to purchase identification devices, identify the property for movement recording and enrol in industry quality assurance programs.

Property owners obtain a PIC from the ACT Chief Veterinary Officer. In the ACT, PICs are presently not mandatory (see section 36 of the regulation).

Overview of the bill

The bill provides the necessary legislative framework for the operation of the NLIS for cattle, sheep, goats and pigs in the Territory.

The bill makes identifying these animals with a permanent identifier compulsory so that the movements of these animals can be better traced. The bill also requires information about movements of cattle sheep and goats to be uploaded electronically to the NLIS database. While the bill makes it compulsory for movements of pigs to be recorded, it does not make it compulsory for pig movements to be uploaded to the NLIS database. This is because the ACT is waiting on the finalisation of the NSW regulation in this regard so that consistency between the jurisdictions can be assured.

In summary, the bill provides for the following:

1. New requirements for PICs

- Operators of an abattoir, saleyard or stock event (e.g. agricultural show) must have a PIC
- Owners of cattle, sheep, goats and pigs must have a PIC for their property
- Owners of camelids, deer or equines and certain numbers of small poultry and large poultry must have a PIC for their property. The requirement for properties that keep equines and certain numbers of poultry to have a PIC reflects recent past experience when there were outbreaks of equine influenza and avian influenza and the government's response was hampered by lack of knowledge about the location of these animals. Similarly, as camelids and deer are susceptible to foot and mouth disease, information on the location of these species will also help in the event of a need to respond to this disease. The updated PIC requirements also provide consistency with NSW regulations. . In relation to poultry, a PIC will be required if more than 10 emus or ostriches or more than 100 small poultry are kept in captivity.

This ensures recreational or backyard” keepers of a small number of poultry are not subject to the new requirements.

2. Requirements for identification of cattle sheep goats and pigs

- Cattle, sheep, pigs and goats have to be properly identified by having a permanent identifier attached. A permanent identifier will have the PIC of the property on it. Permanent identifiers come in different forms depending on the animal.
- The owner of cattle, sheep, goats and pigs must ensure the stock is properly identified before the animal leaves their property.
- The owner of a saleyard receiving cattle, sheep, goats and pigs must ensure that they are properly identified.
- Some movements of cattle, sheep, goats and pigs are exempt from these requirements.
- Provisions around the requirements for permanent identifiers are being updated and clarified.

3. Stock transactions

- Delivery information must be provided at the time of delivery of cattle sheep goats and pigs.
- Owners of cattle, sheep, goats and pigs must prepare the delivery information and keep a record of the information for 7 years.
- Cattle, sheep, goats and pigs must not be delivered unless the delivery information has been provided. The delivery information must be provided to any purchaser of the stock who must keep it for 7 years unless they are a stock and station agent in which case they must keep it for 2 years.

4. Reporting and record keeping

Information about movements of cattle, sheep and goats (but not pigs) must be provided to the NLIS administrator within certain time frames.

5. Registers

The Director-General is required to establish a register that contains information the Director-General considers necessary having regard to the purposes for which the register is maintained. Section 52V sets out the purposes of the register.

Offence and compliance provisions in the bill generally

The current provisions of the Act provide that it is an offence to travel tagable stock that is not tagged. Similarly, there are requirements in the regulation regarding NLIS devices for cattle only (sections 9-23):

- Sale and supply of NLIS device (section 11); use of NLIS device (section 12); loss or theft of approved NLIS device (section 13) and alteration of NLIS equipment (section 14);
- When cattle must be tagged with approved NLIS device (section 15);
- Information about NLIS tagable stock—saleyards (section 17); stock and station agents (section 18); abattoirs (section 19); lost tags (section 20); holdings without property identification code (section 21); exports (section 22) and arrival at holdings (section 23).

The bill provides for a range of new offences related to the implementation of the NLIS which complement and replace these offences to more accurately align, as far as possible, with the NLIS and the offences that apply in NSW. Alignment of offences with those in NSW assists compliance for producers and traders and assists enforcement. The penalties have increased from those that were in the regulation but are considered proportionate to the level of risk that non-compliance brings to biosecurity and market access.

Public and market confidence depends upon there being robust systems along the entire supply chain for animal products. If one component fails, confidence in the entire system is damaged and there can be loss of market access and economic activity as a result. A strong system of enforcement and compliance including significant penalties is needed to ensure that the interest of good producers and suppliers is not undermined by recalcitrant operators. The new offences and penalties contained in the bill are aimed at allowing enforcement action to occur at any part of the chain when it is operating in the ACT.

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 selling animals commercially, 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 to 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.

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 result in a serious biosecurity issue, 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.

Human rights implications

The bill engages the right to be presumed innocent contained within section 22 and the right to privacy and reputation contained within section 12 of the *Human Rights Act 2004*.

Section 28 (1) of the Human Rights 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 Human Rights 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 any provision of this bill limits an individual's human rights, any limitation is reasonable and justified.

Right to be presumed innocent

Section 22 (1) of the Human Rights Act provides that—

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

The bill inserts new sections into the Act which contain offences of strict liability. Offences of strict liability engage the right to be presumed innocent under section 22 (1) of the Human Rights 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.

