

Department of Primary Industry and Resources

ANIMAL PROTECTION BILL 2018

SERIAL NO. 44

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NORTHERN TERRITORY

MINISTER FOR PRIMARY INDUSTRY AND RESOURCES

EXPLANATORY STATEMENT

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Contents

GENERAL OUTLINE	1
NOTES ON CLAUSES	2
PART 1 PRELIMINARY MATTERS	2
Clause 1. Short Title	2
Clause 2. Commencement	2
Clause 3. Objects of Act	2
Clause 4. Definitions	2
Clause 5. Meaning of <i>animal</i>	2
Clause 6. Minimal level of care for animal	3
Clause 7. Scientific purposes	3
Clause 8. Scientific use code	3
Clause 9. Act binds Crown	4
Clause 10. Application of Criminal Code	4
PART 2 ADMINISTRATION	4
Division 1 CEO	4
Clause 11. CEO's functions and general powers	4
Clause 12. CEO's investigative powers	4
Clause 13. Approved forms	5
Clause 14. Delegation	5
Division 2 Appointment of authorised officers	5
Clause 15. Appointment	5
Clause 16. Identity card	6
Clause 17. Return of identity cards	6
Clause 18. Functions of authorised officers	6
Division 3 Advisory committee	6
Clause 19. Animal Welfare Advisory Committee	6
Division 4 Codes of practice	7
Clause 20. Making codes of practice	7
Clause 21. Use of codes of practice in proceedings	7
PART 3 CARE AND PROTECTION OF ANIMALS	8
Division 1 Obligations and offences	8
Clause 22. Obligations	8
Clause 23. Minimum level of care	8
Clause 24. Cruelty to an animal	8

Clause 25.	Aggravated cruelty	9
Clause 26	Notification of injury to domesticated animal	9
Clause 27	Administering poison.....	10
Clause 28	Laying of poison.....	10
Clause 29	Traps.....	11
Clause 30	Electrical devices	11
Clause 31	Spurs	11
Clause 32	Prohibited activities	12
Clause 33	Greyhounds	13
Clause 34	Restraining dog in moving vehicle	13
Division 2	Power to alleviate suffering	13
Clause 35	Power to alleviate suffering.....	13
PART 4	REGULATION OF SCIENTIFIC USERS OF ANIMALS	14
Division 1	Preliminary matters	14
Clause 36	Definitions	14
Clause 37	Ability to group authorities or bodies.....	14
Clause 38	Employees and contractors	14
Clause 39	CEO guidelines	15
Division 2	Registration	15
Clause 40	Requirement for registration	15
Clause 41	Application for registration	15
Clause 42	Consideration of application.....	15
Clause 43	Decision on application	16
Clause 44	Conditions of registration	16
Clause 45	Duration and renewal of registration	16
Clause 46	Variation of registration by agreement or on application	17
Clause 47	Variation, suspension or cancellation of registration by CEO	17
Clause 48	Surrender of registration	17
Clause 49	Registration not transferable	18
Division 3	Accreditation of animal ethics committees	18
Clause 50	Application for accreditation.....	18
Clause 51	Consideration of application.....	18
Clause 52	Decision on application.....	19
Clause 53	Conditions of accreditation.....	19
Clause 54	Duration and renewal of accreditation.....	19

Clause 55	Variation of accreditation by agreement or on application	19
Clause 56	Variation, suspension or cancellation of accreditation by CEO.....	19
Clause 57	Surrender of accreditation.....	20
Clause 58	Accreditation not transferable	20
Division 4	Project oversight and code requirements	20
Clause 59	Application for project approval.....	20
Clause 60	Authority to act.....	21
Clause 61	Consideration of application.....	21
Clause 62	Conditions of project approval	21
Clause 63	Duration and renewal of project approval	21
Clause 64	Variation of project approval by agreement or on application	22
Clause 65	Variation, suspension or cancellation of project approval by committee	22
Clause 66	Automatic suspension or cancellation of project approval	22
Clause 67	Surrender of project approval	23
Clause 68	Transferability of project approval.....	23
Clause 69	Offences relating to project approval	23
Clause 70	Offences to contravene codes	23
Division 5	Other matters	24
Clause 71	Registers.....	24
Clause 72	Annual report – registered persons.....	24
Clause 73	Annual reports – accredited animal ethics committees	24
Clause 74	Registered person must report contraventions	25
Clause 75	Improvement Notice.....	25
Clause 76	Review by Civil and Administrative Tribunal	26
PART 5	MONITORING PROGRAMS AND ENFORCEMENT	26
Division 1	Preliminary matters	26
Clause 77	Interpretation.....	26
Division 2	Monitoring programs.....	26
Clause 78	CEO to develop programs	26
Division 3	Functions and powers of authorised officers	27
Clause 79	Specific function relating to monitoring programs	27
Clause 80	Requirement to report suspected offences	27
Clause 81	Power to require name and address.....	27
Clause 82	Exercise of powers	27

Clause 83	Power of entry.....	28
Clause 84	Consent to entry	30
Clause 85	Application for and issue of warrant.....	30
Clause 86	Effect and term of warrant.....	31
Clause 87	Entry on Aboriginal land.....	31
Clause 88	Powers of inspection.....	31
Clause 89	Reports	32
Clause 90	Power to alleviate suffering.....	32
Clause 91	Power to destroy an animal	33
Clause 92	Animal welfare direction.....	34
Division 4	Dealing with seized animals and things	35
Clause 93	Definition.....	35
Clause 94	CEO to keep and care for seized animal or thing	35
Clause 95	Retention of animal or thing seized under section 88(2)(f).....	35
Clause 96	Retention of animal seized under section 90	36
Clause 97	Animal or thing to be returned to person entitled	36
Clause 98	Sale or disposal of animal or thing.....	36
Clause 99	Return or disposal orders.....	37
Division 5	Recovery of seizure and management costs	37
Clause 100	Meaning of seizure and management costs	37
Clause 101	Order for reimbursement of seizure and management costs	38
PART 6	MISCELLANEOUS MATTERS	39
Clause 102	Protection from liability.....	39
Clause 103	Unauthorised disclosure of confidential information.....	39
Clause 104	Obstruction of designated persons	40
Clause 105	Misleading information.....	40
Clause 106	Falsely representing to be an authorised officer	40
Clause 107	Criminal liability of executive officer of body corporate	41
Clause 108	Criminal liability of executive officer of body corporate – evidential burden of proof on defence.....	42
Clause 109	Continuing offences	43
Clause 110	Defences.....	43
Clause 111	Alternative verdicts	44
Clause 112	Immediate forfeiture in certain cases	44
Clause 113	Additional orders on finding of guilt – seizure of animals	45

Clause 114	Additional orders on finding of guilt – future possession of animals	45
Clause 115	Automatic ban for multiple offences	45
Clause 116	Time for commencing prosecutions	46
Clause 117	Authority to prosecute	46
Clause 118	Enforcement of orders to pay	47
Clause 119	Evidentiary certificate	47
Clause 120	Power to conduct post-mortem examination	48
Clause 121	Regulations	48
PART 7	REPEALS AND TRANSITIONAL MATTERS	48
Division 1	Acts repealed	48
Clause 122	Acts repealed	48
Division 2	Transitional matters for Animal Protection Act 2018.....	49
Clause 123	Definitions	49
Clause 124	Acts of Authority	49
Clause 125	Offences provisions – before and after commencement.....	49
Clause 126	Permits.....	49
Clause 127	Transitional regulations.....	50
PART 8	CONSEQUENTIAL AMENDMENTS	50
Clause 128	Laws amended	50
Clause 129	Expiry of Part	50
Schedule 1	Reviewable decisions and affected persons	50
Schedule 2	Repealed Acts	50
Schedule 3	Laws amended	51

GENERAL OUTLINE

This Bill repeals the *Animal Welfare Act* and creates a new Animal Protection Act. Following are some of the key new initiatives in the prepared Bill:

- clarifying responsibility and accountability by vesting the administrative power of the Act with the Chief Executive Officer (CEO) of the regulatory agency, rather than with an Animal Welfare Authority;
- registering the actual scientific users of animals for scientific purposes, rather than the current practice of licensing premises;
- providing accredited animal ethics committees with increased oversight for research projects they approve;
- the ability to prescribe by regulation, codes of practice and standards relevant to animal welfare;
- creating a single category of authorised officers rather than the two categories under the current Act;
- an ability to issue animal welfare directions and Improvement Notices to those who provide inadequate care to animals or fail to comply with certain statutory requirements, with penalties for those who do not comply;
- under controlled circumstances, allowing authorised officers to enter land to check on the condition of animals at risk, without a warrant or the written consent of the occupier;
- under certain circumstances, allowing an authorised officer to lawfully destroy an animal to end its suffering; and
- provides that the Bill complies with the principles of criminal responsibility in Part IIAA of the Criminal Code and that the offences and penalties are appropriate and proportionate to the relevant criminal conduct.

The Bill aligns and builds upon the existing regulatory framework in the Territory, with clearly defined rights, roles and responsibilities for government, industry and the community with respect to animal welfare. The Bill will serve to strengthen existing policies and make governance of animal welfare more effective, in turn contributing to a greater protection of animals under law in the Northern Territory (NT).

NOTES ON CLAUSES

PART 1 PRELIMINARY MATTERS

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. When passed the Bill will be cited as the *Animal Protection Act 2018*

Clause 2. Commencement

This is a formal clause which states when the Act will commence, which in this instance will be on the date fixed by the Administrator.

Clause 3. Objects of Act

This clause sets out the objects of the Act, which broadly provide for the care and protection of animals. These objects are incorporated into key clauses within the Bill and are particularly relevant to the administration and interpretation of the Act.

Clause 4. Definitions

This clause defines various words and expressions used in the Act. Some of the key definitions are defined in other sections e.g. ***animal*** and ***minimum level of care***.

Clause 5. Meaning of *animal*

This clause defines the meaning of ***animal*** for the purposes of the Act. With respect to fish, clause 5(1)(b) clarifies that fish only fall within the meaning of animal in circumstances where a live fish is held in captivity. Similarly, clause 5(1)(c) clarifies that the meaning of animal extends to include live crustaceans, but only if they are in captivity.

Clause 6. Minimal level of care for animal

This clause defines the term ***minimum level of care*** for the purposes of the Act. Clause 6(1) provides a detailed list of which activities and actions would constitute a person providing a minimum level of care to an animal (e.g. sufficient food, water and shelter, care if injured or diseased, appropriately exercised, handled and confined only in ways that are appropriate, and not used in animal fights or abandoned).

Clause 6(2) provides more clarity around the term appropriate in ensuring the welfare, health and safety of an animal and by having regard to all relevant circumstances. Clause 6(3) provides direction as to what is *not appropriate* (e.g. something that causes or is likely to cause an animal unnecessary suffering). Lastly under clause 6(3)(b), a power is provided by regulation to allow for the prescribing of actions, conduct or circumstances that are not appropriate.

Clause 7 Scientific purposes

Clause 7(1) describes the uses of an animal which would fall under the term ***scientific purposes*** (e.g. using the animal in activities to acquire, develop or demonstrate knowledge or techniques in an area of science). Clause 7(2) details the types of activities which constitute using an animal for scientific purposes (e.g. teaching, performing field trials, environmental studies, research including breeding and where the effects on animals are unknown or uncertain, testing of products etc.).

Lastly, clause 7(3) ensures that using an animal for scientific purposes also includes using the remains of an animal killed for the purpose of an activity listed in 7(1).

Clause 8 Scientific use code

Clause 8(1) defines the term ***scientific use code*** for the purposes of the Act - which is the *Australian code for the care and use of animals for scientific purposes*, and which is in force at a given point in time.