The limit that this bill places on the right to the presumption of innocence in section 22 (1) of the Human Rights Act is considered reasonable and justifiable in a free and democratic society, taking into account the factors enumerated in section 28 (2) of the Human Rights Act:

The nature of the right affected

The right to presumption of innocence before the law is a very important right that has been recognised by the common law for centuries, and is now codified in section 22 (1) of the Human Rights Act. The courts have held, however, that the right to presumption of innocence may be subject to limits, particularly where those who might be affected by an offence would be expected to be aware of its existence. The proposed strict liability offences in the bill are regulatory in nature. Participants in the NLIS would be expected to know of the requirements of the scheme.

The importance of the purpose of the limitation

The purpose of providing a reverse onus of proof through the proposed strict liability offences is to ensure the effective enforcement of and compliance with the NLIS. A reverse onus engages the offences in the bill to be more effectively prosecuted.

The strict liability offences in the bill are regulatory in nature and of a type that those affected by the offences could be expected to be aware of. They are appropriate where an authorised officer is in a position to readily assess the truth of a matter and determine that an offence has been committed.

The use of strict liability is beneficial where offences need to be dealt with expeditiously to ensure confidence in the regulatory scheme. The use of strict liability was carefully considered in developing the offences. In all the circumstances, it is considered that the strict liability offences in the bill are appropriate and do not unduly trespass on personal rights and liberties. Compliance with the provisions of the bill is important to underpin the NLIS and to reduce biosecurity risk.

Nature and extent of the limitation

The limitation on section 22 of the HRA is not extensive.

Under the *Criminal Code 2002*, all strict liability offences have a specific defence of mistake of fact. Section 23 (3) of the Criminal Code further provides that other defences may still be available for use in strict liability offence cases.

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

Relationship between the limitation and its purpose

The objective of the legislation can only be achieved by removing the need for intent by way of strict liability offences because the purpose of the provisions is not to punish wrongdoing but to protect the environment, economic assets and public health and safety.

It is considered that the limitation in the strict liability offences serves a legitimate objective to protect the environment and economic assets and public health and safety and it is rationally connected to achieving that objective.

Less restrictive means reasonably available to achieve the purpose

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

Right to privacy and reputation

Making identification of stock by NLIS devices may be seen to be engaging the right to privacy under section 12 of the HRA. Section 12 provides that—

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

The right to privacy is a fundamental right that encompasses the idea that individuals should have a separate area of autonomous development, dignity and freedom from arbitrary, unreasonable or oppressive government interference.

The right to privacy and reputation is both limited and supported by the Bill. The scheme requires applicants to disclose personal information and therefore limits the right to privacy and reputation. However, the use of the PIC number is limited in its use.

The right is supported through the creation of a scheme to allow for measures that will protect the Territory and the broader Australian national interest in relation to agriculture and the economy against the harm of a biosecurity risk. It does this by providing the legislative support for the NLIS and PICs which will allow for the efficient and effective identification of properties and stock in the event of an incident which will help facilitate an emergency response to an incident. It is also an important part of informed decision making on disease control and eradication.

The nature of the right affected

The new part 4 to the Act allows the Chief Veterinary Officer to collect and record information and the Director-General is able to make this information available to others.

The importance of the purpose of the limitation

Without contact and property details of livestock holders, the Chief Veterinary Officer and the Director-General or others involved in biosecurity management could not manage a biosecurity incident effectively.

Nature and extent of the limitation

The provision has been drafted narrowly to ensure that it is reasonable, proportionate and necessary to achieve the policy objective of the bill. The purpose is to identify properties holding and producing stock in order to implement the NLIS and to improve biosecurity response in relation to animal diseases thus the registers only requires this information.

Other information which may be necessary is reported to the NLIS and held by various people such as abattoirs, stockyard operators and stock and station agents. These records include records about movement of stock; lost or stolen identifiers; stock that has died or is slaughtered and the sale or disposal of stock. The bill allows records to be requested by an authorised person and some records must be provided to the NLIS administrator.

Authorised officers have general powers under the Act which are compatible with human rights and provide checks and balances such as a requirement to show an identity card.

The use and disclosure of the information will be consistent with the *Information Privacy Act 2014* and Territory Privacy Principles when information is collected including on registration.

Relationship between the limitation and its purpose

The purpose of provisions relating to registers is to provide the Chief Veterinary Officer and the Director-General with powers to obtain information and keep this information in a register. The provision has been drafted narrowly to ensure that it is reasonable, proportionate and necessary to achieve the policy objective of the bill. The collection and secure storage of records will comply with the *Information Privacy Act 2014*.

Any less restrictive means reasonably available to achieve the purpose

In light of the very real risk of a biosecurity event, the amendments do not unreasonably or unnecessarily infringe on human rights protecting privacy and reputation. The collection of information contributes to the ACT's and Australia's ability to nationally manage animal disease and food safety biosecurity incidents.

Scrutiny of Bills Committee Principles

The following addresses the Scrutiny of Bills Committee principles.

Unduly trespass on personal rights and liberties

As noted above, there are a number of offences including strict liability offences created by the bill.

These may be seen as engaging a number of rights under the Human Rights Act and unduly trespassing on personal rights and liberties.

A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially, this means conduct alone is sufficient to make the defendant culpable.

The strict liability offences in the bill arise in the context where defendants can reasonably be expected to know the requirements of the law. The maximum penalty imposed for strict liability offences in the bill is 50 penalty units. This maximum penalty is in accordance with the Justice and Community Services Guide to Framing Offences.

In all the circumstances, it is considered that the strict liability offences in the Bill are appropriate and do not unduly trespass on personal rights and liberties. Compliance with the provisions of the bill is important to ensure protection of the environment and economic assets.

Make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;

The bill does not make rights liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;

The bill does not make rights liberties and/or obligations unduly dependent upon non-reviewable decisions. The bill does not restrict trade in stock, it merely makes trade and production of stock dependent upon measures aimed at protecting the environment and other participants in the market. New section 44 provides that the chief veterinary officer may inactivate or cancel an identification code. However, the chief veterinary officer can only do this if the chief veterinary officer believes, on reasonable grounds, that a PIC or an agent identification code is not needed for compliance with the Act and if the officer gives the person allocated the code a reasonable opportunity to give reasons why the code should not be inactivated or cancelled and considers the reasons given. The bill also provides an appeal right from the officer's decision.

Inappropriately delegate legislative powers;

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

Insufficiently subject the exercise of legislative power to parliamentary scrutiny;

The bill does not insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Costs and Benefits

A regulatory impact statement (RIS) was prepared by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) to inform the Ministerial Council (PIMC) decision to improve the NLIS to include sheep and goats (see [Decision RIS Sheep and Goats](#)).

The RIS found that the benefits of improving the NLIS would mainly arise from reducing the potential consequences or costs of pest and disease outbreaks. Benefits also arise from mitigating food safety risks, improving product integrity and reducing market access restrictions. Farm productivity and animal welfare were also noted as protection benefits from improved traceability and animal identification.

Costs largely arise from additional requirements for tagging and registering animals and for administration, verification, enforcement and compliance and the like. However, given that systems are already in place for tracking cattle, the additional costs are largely incremental, although do apply to a broader range of producers.

The bill does not have any significant additional financial impacts on landholders or the Government. Any additional costs to Government are short-term and are able to be absorbed into current administrative practice.

Stock owners are not charged a fee for any requirements (even though the Act provides that a fee may be charged), so while there is a slight increase in administrative burden, the cost of the overall reform is not considered significant.

The benefits of these new requirements are much more significant than the costs. The ability to quickly trace an outbreak of disease or biosecurity event back to the property of origin allows more rapid containment and quarantine, for example, and would likely reduce impacts on other producers allowing risk to be managed in a more effective and efficient manner.

Outline of Provisions

Part 1 Preliminary

Clause 1

Name of Act

This clause states the title of the Act as the *Animal Diseases Amendment Act 2018*.

Clause 2

Commencement

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

Clause 3

Legislation amended

This clause indicates that this Act amends the *Animal Diseases Act 2005* (the AD Act) and the *Animal Diseases Regulation 2006* (the AD Regulation).

Clause 4

Legislation repealed

This clause indicates that the Animal Diseases (Tagable Stock) Declaration 2005 (no.1) is repealed

Part 2 Animal Diseases Act 2005

Clause 5

Dictionary, Section 4 note 1

This clause substitutes a new note about the Dictionary.

Clause 6 Part 4

Division 4.2 requires people who keep cattle, sheep, goats and pigs; camels, alpacas and llamas; horses, donkeys, asses, mules and zebras; more than 10 emu and ostriches; and more than 100 chickens, turkey, guinea fowl, duck, goose, quail, pigeon, pheasant or partridge to have a property identification code (PIC) which is supplied by the Chief Veterinary officer. An offence with a penalty of a maximum 50 penalty units is committed if the PIC is not obtained. A person operating an abattoir, saleyard and stock event must also obtain a PIC. Not doing so is an offence with a maximum penalty of 50 penalty units.

Under new Part 4:

- a) It is the chief veterinary officer (CVO) that allocates a property identification Code (PIC) (section 38). The chief vet can also transfer, inactivate or cancel a code (sections 43 and 44).
- b) PICs can be allocated to a property or premises and unleased territory land (section 38(1)).
- c) The CVO can also allocate an agent identification code to a stock and station agent.
- d) Codes may be allocated on application or on the chief vet's own initiative (section 38).
- e) People applying for a code must provide the chief vet with certain particulars when applying for a code (sections 39 and 41).
- f) People must update the chief vet with any changes in the details for the property or agent to which a PIC has been allocated. It is an offence not to do so (maximum penalty 20 penalty units) (sections 40 and 42).
- g) Only certain persons can apply for a PIC - the lessee of the property or premises; the occupier of the property or premises, if the lessee is not the occupier; the licensee or land custodian of unleased territory land; and the operator of an abattoir, saleyard or stock event (s39).

The new provisions are outlined below.

Part 4 National Livestock Identification System

The new title of Part 4 is the National Livestock Identification System.

Division 4.1 General

New **section 37** provides definitions to apply for part 4 of the Act. Definitions are included for: *cattle; camelids; equines; large poultry and small poultry*.

The meaning of ‘*identifiable stock*’ is included for those animals required to be traced and a carcass of any such animal. The terms *identifier*, *property identification code* and *agent identification code* are also defined. There is also a definition of *related NLIS law*.

Division 4.2 Identification codes

New **section 38** *Allocating identification codes* assigns responsibility for issuing PICs and Agent Identification Codes to the CVO.