Clause 8(2) requires the CEO of the agency administering the Act to ensure that a copy of the code is available for inspection by members of the public (including on the agency's website).

Clause 9 Act binds Crown

This clause provides that the Crown in right of the NT must comply with the legislation. It also provides that, as far as possible under NT constitutional law, the Crown in right of its other capacities is also bound by the legislation.

Clause 10 Application of Criminal Code

This is a standard clause that provides that Part IIAA of the Criminal Code applies to an offence against this Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences and deals with the burden of proof. Part IIAA also defines, or elaborates on, certain concepts commonly used in the creation of criminal offences.

PART 2 ADMINISTRATION

Division 1 CEO

Clause 11 CEO's functions and general powers

This clause sets out the CEO's functions and general powers to ensure compliance with the Act including: the appointment and supervision of authorised officers, deciding if offences are to be prosecuted, administration of the scheme registering scientific users, and to perform other functions in order to effectively administer the Act.

Clause 12 CEO's investigative powers

Clause 12(1) and 12(2) sets out the investigative powers the CEO can use to carry out functions under the Act including (in part) the obtaining of information and consulting with persons; making of inquiries; and the requiring of persons to provide information and documents.

Clause 12(3) and 12(4) make it an offence for a person not to follow a requirement given by the CEO, with a maximum fine of 100 penalty units. This is an offence of strict liability (i.e. the person either followed the CEO requirement given, or he/she did not). Clause 12(6) does not excuse a person from complying with a requirement on the grounds of self-incrimination.

However clause 12(7) ensures that information provided is not admissible in evidence against the individual, except for an offence of providing false or misleading information. [See below note briefly explaining offences of strict and absolute liability].

Note: a number of offences in this Bill are prescribed as either strict or absolute liability. Strict liability and absolute liability dispense with the requirement to prove fault applies to the whole offence or to one or more physical elements of the offence. Where strict liability applies, the defence of mistake of fact is available, as are the other general defences. If absolute liability applies, mistake of fact is not available, but the other general defences are.

Clause 13 Approved forms

This clause gives the power for the CEO to approve forms (e.g. an application form) used in the administration of the Act.

Clause 14 Delegation

This clause allows the CEO to delegate any of his/her powers and functions under the Act to another person, with the exception of the power to appoint authorised officers.

Division 2 Appointment of authorised officers

Clause 15 Appointment

This clause sets out the procedure for the appointment of authorised officers by the CEO and notification of such appointments via a Gazette notice. Clause 15(2) states that the CEO must not appoint a person as an authorised officer unless satisfied that the person has the necessary skills, qualification, training and experience to properly perform the functions of an authorised officer. Clause 15(5) states that a police officer has the powers and functions of an authorised officer under this Act, subject to any conditions or limitations that the CEO may have specified in a Gazette notice.

Clause 16 Identity card

This clause requires the CEO to provide an authorised officer (excluding a police officer) with an identity card stating that person's name and that he/she is an authorised officer. The card must also display a recent photo of the officer, his/her signature and other information. Clause 16(2)(c) requires that the identity card list any limitation of powers applying to the authorised officer who holds the card, if applicable.

Clause 17 Return of identity cards

This clause requires a person who ceases to be an authorised officer to return his/her identify card to the CEO within 21 days. Under clause 17(2), a failure to do so is an offence incurring a maximum fine of 20 penalty units. This is an offence of strict liability i.e. the former authorised officer either returned the card to the CEO within the specified time frame, or did not.

Clause 18 Functions of authorised officers

Clause 18(1) and 18(2) set out the functions of an authorised officer, and confirms that such officers have the necessary powers to perform their functions, and that these are conferred to them under the Act. Such functions including assessing whether or not persons are complying with the Act; investigating and gathering evidence of suspected offences; the seizing of animals and any other defined functions. Clause 18(3) ensures that in exercising a power or performing a function, an authorised officer is subject to the direction of the CEO.

Division 3 Advisory committee

Clause 19 Animal Welfare Advisory Committee

Clauses 19(1) and (2) requires the Minister to establish an *Animal Welfare Advisory Committee*, and for it to be constituted in accordance with the Regulations.

Clause 19(3) lists the functions of the committee which may include: advising the Minister on animal welfare issues and the operation of the Act; examining or reporting on matters relevant to animal welfare; examining and/or developing codes of practice or standards; and providing advice on matters of relevance.

Remaining sub-clauses deal with the term and conditions of members appointed; the determining of committee procedures; the provision of assistance to the committee; and the payment of expenses/costs incurred by the committee. Clause 19(7) allows the Minister to appoint other advisory committees should it be deemed necessary to do so.

Division 4 Codes of practice

Clause 20 Making codes of practice

Clause 20(1) states that a regulation may prescribe codes of practice relating to animal welfare. Clause 20(2) sets out the types of activities, circumstances and situations that a code of practice may cover e.g. the production, processing, keeping, display, treatment, care and handling of animals; the transportation, sale, hunting, killing, control or protection of animals; and the use of animals, including for scientific purposes. Clause 20(3) allows for a code of practice to relate to any animal or class of animal.

Clause 21 Use of codes of practice in proceedings

This clause allows for a code of practice to be used in proceedings as evidence of whether or not a duty or obligation under the Act has been complied with. Further, a defence is provided if the conduct constituting an offence (or element) was undertaken in accordance with a code of practice adopted or prescribed (by a regulation).

PART 3 CARE AND PROTECTION OF ANIMALS

Division 1 Obligations and offences

Clause 22 Obligations

This clause makes it clear that a person in control of an animal owes a duty of care to that animal, and must not be cruel to that animal.

Clause 23 Minimum level of care

Clause 23(1) makes it an offence for a person, who is in control of an animal, to intentionally not provide that animal with at least a minimum level of care, resulting in the animal not receiving the required level of care. A maximum fine of 100 penalty units or imprisonment for 12 months is stated. Strict liability applies to one physical element of the offence which is whether or not a person was in control of the animal at the time the offence occurred (i.e. the person was either in control of the animal at the time, or he or she was not).