New **section 39** *Applying for property identification code* provides details about who can apply for a property identification code and the details that need to be provided in the application.

New **section 40** *Responsible person for property with property identification code must update details* provides that it is an offence to not provide to the CVO updated details relating to the property or premises when there is a change to any details for the property.

New **section 41** *Applying for agent identification code* provides that a stock and station agent can apply for an agent identification code and includes the details that need to be provided with the application.

New **section 42** *Stock and station agent must update details of agent identification code* provides that it is an offence to not provide to the CVO updated details relating to the agent when there is a change in the details. This is a strict liability offence.

New **section 43** *Transfer of identification codes* allows the CVO to transfer property identification codes and agent identification codes in some circumstances.

New **section 44** *Inactivation or cancellation of identification codes*. This section applies if the chief veterinary officer believes, on reasonable grounds, that a PIC or an agent identification code is not needed for compliance with the Act. The chief veterinary officer may inactivate or cancel the identification code if the officer gives the person allocated the code a reasonable opportunity (at least 15 working days) to give reasons why the code should not be inactivated or cancelled and considers the reasons given. The chief vet must tell a person if their code is inactivated or cancelled and the code can only be reallocated in circumstances declared by the director-general.

New **section 45** *Property identification code required if certain animals kept* makes it mandatory for a responsible person to have a PIC where a person keeps animals subject to the NLIS (cattle, sheep goats and pigs) and camelids, deer, equines and certain numbers of poultry (100 or more small poultry or 10 or more large poultry).

A responsible person, as defined in section 45(3), commits an offence if they have the animals specified and do not have a PIC. The maximum penalty for this strict liability offence is 50 penalty units.

New **section 46** *Property identification code required if certain activities happen* makes it mandatory for abattoirs, saleyards and other premises holding stock events to have a PIC. If they don't have a code a maximum penalty of 50 penalty units applies. The offence is a strict liability offence.

Division 4.3 Permanent identification of identifiable stock

Division 4.3 deals with permanent identification of certain stock.

The Division requires cattle sheep goats and pigs (identifiable stock) to be properly identified and creates offences relating to the movement of identifiable stock that is not properly identified. These are important provisions that ensure the movements of certain animals are recorded and enable traceability in the case of a disease outbreak, etc.

To be properly identified, the identifiable stock must have a permanent identifier properly attached (section 47). What constitutes a permanent identifier is set out in the dictionary and differs depending on the animal. For cattle, sheep and goats, it is a device that is accredited by NLIS Ltd. For pigs, it can be an NLIS device or brand.

It is an offence to move identifiable stock from a property or premise that is not properly identified unless the movement is an exempt movement under section 48. The maximum penalty is 50 penalty units.

A person in charge of identifiable stock commits an offence if the person delivers identifiable stock to a saleyard or abattoir and does not immediately tell the operator of the saleyard that the stock is not properly identified. The maximum penalty is 50 penalty units.

Saleyard and abattoir operators commit an offence if they keep identifiable stock that is not properly identified at the saleyard or abattoir, or sell, buy or slaughters stock that is not properly identified or do not take reasonable steps to ensure another person does not sell or buy or slaughter the stock. The maximum penalty in each case is 50 penalty units.

Exempt movements are set out in section 48 and include for example, moving an animal for display to the National Zoo and moving stock to contiguous land. Identifiable stock that is not properly identified can be moved in an extreme emergency, for example, a flood or bushfire (section 49(1)(g)). Stock moved in an emergency are still monitored because the owner of the identifiable stock is required to give the CVO certain information within 7 days (section 50). Identifiable stock can also be moved without being properly identified with the written approval of the CVO.

Subdivision 4.3.1 Identifiable stock

New **section 47** *When identifiable stock is properly identified* – pt 4 provides that stock must be identified according to this section, or in accordance with NLIS in other jurisdictions if the animal is born outside of the ACT.

The section provides that the identifier (for example, a device or a brand) must relate to the PIC of the property on which the stock is held; that it must be working and readable; and be properly attached to the appropriate animal.

Section 47(2) provides the meaning of *properly attached*. For cattle, it must be attached in accordance with the manufacturer's instructions and the NLIS (cattle traceability) Standards; for sheep and goats, it must be attached to the ear in accordance with the manufacturer's instructions and NLIS standards and in a way that allows the PIC to be easily read; and for pigs it can be a brand or NLIS device attached in accordance with the manufacturer's instructions and the NLIS Pig Standards.

New **section 48** *Offences—identifiable stock not properly identified* indicates a range of penalties that apply when stock that is required to be identified (identifiable stock) is not appropriately identified. These offences apply throughout the supply chain as follows:

- A person moves identifiable stock from a property or premises without proper identification unless it is exempt under new section 49 *Exempt movements of identifiable stock*.
- An operator of a saleyard or abattoir keeps identifiable stock that is not properly identified.
- An owner of identifiable stock does not immediately tell the operator that the stock is not properly identified when that stock arrives at a saleyard or an abattoir.
- A person sells or disposes or buys or acquires identifiable stock at a saleyard and it is not appropriately identified.

It is an offence for a person in charge of identifiable stock at a saleyard or an abattoir to not take reasonable steps to ensure that another person does not sell, buy, slaughter or otherwise dispose of or acquire stock that is not appropriately identified. The section does not, however, apply if the slaughter needs to occur for humane reasons and is at the direction of authorised person.

The bill indicates that identifiable stock is not required to be properly identified after the stock is slaughtered at an abattoir even if it should have been properly identified before the slaughter.

Penalties apply to these offences at a maximum of 50 penalty units.

New **section 49** *Exempt movements of identifiable stock* provides exemptions to the offences outline at New Section 48 (1) relating to the identification requirements for some stock. Stock does not need to be identified when it is a carcass that is moved to an appropriate waste management facility or the National Zoo and Aquarium.

Other exemptions apply if the stock (other than a pig):

- is moved to a contiguous property and will be returned within 2 days; or
- the stock is grazed continuously across both properties (eg, they are managed as one property); or
- the stock is moved to another part of the same property by a route that requires the stock to leave the property (for example if the stock need to cross a road to get to another part of the property), or
- the identifiable stock is moved for display at the National Zoo and Aquarium.

Other exemptions apply as follows:

- dairy goats and goats born without ears do not need to be identified if they are being moved somewhere other than a saleyard or abattoir.
- If the goats are captured in the wild and are moved to an abattoir.
- pigs do not need to be identified if they are going to remain with the same owner.

Other provisions from committing an offence apply to the exemption for removal of identifiable stock because of an extreme emergency such as a bushfire or flood or when the Chief Veterinary Officer has approved the movement in writing, or when cattle have a special identifier approved or recognised by another State.

New **section 50** *Offence—required information if identifiable stock moved in extreme emergency* provides that the owner of identifiable stock who moves the stock from a property or premises in an emergency must give the chief veterinary officer information about the movement of the stock within 7 days after the day the stock are moved. A maximum penalty of 50 penalty units applies to this strict liability offence.

Information that needs to be provides includes details of the properties the stock are moved from and to; the date the stock were moved; and the number and a description of the stock moved. This ensures tracking of the stock should an issue arise.

Subdivision 4.3.2 Permanent identifiers

Division 4.3.2 has provisions relating to permanent identifiers.

Only certain people can acquire permanent identifiers. Only the CVO and a person who has a PIC or agent identification code under sections 39 and 41 can acquire a permanent identifier.

The CVO can give directions for the use of permanent identifiers in a sale yard or an abattoir (section 52A).

Permanent identifiers are those devices that have been accredited by the NLIS. A manufacturer of NLIS devices must keep supply records (eg the date the device was supplied and to whom, etc) and if cattle is involved, give the NLIS administrator the relevant identification particulars of the cattle within certain time frames. Failure to do so is an offence with a maximum penalty of 50 penalty units.

There are a number of offences in the bill relating to permanent identifiers.

An offence is committed if a person:

- a. Alters, or allows or directs another person to alter, a permanent identifier and equipment that is used to attach or read a permanent identifier. The maximum penalty is 50 penalty units.
- b. Removes or directs another person to remove a permanent identifier unless the stock is slaughtered at an abattoir; an authorised person permits the removal; the stock is dead and the animal did not die of a notifiable disease; the device cannot be read and a new identifier is attached immediately and the NLIS administrator advised of the replacement. The maximum penalty is 50 penalty units.
- c. Buys sells or moves identifiable stock from a property or premises knowing that the permanent identifier has been altered or removed. The maximum penalty is 50 penalty units.
- d. Attaches a permanent identifier to identifiable stock that has previously been attached to other stock.
- e. Attaches a permanent identifier knowing the attachment means the stock is not properly identified.
- f. Manufactures, sells supplies or uses counterfeit identifiers.
- g. fails to notify the NLIS administrator within 7 days when a permanent identifier is lost or stolen

People can be required to provide an authorised people with information about the location and use of a permanent identifier. The information must be given within 7 days and failure to do so is an offence with a maximum penalty of 20 penalty units. Operators of abattoirs are required to dispose of the identifier of slaughtered stock so as to ensure it is unable to be reused. The maximum penalty is 20 penalty units.

New **section 51 Definitions**—*subdivision 4.3.2* provides a definition for the term ‘supply’ used in Subdivision 4.3.2. Supply includes sale.

New **section 52** *Offences—acquisition of permanent identifiers* provides for an offence relating to the acquisition of permanent identifiers by a person who does not have a property identification code or agent identification code or who is not the CVO. Penalties of up to 50 penalty units apply.

The manufacturer of an NLIS device commits an offence if they supply a permanent identifier to a person who is not the CVO or a responsible person who has a PIC or an agent that does not have an agent identification code or where the PIC is not active.

New **section 52A** *Directions for use of permanent identifier in saleyard or abattoir* this section allows the CVO to give directions for the use of permanent identifiers in a saleyard or an abattoir. A direction must be notified. This will allow the chief veterinary officer to provide direction about how stock and station agents and operators of saleyards can obtain devices from the chief vet when they discover stock at the saleyard that do not have a device attached.

It is an offence to not comply with a direction. The maximum penalty is 50 penalty units.

New **section 52B** *Request for details on use and location of permanent identifier* provides that an authorised person can seek information from the responsible person for a property or premise with PICs to provide information on the location and use of any permanent identifier issued for that property. Details need to be provided with a stated timeframe (at least 7 days after the request). An offence with a maximum penalty of 50 penalty units applies if this information is not provided within the time stated. This is a strict liability offence. New **section 52C** *Records and provision of information to NLIS administrator* provides that the manufacturer of an NLIS accredited device is required to keep supply records for permanent identifiers for specified times.