Clause 24 Cruelty to an animal

Clause 24 deals with matters of cruelty to animals and sets out a number of offences specifying which actions (or inactions) would constitute acts of cruelty. For example under clause 24(1) a person commits an offence if they intentionally cause suffering or harm to an animal, or intentionally contribute to its suffering and harm, that in the circumstances is unjustifiable, unnecessary or unreasonable.

Further examples of offences that constitute cruelty include: intentionally beating an animal to cause pain; intentionally abusing, terrifying or tormenting an animal; intentionally injuring or wounding an animal that is unjustifiable, unnecessary or unreasonable in the circumstances; intentionally engaging in conduct that under a prescribed regulation is deemed to constitute cruelty; and for a person in control of an animal, intentionally failing to take reasonable action to try to alleviate an animal's suffering in circumstances where the person knows the animal is suffering.

Clause 24(7) also makes it an offence for a person to perform procedures which under the Act constitute cruelty to an animal (e.g. tail docking, ear cropping, voice box removal, horse firing etc.). However clause 25(8) allows for such procedures to be performed by a veterinarian, if the veterinarian believes on reasonable grounds that the procedure is a necessary therapeutic measure for the treatment and welfare of the animal.

The maximum penalty fine for any of the 7 listed offences of cruelty to an animal under clause 24 is 200 penalty units or 2 years imprisonment. Strict liability applies to specified elements within some of the offences. Absolute liability applies to clause 24(5)(b) pertaining to conduct prescribed by regulation to constitute cruelty.

Clause 25. Aggravated cruelty

This purpose of this clause is to take into account circumstances where an offence of cruelty - detailed in clause 24 - has resulted in the causing of serious harm or even death to the animal. Under clause 25(2) the maximum penalty for an offence is a fine of 500 penalty units or 5 years imprisonment.

Clause 25(3) defines what is meant by the term **serious harm** (e.g. harm that endangers the life of an animal; or contributes to such serious injury, disease or severe physical condition that it would be cruel not to destroy the animal; or harm that causes serious and protracted impairment to the animal).

Clause 26 Notification of injury to domesticated animal

Clause 26 requires that a person who injures a domesticated animal, who is not in control of the animal (e.g. they are not the owner), must inform the person who is in control of the animal about the injury. An example might be a person driving a car along a street and accidentally hitting a dog. If the person in control of the animal cannot be located, then the person who injured the animal must inform an authorised officer about the injury (e.g. by making a telephone call to the Animal Welfare Branch which also has a 24-hour contact number).

Failure to inform either the person in control of the animal, or an authorised officer, is an offence with a maximum fine of 20 penalty units. Such an offence is one of strict liability (i.e. either the person contacted the person in control of the animal, or an authorised officer, or he or she did not).

Clause 27 Administering poison

This clause makes it an offence to intentionally administer poison to an animal. The term **poison** is defined under clause 4 of the Bill and refers in part to: a scheduled substance as defined under section 7 of the *Medicines, Poisons and Therapeutic Goods Act*; and/or a substance likely to cause or contribute to an animal suffering (e.g. ground glass).

The maximum fine for this offence is 100 penalty units or 12 months imprisonment. However the provision will not apply to veterinarians acting in the normal course of veterinary practice, or to any person or class of persons, or to any activity or circumstances, excluded by regulation (e.g. poisons used by licensed pest controllers, or for permitted wild dog baiting programs etc.).

Clause 28 Laying of poison

Clause 28(1) makes it an offence to intentionally lay a substance that is a poison with the intention of killing or causing suffering to an animal. The maximum fine for an offence is 100 penalty units or 12 months imprisonment. Where a person is reckless as to whether or not the laying of the substance results in an animal being killed or suffering harm, the maximum fine applied is 50 penalty units, or 6 imprisonment for 6 months.

Clause 28(4) makes it an offence if a person lays a substance that is poison and there is a reasonable likelihood that the poison will kill or cause suffering to an animal. The maximum fine for this offence is 20 penalty units and it is one of strict liability. However a defence is provided at clause 28(6) if the defendant took all reasonable steps to avoid killing or causing suffering to animals. Lastly, clause 28(7) allows for the exemption by regulation of an activity or circumstance (and see the examples given in relation to clause 27).

Clause 29 Traps

Clause 29(1) makes it an offence for a person to set or use a metal jawed or an otherwise prohibited trap, with a maximum fine of 100 penalty units. Other offences created include the selling of metal jawed and prohibited traps (50 penalty units), and/or possession of such traps (10 penalty units). All three offences are strict liability offences.

Clause 29(5) allows for the use, sale or possession of a metal jawed or otherwise prohibited trap, if in receipt of an authorisation from the CEO to do so; or if the trap is a bow trap or soft-jawed trap; or if a metal trap is exempted by regulation; or if a trap is possessed solely for the purposes of display, or as curios or as part of a collection. Clause 29(6) defines the meaning of what is a **metal jawed trap** and a **prohibited trap**.

Clause 30 Electrical devices

Clause 30(1) makes it an offence for a person to intentionally use an electrical device on an animal, with a maximum fine for this offence of 100 penalty units. A second offence exists for the intentional selling of an electrical device, which attracts a maximum fine of 50 penalty units. Clause 30(4) makes it an offence for a person to be in possession of an electrical device and attracts a maximum fine of 10 penalty units. All three offences are of strict liability.

Clause 30(6) defines what is meant by an **electrical device** which excludes an electric fence, or devices specifically prescribed by regulation. A regulation may allow for the use of bark-activated electric dog collars, electric cattle prods, and other listed items, as well as prescribing who can use certain items and under what circumstances.

Clause 31 Spurs

Clause 31(1) and (2) make it an offence for a person to intentionally attach a spur (with sharpened or fixed rowels) to an animal, or use such spurs on an animal, with a maximum fine of 100 penalty units for either offence. An example of spurs that are attached to an animal are those seen on the legs of birds during cock fighting matches held in South-East Asia.

Other offences created include the intentional selling of spurs (maximum fine of 50 penalty units), and/or possession of these spurs (maximum fine of 10 penalty units). All three offences are strict liability offences. Clause 31(7) allows for the possession of spurs solely for the purpose of display, or as curios, or as part of a collection. Clause 31(8) allows for the possession, sale or attachment of a device if prescribed by regulation to be excluded spurs. Clause 31(9) defines the meaning of a *spur*.

Clause 32 Prohibited activities

Clause 32(1) makes it an offence for a person, who is in control of an animal, to intentionally use the animal - or permit the animal to be used – in a prohibited activity (e.g. an organised dog fight) and the person is reckless in relation to the circumstances. Such an offence attracts a maximum fine of 200 penalty units or imprisonment for 2 years. Strict liability applies with respect to the person in control of the animal.

Further offences are created for: the intentional organising, promoting, advertising or conducting of a prohibited activity (maximum fine of 200 penalty units or imprisonment for 2 years); for the owner, manager or occupier of a premises that intentionally allows a prohibited activity to take place (maximum fine of 200 penalty units or imprisonment for 2 years); and for a person who intentionally attends a prohibited activity (maximum fine of 100 penalty units). Strict liability applies to the person who is the owner, manager or occupier of the premises.

Prohibitions under Clause 32 do not apply to: the rehabilitating of native animals for future release into the wild; the keeping and displaying of animals whose normal diets include live food (e.g. providing snakes with live frogs); and the mustering and working of stock animals.

Clause 32(7) defines what is meant by a *prohibited activity* which includes (in part) the release of an animal from confinement for the purposes of being hunted by persons or another animal; use of animals to fight a person or another animal; and the using (and/or killing) of an animal as a lure for the blooding of greyhounds.

Clause 33 Greyhounds

Clause 33(1) makes it an offence for a person, who is in control of a racing greyhound (or being trained for racing), to keep other species of animals (e.g. rabbits, possums, cats etc.) on the same premises as the greyhound, which could be used for the purpose of blooding a greyhound for racing. This offence attracts a maximum fine of 100 penalty units. Strict liability applies with respect to the person in control of the greyhound, and the keeping of a greyhound on the same premises as an animal other than a greyhound.

Clause 33(3) allows for a person, who has a racing greyhound on his/her premises, to also keep an animal other than a greyhound (e.g. a pet cat, dog, rabbit etc.) on the same premises, if in receipt of a written authorisation from the CEO to do so.

Clause 34 Restraining dog in moving vehicle

Clause 34(1) makes it an offence for a person, who is driving on a public street, to have an unsecured dog riding outside of the passenger compartment of a motor vehicle (e.g. the dog is unsecured and riding on the tray of a motor vehicle, or on an attached trailer). Clause 34(1)(c) requires that a dog be secured in a way that prevents it from being injured from the movement of the motor vehicle or trailer. This offence attracts a maximum fine of 50 penalty units. Strict liability also applies.

Clause 34(3) clarifies that this offence does not apply in relation to a dog used to assist in the movement of stock animals. Clause 34(4) defines the terms **public street** and **trailer** which are all per section 8(1) of the *Traffic Act*.

Division 2 Power to alleviate suffering

Clause 35 Power to alleviate suffering

This clause gives a veterinarian the power to destroy an animal that is so severely injured, diseased or in such poor physical condition, that it would be cruel to keep it alive. The veterinarian is obliged to destroy the animal in a way that causes it to die quickly and without unnecessary suffering.

The veterinarian may choose to move the animal to a place considered to be appropriate for the purpose. A veterinarian, who exercises a power under this clause, is entitled to receive from a person in control of the animal the reasonable costs incurred in exercising the power (e.g. destroying the animal) and may recover those costs.

PART 4 REGULATION OF SCIENTIFIC USERS OF ANIMALS

Division 1 Preliminary matters

Clause 36 Definitions

This clause defines various words and expressions used in Part 4 of the Act [e.g. ***animal ethics committee*** (as defined under the scientific use code); ***animal welfare offence***; ***chief investigator***, ***educational institution***; ***project***; and ***project approval***]. The definition of a ***disqualifying event*** is defined under a separate clause [see 42(4)].

Clause 37 Ability to group authorities or bodies

This clause allows the CEO to group of 2 or more authorities, institutions, bodies or entities together as a single entity. For example it allows for the grouping of schools together to be considered as a single entity classed as educational institutions. In turn this allows for a single approval to be granted (e.g. to the Department of Education) rather than a multitude of individual approvals [i.e. every individual school needing to get its own approval to undertake similar activities conducted in science classrooms (e.g. the anatomical dissection of a deceased frog)].

Clause 38 Employees and contractors

This clause ensures that under Part 4 of the Act a person is considered to be engaged by another person if they are an employee or a contractor performing work or services for the first person, even if in a volunteer (unpaid) capacity.

Clause 39 CEO guidelines

This clause allows the CEO to publish guidelines for determining whether or not a person is a fit and proper person to be registered, or to act under a project approval, so the person can use animals for scientific purposes. Further, it also allows the CEO to specify matters of relevance for inclusion in any application for the accreditation of an animal welfare committee.

Division 2 Registration

Clause 40 Requirement for registration

Clause 40(1) makes it an offence for an unregistered person to intentionally use an animal for scientific purposes, or allow an animal to be used for such purposes. This offence attracts a maximum fine of 100 penalty units or imprisonment for 12 months. Strict liability applies as to whether or not the person is registered. However the offence does not have effect in relation to an individual engaged by a registered person, or a student of a registered educational institution who is acting in the course of his/her studies.