It is also an offence for the manufacturer of an NLIS accredited device to not give the NLIS administrator information relating to the supply of permanent identifiers for cattle within certain time frames as specified in this section.

An offence against this section is strict liability and attracts a maximum penalty of 50 penalty units.

New **section 52D** *Alteration or removal of permanent identifier* makes it an offence to alter or remove, or allow or direct another person to alter or remove permanent identifiers or to alter associated equipment for attaching and reading identifiers. A maximum penalty of 50 penalty units applies.

The offence of removing an identifier does not apply in a number of circumstances including that the stock is slaughtered at an abattoir or when the stock is dead and the chief veterinary officer does not need to be notified of the death, or when removal is authorised by an authorised person.

It is also not an offence to remove an identifier from cattle if the identifier for cattle is replaced by a new identifier because the previous one was not able to be read, and the information about the replacement identifier is given to the NLIS administrator in the timeframes specified in the section.

It is an offence with a maximum penalty of 50 penalty units to buy, sell or move stock when a person knows that the permanent identifier has been removed or altered. An offence is committed if a person removes a permanent identifiable from identifiable stock (other than pigs) and attaches a new permanent identifier and fails to tell the NLIS administrator about the new identifier.

The section does not apply to those authorised by the section to remove identifiers.

New **section 52E** *Improper use of permanent identifiers* provides for a number of offences relating to improper attachment of permanent identifiers to ensure that stock are appropriately identified. The maximum penalty for these offences are 50 penalty units.

New **section 52F** *Destruction of permanent identifiers removed from slaughtered stock* provides that abattoir operators must dispose of permanent identifiers from slaughtered stock in a way that ensures they cannot be reused. A maximum penalty of 20 penalty units applies if the identifiers are not disposed of appropriately.

New **section 52G** *Manufacture, sale, supply and use of counterfeit identifiers* makes it an offence to knowingly make, supply or use anything that could reasonably be mistaken for a permanent identifier. The maximum penalty for the offence is 50 penalty units. The section does not apply if the person did not know, and could not reasonably be expected to have known, that the thing could be mistaken for a permanent identifier.

New **section 52H** *Loss or theft of unattached permanent identifier for cattle* provides for a range of offences when a permanent identifier is issued for cattle on a property but not attached to cattle is lost or stolen. A responsible person for the property must inform the NLIS administrator in writing about the loss or theft of the tags within 7 days of becoming aware of the theft or loss unless they know that someone else has done so. A maximum penalty of 50 penalty units applies to this offence.

Division 4.4 Information requirements—stock transactions

This division proscribes what information about stock transactions is required. This information is backbone of the NLIS system and the traceability of identifiable stock. Certain information about identifiable stock must be prepared (delivery information), handed over on delivery and a copy kept for a certain period of time except if the stock are on a property for less than 24 hours or moved because of an extreme emergency or with the written approval of the chief vet.

The delivery information is:

- a. The kind and number of stock
- b. The date the stock left the previous property
- c. The PIC of the previous property
- d. The serial number of any NLIS document
- e. A completed delivery declaration. The declaration includes the name and signature of the owner, the date, and PIC of the property to which the stock is being delivered.
- f. Relevant identification particulars of sheep pigs and goats and whether the animals were bred on the previous property

Owners of identifiable stock commit an offence if they do not prepare the delivery information, give the delivery information to the person to whom the stock is delivered and keep the delivery information for 7 years. The maximum penalty is 50 penalty units. Similar offences are committed by stock and station agents and an operator of a saleyard or stock event (for example an agricultural show).

Division 4.4.2 requires certain transaction information about cattle sheep and goats to be provided to the NLIS administrator. This is the final link in the chain of the NLIS system for recording the movements of identifiable stock. Pigs are not yet included because the ACT is waiting on the finalisation of the NSW regulation in this regard so that consistency between the jurisdictions can be assured.

Owners of identifiable stock, saleyard and stock event operators, stock and station agents have to provide certain information to the NLIS administrator and it an offence not to do so.

This division also requires reporting to the NLIS administrator about live export of identifiable stock and the death of cattle at a saleyard.

Subdivision 4.4.1 Provisions applying to all identifiable stock

New **section 52I** *meaning of delivery information –subdivision 4.4.1* provides a definition of *delivery information* in relation to identifiable stock to inform other sections in this subdivision.

New **section 52J** *Owner of identifiable stock must prepare and retain delivery information etc.* provides a range of offences that relate to requirements to prepare and retain delivery information. A maximum penalty of 50 penalty units applies to these offences. An owner of identifiable stock must prepare delivery information before delivering their stock to another person and must give the delivery information to a person who is to deliver the stock. The owner must keep the delivery information and the PIC of the receiving property or agent for at least 7 years.

The provision requires delivery information to be given at the time of delivery. A range of exceptions apply including in emergency situations.

New **section 52K** *Delivery information—stock and station agents and saleyards* provides an offence if a person does not provide delivery information in relation to stock delivered to a stock and station agent. A maximum penalty of 50 penalty units applies to these offences.

A stock and station agent commits an offence if they sell or dispose of identifiable stock without the appropriate delivery information. A maximum penalty of 50 penalty units applies to these offences.