Clause 41 Application for registration

Clause 41(1) requires a person to apply to the CEO for registration to use an animal for scientific purposes. Clause 41(2) states that the application must be in the approved form and sets out the information needed for inclusion in an application, including details of the animal ethics committee that a person intends to use for the purpose of the registration. A further clause allows the CEO to require any additional information the CEO considers necessary in order to determine whether or not to register the applicant. If there is a stated fee prescribed by regulation, then this fee is to accompany the application.

Clause 42 Consideration of application

Clause 42 sets out the matters that the CEO must consider - and be satisfied with - before the CEO can register an applicant allowing a person (or body corporate) to use an animal for scientific purposes.

Key matters include: whether or not the applicant is a fit and proper person for such registration; and whether or not the applicant has the necessary competency in the caring and handling of animals to ensure compliance with the scientific use code.

Clause 42(3) requires the CEO to consider whether or not a disqualifying event has happened in relation to the applicant or the executive officers of a body corporate. The term ***disqualifying event*** is defined in detail which in part includes: a finding of guilt for an animal welfare offence; the suspension or cancellation of a registration under clause 47 or an approval under clause 65 (or similar approvals); and any cancellation or suspension of a licence under Part 5 of the former *Animal Welfare Act*. Clause 43(3) also requires the CEO to take into consideration any matters specified in the CEO guidelines and any other matters the CEO considers to be relevant to the application.

Clause 43 Decision on application

This clause requires the CEO, after considering an application for registration, to either approve the application by registering the applicant or refuse the application. As soon as practicable after making a decision, the CEO must give a decision notice to the applicant.

Clause 44 Conditions of registration

This clause allows for the attaching of conditions to a registration granted by the CEO. Clause 44(3) makes it an offence for a registered person to contravene a condition of registration, with a maximum fine of 100 penalty units or imprisonment for 12 months. Strict liability applies with respect to a registration being subject to a condition (i.e. a condition either existed or it did not).

Clause 45 Duration and renewal of registration

This clause states that a registration is in force for 3 years unless otherwise suspended, cancelled or surrendered. Prior to expiry of a registration, a registered person must apply to the CEO for a renewal, and the application must be in the approved form and supported by the required information. If there is a stated fee prescribed by regulation, then this renewal fee is to accompany the application.

Clause 46 Variation of registration by agreement or on application

This clause allows the CEO, with agreement from the registered person, or on application by the person, to vary the registration of the person or a condition applying to the registration. As soon as practicable after making a decision, the CEO must give a decision notice to the applicant.

Clause 47 Variation, suspension or cancellation of registration by CEO

This clause allows the CEO to either vary a condition of registration, suspend the registration or cancel the registration. Clause 47(1) sets out the matters as to why the CEO may take one of the above actions. These include: a person improperly obtaining a registration (e.g. using false information); contravention of a condition of the registration or of the scientific use code; a registered person failing to provide an annual report; a contravention of the Act or a corresponding law; or the registered person - or an animal ethics committee used by the registered person - having acted inappropriately.

Before taking an action, Clause 47(3) requires the CEO to firstly notify the registered person of his/her intention and the reasons why. Secondly, the CEO must allow the registered person a reasonable opportunity and time to make representations about the proposed action (i.e. put forward a case as to why their registration should not be cancelled etc.). Lastly, as soon as practicable after making a decision, the CEO must give a decision notice to the registered person.

Clause 48 Surrender of registration

This clause allows a registered person to give notice in writing to the CEO regarding the surrendering of a current registration.

Clause 49 Registration not transferable

This clause makes it clear that a registration granted under this Part of the Act is not transferrable. This is to ensure that a person or entity in receipt of a registration has been appropriately vetted through the application and consideration process detailed under clauses 41 and 42.

Division 3 Accreditation of animal ethics committees

Clause 50 Application for accreditation

Clause 50(1) requires a person to apply to the CEO for the accreditation of an animal ethics committee ('the committee'). Clause 50(2) requires that an application must be in an approved form, and sets out the information needed for inclusion in an application, including the terms of reference of the committee to be used, and how the committee is to be constituted.

An application will need to be supported by other information specified/required by the CEO to assist in decision-making, and be accompanied by a stated fee if one is prescribed by regulation.

Clause 51 Consideration of application

Clause 51 sets out the matters that the CEO must consider - and be satisfied with - before the CEO can accredit an animal ethics committee ('the committee'). These include whether or not the constitution of the committee is appropriate with respect to its terms of reference; and whether or not the committee has the competency to comply with the scientific use code.

Other matters that the CEO must take into consideration include: the provision and requirements of the scientific use code applying to such committees; any matters specified in the CEO's guidelines; and any other matters the CEO considers to be of relevance to an application.

Clause 52 Decision on application

This clause requires the CEO, after considering an application for accreditation, to either approve the application by accrediting the animal ethics committee, or refuse the application. As soon as practicable after making the decision, the CEO must give a decision notice to the applicant.

Clause 53 Conditions of accreditation

This clause states that an accreditation is subject to conditions that the CEO considers to be appropriate, and that these must be included in the decision notice given to the applicant referred to in clause 52.

Clause 54 Duration and renewal of accreditation

This clause states that an accreditation is in force for 3 years unless otherwise suspended, cancelled or surrendered. Prior to expiry, an application may be made to the CEO for a renewal, and the application must be in the approved form and supported by the required information. If there is a stated fee prescribed by regulation, then this renewal fee is to accompany the application.

Clause 55 Variation of accreditation by agreement or on application

This clause allows the CEO, with agreement from the person holding the accreditation, or on application by the person, to vary the: accreditation of an animal ethics committee; its authority, or its composition; or a condition applying to the accreditation. As soon as practicable after a decision has been made, the CEO must give a decision notice to the person holding the accreditation.

Clause 56 Variation, suspension or cancellation of accreditation by CEO

This clause allows the CEO to take action to vary a condition of accreditation, suspend the accreditation or cancel the accreditation. Clause 56(1) sets out the matters as to why the CEO may take one of the actions.