There are also requirements to provide stock and station agents with information relating to the destination of the stock so that they can be traced to the new location. There are requirements for stock and station agents to keep records for at least two years. A maximum penalty of 50 penalty units applies to non-compliance.

A stock and station agent must provide within 7 days of the sale the delivery information and the PIC or address of the saleyard at which the stock were sold to the person buying the stock. A maximum penalty of 50 penalty units applies to non-compliance.

The person who receives the delivery information and PIC details from a stock and station agent must keep the records for 7 years. A maximum penalty of 50 penalty units applies to non-compliance.

A stock and station agent must reconcile stock information every week in which an agent transfers stock and give the information to the NLIS administrator. A maximum penalty of 50 penalty units applies to non-compliance.

A stock and station agent must give the operator of the saleyard delivery information and post-sale information about identifiable stock (other than pigs) on the day of delivery, sale or disposal. The operator of a saleyard must keep the information provided by the stock and station agent for at least 2 years. Maximum penalties of 50 penalty units apply to non-compliance.

New **section 52L** *Delivery information—farm properties* provides a range of offences that relate to requirements for those delivering stock to farm properties to provide and keep delivery information. A maximum penalty of 50 penalty units applies to these offences. The offence does not apply if the identifiable stock is only at a farm property to be transferred to another vehicle and is on the property for less than 24 hours.

New **section 52M** *Delivery information—stock events* provides an offence relating to a failure to provide delivery information on delivery of identifiable stock to a property or premises for a stock event. The operator of the event must keep the records for 7 years and reconcile the stock information and inform the NLIS administrator within 7 days of the event. A maximum penalty of 50 penalty units applies to these offences.

Subdivision 4.4.2 Reporting to the NLIS administrator

New **section 52N** *Application—subdivision 4.4.2* provides that this subdivision does not apply to transactions involving pigs.

While the bill makes it compulsory for movements of pigs to be recorded, it does not make it compulsory for pig movements to be uploaded to the NLIS database. This is because the ACT is waiting on the finalisation of the NSW regulation in this regard so that consistency between the jurisdictions can be assured.

New **section 52O** *Meaning of transaction information* provides a definition of transaction information.

New **section 52P** *Reportable transactions—saleyards* provides for the operator of a saleyard to be subject to a range of offences with a maximum penalty of 50 penalty units for not supplying required information to the NLIS Administrator. The section also provides that the operator must make a record that day of the cattle, sheep or goats that are sold at the saleyard and keep those records for at least 2 years. Maximum penalties of 50 penalty units apply. The section outlines what information must be recorded and kept and the required timeframes.

New **section 52Q** *Reportable transactions—stock and station agents* provides for stock and station agents to be subject to a range of offences with a maximum penalty of 50 penalty units for not supplying required information to the NLIS Administrator within 2 days after the day of a reportable transaction. The Section also provides that a stock and station agent must make a record that day of the cattle, sheep or goats of the stock transactions and keep those records for at least 2 years. Maximum penalties of 50 penalty units apply. The Section outlines what information must be recorded and kept and the required timeframes.

New **section 52R** *Reportable transactions—farm property* provides that an owner of identifiable stock must give the NLIS administrator the transaction information for the reportable transaction within the required time. Maximum penalties of 50 penalty units apply to a failure to comply with the requirements. Definitions provide additional information on what information must be recorded and kept within the required timeframes.

New **section 52S** *Reportable transactions—stock event* provides that an operator of a stock event involving identifiable stock (other than cattle that are at a stock event property for less than 3 days) commits an offence if the operator does not give the NLIS administrator required information within 2 days after a reportable transaction happens. Maximum penalties of 50 penalty units apply to a failure to comply with the requirements.

A person commits an offence if identifiable stock involved in a stock event is moved from a stock event property and the person does not give the operator of the stock event, the property identification code for the property to which the stock are moved.

An operator of a stock event involving cattle that are at a stock event property for less than 3 days commits an offence if the operator does not give the NLIS administrator the information set out in the section within 2 days of a reportable transaction. A maximum penalty of 50 penalty units applies for non-compliance.

New **section 52T** *Reporting to NLIS administrator about live export* provides requirements for informing the NLIS administrator of details of the transaction within 2 days of the stock leaving the ACT for live export. A maximum penalty of 50 penalty units applies to non-compliance. The offence is a strict liability offence.

New **section 52U** *Reporting to NLIS administrator about death of cattle* provides that it is an offence for the operator of a saleyard to not give the NLIS administrator the required information about the death of the cattle in the saleyard. It is also an offence if a stock and station agent does not give the NLIS administrator the required information by the close of business on the next working day after the death of the cattle for cattle that are under their control. Additional requirements on what information must be recorded and kept within the required timeframes are included. A maximum penalty of 50 penalty units applies to non-compliance.

Division 4.5 Registers

Division 4.5 requires the director-general to keep a Territory register that contains information that the director-general considers necessary with regard to the purposes for which a register is kept (section 52V and 52W).

New **section 52V** *Purposes of registers* outlines the purposes for which registers may be kept.

New **section 52W** *Territory register* assigns responsibility for keeping registers to the Director-General and outlines the information that must be kept.

The Director-General must give the information to the NLIS administrator within 7 days of a request.

The Director-General may give the information contained in the Territory register to a person administering the NLIS in another jurisdiction if satisfied that the information is to be used for the NLIS administration.