These include: the improper obtaining of an accreditation (e.g. obtained using false information); or a person contravening a condition of the accreditation; or the animal ethics committee ('the committee') contravening the scientific use code; or the committee failing to provide an annual report; or lastly, the committee is acting inappropriately. Clause 56(3) requires the CEO, as soon as practicable after making the decision, to give a decision notice to the person holding the accreditation.

Clause 57 Surrender of accreditation

This clause allows a person holding an accreditation to give notice in writing to the CEO regarding the surrendering of a current accreditation.

Clause 58 Accreditation not transferable

This clause makes it clear that an accreditation granted under this Part of the Act is not transferrable. This is to ensure that an animal ethics committee, in receipt of an accreditation has been appropriately vetted through the application and consideration process detailed under clauses 50 and 51.

Division 4 Project oversight and code requirements

Clause 59 Application for project approval

Clause 59(1) requires than an application for a project approval - to allow for the use animals for scientific purposes - be made to an accredited animal ethics committee ('the committee') by either a registered person (granted under clause 43); or a chief investigator for the project acting under the authority of a registered person. Such an application must be in the form required by the committee, and additional information may be sought from the applicant to determine whether or not to approve the project.

Clause 60 Authority to act

This clause is to ensure that an animal ethics committee does not consider an application for a project that falls outside of the committee's own terms of reference. (To do so would also contravene the scientific use code.)

Clause 61 Consideration of application

Clause 61 sets out the matters that the animal ethics committee ('the committee') must consider - and be satisfied with - before granting a project approval allowing for animals to be used for scientific purposes. These include being satisfied that all persons involved in the project are fit and proper persons; and that they all have the required competencies to comply with the scientific use code. In arriving at a decision the committee must take into account requirements of the scientific use code; any relevant matters specified in the CEO guidelines; and any other matters the committee considers relevant to the application.

Clause 62 Conditions of project approval

As stated in the clause a project approval is subject to the conditions the accredited animal ethics committee considers to be appropriate. The clause thus allows for the imposition of such conditions by the committee.

Clause 63 Duration and renewal of project approval

This clause sets out the duration of a granted project approval which is determined by the animal ethics committee ('the committee'), subject to any variation(s) granted or suspension, cancellation or surrender of the approval. There is a requirement for the registered person (or a delegate) to apply for any renewal sought, before the original approval date of expiry. Any application needs be in the form required by the committee and treated as if it was an original application for approval.

Clause 64 Variation of project approval by agreement or on application

This clause allows for an accredited animal ethics committee ('the committee') to vary a project approval it has granted, or vary a condition relating to the approval, or the terms of reference for the project, if the registered person for the project consents to the variation. Alternatively the variation can be requested by the chief investigator of the project if acting with authority of the registered person.

Clause 65 Variation, suspension or cancellation of project approval by committee

This clause allows for an accredited animal ethics committee ('the committee') to either vary a condition of the project approval, or suspend or cancel the approval. Clause 65(1) sets out the matters as to why the committee may take one of the above actions. These include: improperly obtaining a project approval (e.g. using false information); or a person contravening a condition of the project approval; or a person operating under the approval and contravening the scientific use code; or a person acting under the approval otherwise acting inappropriately.

Before taking an action to vary a condition, or to suspend or cancel a project approval, Clause 65(3) requires the committee to firstly notify the registered person of the proposed action and the reasons why. Secondly, they must allow the registered person a reasonable opportunity and time to make representations about the proposed action (i.e. put forward a case as to why the proposed action should not be taken).

Clause 66 Automatic suspension or cancellation of project approval

This clause ensures that if a person's registration is suspended, then any project approval for the person (or the chief investigator for the project) is also suspended - while the registration remains suspended. If a person's registration is cancelled or surrendered, then any project approval granted to the person (or the chief investigator) is also cancelled.

Clause 67 Surrender of project approval

This clause provides for a person, holding a project approval, to surrender the approval by giving notice in writing to the animal ethics committee responsible for the approval.

Clause 68 Transferability of project approval

Clause 68 allows for the transfer of a project approval, if approved by an accredited animal ethics committee ('the committee'). An application to transfer a project approval must be in a form required by the committee, and is to be treated the same as if it were an application for an initial project. In addition, a chief investigator will not be able to transfer a project approval without the consent of the registered person.

Clause 69 Offences relating to project approval

Clause 69(1) makes it an offence for a person, without a project approval (given under clause 61), to intentionally use (or allow another person to use) an animal for scientific purposes. The maximum fine is 100 penalty units or 12 months imprisonment. Strict liability applies as to whether or not a project approval was in place. This offence does not apply to a person engaged to work for a registered person, or a student of a registered educational institution (holding a project approval), so long as the student is acting within his/her studies.

Clause 69(3) makes it an offence for a person to use (or allow an animal to be used) for scientific purposes – even with a project approval in place – if the use contravenes the project approval including any conditions. The maximum fine is 100 penalty units or 12 months imprisonment. Again strict liability applies as to whether or not a project approval was in place at the time.

Clause 70 Offences to contravene codes

Clause 70 makes it an offence for a person, to intentionally use (or allow another person to use) an animal for scientific purposes, if in doing so there is a contravention of the scientific use code, or a code of practice. The maximum fine is 100 penalty units or 12 months imprisonment.

Division 5 Other matters

Clause 71 Registers

This clause requires the CEO to maintain both a register of registered persons under Part 4 of the Act, as well as a register of accredited animal ethics committees ('the committee'). Clause 71(2) requires for certain information to be contained on the register including: name and contact details of registered persons; and for a committee, its name, terms of reference and contact details. Registers may also contain other information that the CEO considers appropriate.

Such registers need to be made available for inspection by the public, who may take extracts (free of charge) or a copy of the register for payment of a fee (if one is prescribed by regulation). Clause 71(4) states that the register is not to contain the names or contact details of individual members of an animal ethics committee.