New **section 52X** *NLIS register* provides that the NLIS administrator must keep a register of information given to the administrator under this Act. The NLIS administrator must allow an authorised person access to the NLIS Register information free of charge and in a way requested by the authorised person. The section provides information on who is authorised.

Division 4.6 Miscellaneous

New **section 52Y** *Provision of information to NLIS administrator etc.* provides that information given to the NLIS administrator may be required to be given in an electronic form. The Director-General can specify how information is given to people, other than the NLIS administrator. The operator of a business providing NLIS information must ensure that systems are in place to ensure that the information given is accurate and any inaccurate information is promptly corrected.

New **section 52Z** *Inspection of slaughtered stock* brings across previous section 22 of the Animal Diseases Regulation 2006 because the Bill omits section 22 from the regulation.

New section 52ZA Evidentiary certificates

This clause updates section 52 relating to evidentiary certificates to comply with provisions in part 4 as amended by clause 6 of the Bill.

Clause 7 General Powers on entry to premises section 69(1)(e)(iii) This clause amends section 69 (1) (e) (iii) to substitute the term ‘identifiable stock’ for the term ‘tagable stock’. This amendment is consequential to the insertion of a new Part 4 in the AD Act by the Bill (clause 6). ‘Tagable stock’ included more animals than identifiable stock so there is no expansion by the clause of the definition but rather it is more restricted (to cattle sheep goats and pigs) (see DI 2005-237 for what was ‘tagable stock’).

Clause 8

This clause removes the regulation making power at section 90(2)(n) which related to requirements for tags. This amendment is consequential to the insertion of a new Part 4 in the AD Act by the Bill (clause 6). ‘Tagable stock’ included more animals than identifiable stock so there is no expansion by the clause of the definition but rather it is more restricted (to cattle sheep goats and pigs) (see DI 2005-237 for what was ‘tagable stock’).

Clause 9

Dictionary, definition of *abattoir*

This clause omits the definition of *abattoir* from the dictionary and relies on its common meaning.

Clause 10

Dictionary, definition of *agency* par (a), (i)

This is a technical amendment. The definition, par (a) (i) defines an agency as *an administrative unit* of the Commonwealth or State. The ACT statute book doesn’t contain any other references to a Commonwealth or State administrative unit, and refers to the chief bureaucratic entities in executive branches of Commonwealth, State or Territory governments (other than the ACT’s) as *departments*. The amendment corrects the reference in the definition of *agency*, substituting *an administrative unit* with *a department*.

Clause 11

Dictionary new definition of *agent identification code*

Dictionary new definition of agent identification code inserts a new definition of agent identification code.

Clause 12

Dictionary, definition of *approved tag*

Omits the definition of approved tag as a consequence of the insertion of new part 4 by clause 6.

Clause 13

Dictionary, new definitions

This clause inserts a number of new definitions.

Clause 14

Dictionary, definition of *holding*

This clause omits the definition of *holding* from the dictionary. It has been replaced by the term *property*. This is to ensure consistency of terms used in the Act.

Clause 15

Dictionary, new definitions

This clause inserts a number of new definitions and provides cross references to the relevant sections.

Clause 16

Dictionary, definition of *register*

The definition of *register* is omitted as it refers to a register that has been omitted.

Clause 17

Dictionary, New definitions

This clause inserts a number of new definitions and provides cross references to the relevant sections.

Clause 18

Dictionary, Definition of *stock*

The definition of *stock* has been omitted as it refers to a section that has been omitted by the Bill.

Clause 19

Dictionary New definitions

This clause inserts a number of new definitions and provides cross references to the relevant sections.

Clause 20

Dictionary, Definitions of *tag*, *tagable stock* and *tag number*

This clause provides that the definition of *tag*, *tagable stock* and *tag number* have been omitted because provisions about these things have been omitted as a consequence of the insertion of new part 4 by clause 6.

Clause 21

Dictionary, New definition of *transaction information*

This clause inserts a definition of *transaction information* and provides a cross reference.

Clause 22

Dictionary, definition of *travelling stock*

This clause makes a consequential change to the definition of travelling stock to reflect the omission of the term 'holding' by clause 14.

Part 3 Animal Diseases Regulation 2006

Clause 23

This clause substitutes a new note 1 in the Dictionary.

Clause 24

Part 2 heading etc.

This clause omits part 2 heading and divisions 2.1 to 2.5 and sections 35 to 37 from the AD regulation. The divisions related to the NLIS and substitute provisions are provided in Part 4 of the Bill as amended by clause 6.

Clause 25

Miscellaneous Division 2.6 (as amended)

This clause relocates the amended division 2.6 to part 5 of the AD regulation.

Clause 26

Schedule 1, items 10 and 11

This clause substitutes items 10 and 11 of schedule 1 with the updated requirements of the Bill, part 4 as amended by clause 6.

Clause 27

Schedule 1, items 16 to 19

This clause removes items 16 to 19 from schedule 1 as a consequential change to the repeal of Part 2 (division 2.1 to 2.5) of the AD regulation as provided for in clause 24.

Clause 28

This clause is consequential and omits the listed terms from the Dictionary note 3.

Clause 29

This clause omits definitions of terms from the Dictionary consequential to the amendments made by the Bill to the AD Regulation.