Clause 72 Annual report – registered persons

Clause 72 requires a registered person to provide an annual report to the CEO detailing prescribed information about the animals used (or allowed to be used) for scientific purposes including; what activities were performed in connection with the registration; any complaints received and outcomes achieved during the period of registration; and any other information if prescribed by regulation.

A failure to provide an annual report to the CEO not later than five months after the end of a calendar year (or a longer period if allowed by the CEO) is an offence with a maximum fine of 100 penalty units. Strict liability applies to this offence (i.e. an annual report was either received or not received by the CEO in the designated time period).

Clause 73 Annual reports – accredited animal ethics committees

Clause 73 requires an accredited animal ethics committee ('the committee') to provide an annual report to the CEO detailing prescribed information about each project approval the committee granted during the calendar year.

The report is to also include: any complaints received by the committee, including any steps it took to deal with such complaints; any outcomes achieved during the reporting period; and any other information if prescribed by regulation. The committee must provide the annual report to the CEO not later than five months after the end of a calendar year (or a longer period if allowed by the CEO).

Clause 74 Registered person must report contraventions

Clauses 74(1) and (2) requires a registered person to make a report to the CEO, and the accredited animal ethics committee ('the committee'), within 7 days, of any person(s) who the registered person believes on reasonable grounds to have contravened an approval granted (i.e. allowing for an animal to be used for scientific purposes). Under clause 74(3) a failure by the registered person to report the contravention to both the CEO and the committee is an offence with a maximum fine of 100 penalty units.

Clause 74(4) states that strict liability applies with respect to the person either being a registered person or not at the time; the registered person first becoming aware of the contravention, and the elapsing of 7 days before reporting it (or not) to the CEO and the committee; and reporting in the prescribed manner (if set out under the Regulations).

Clause 75 Improvement Notice

Clause 75 provides for an Improvement Notice to be used by an authorised officer in circumstances where the officer has a reasonable belief that a registered person (or a person engaged by the registered person) is: contravening a provision of the scientific use code or a requirement imposed by an accredited animal ethics committee ('the committee'), in circumstances that make it likely the contravention will be continued or repeated; or a person is performing or has performed an activity that is or has unreasonably threatened the welfare of an animal. It is an offence for a person to intentionally engage in conduct that results in a contravention of the notice, with a maximum fine of 100 penalty units or imprisonment for 12 months. Strict liability applies with respect to whether or not a person has received an Improvement Notice.

Clause 76 Review by Civil and Administrative Tribunal

This clause allows for the reviewing of decisions by a Tribunal of **reviewable decisions** as listed in Schedule 1. Also detailed in this Schedule is a list of **affected persons** for each reviewable decision. The Tribunal used to review such decisions is the Northern Territory *Civil and Administrative Tribunal*.

PART 5 MONITORING PROGRAMS AND ENFORCEMENT

Division 1 Preliminary matters

Clause 77 Interpretation

Clause 77(1) serves to clarify that under this Part of the Act, an occupier of a premises also includes reference to a person - who an authorised officer has reasonable grounds to believe – is the occupier or the person in charge of the premises. Clause 77(2) clarifies that a reference to premises also includes: a motor vehicle; trailer or caravan; aircraft; a boat or other vessel; and a train or rolling stock used on a railway.

Lastly, clause 77(3) clarifies that an animal or thing is **connected with an offence** if: it is part of the offence that has or is being committed; likely to provide evidence of the commissioning of an offence; or being used (or intended to be used) for the purpose of committing the offence.

Division 2 Monitoring programs

Clause 78 CEO to develop programs

Clause 78(1) allows the CEO to develop a program to allow authorised officers to monitor compliance with an established code of practice or with the scientific use code. Before finalising a monitoring program there is a requirement for the CEO to publish a notice in newspapers and on the agency's website, which identifies: what requirements are to be included; where copies of the proposed program can be inspected; and allowing interested persons 28 days in which to make a submission on the proposed program.

Clause 78(5) allows the CEO – via a Gazette notice – to adopt a monitoring program, with or without variations, after considering any comments received during the consultation phase. A monitoring program can be varied, but if so, it must follow the same process as if it were a new program (e.g. allowing interested persons to comment on proposed changes). Copies of the most recent version of a monitoring program need to be available for inspection and published on the agency’s website.

Division 3 Functions and powers of authorised officers

Clause 79 Specific function relating to monitoring programs

This clause requires authorised officers to perform functions specified in a monitoring program (developed under clause 78).

Clause 80 Requirement to report suspected offences

This clause requires an authorised officer, who believes on reasonable grounds that an offence against the Act has been, is being or is likely to be committed, to report the matter to the CEO as soon as practicable.

Clause 81 Power to require name and address

This clause provides a power for authorised officers to ask for and be given a person’s name and address, if they believe on reasonable grounds that the person has committed, is committing, or is about to commit an offence against the Act. It is an offence for a person not to provide his/her name and address if requested to do so, with a maximum penalty fine of 50 penalty units. Strict liability applies for this offence (i.e. a person either did give his/her name and address to an authorised officer, or he/she did not).

Clause 84(4) excuses a person for not complying with a request made by an authorised officer for the person’s name and address, if the authorised officer did not show his or her identity card if requested by the person to do so, and the authorised officer did not inform the person that a failure to comply with the requirement is an offence.

Clause 82 Exercise of powers

Clause 82(1) makes it clear that an authorised officer has the necessary powers to perform his/her functions under this Act. Clause 82(2) makes it clear that an authorised officer may use reasonable force in exercising a power or performing a function under the Act. An example of use of force is to gain entry into a locked car to remove a confined animal (e.g. a cat or dog) that is suffering heat stress. Usual practice is for an authorised officer to first try to locate the owner of the vehicle, and if they are unable to be found, to then seek the assistance of a locksmith to open the vehicle. However if a locksmith is unavailable to attend (or will take too long to attend), and the animal is at risk of severe injury, then the authorised officer will use reasonable force to open the vehicle and remove the animal.

Clause 83 Power of entry

Clause 83 is very detailed and sets out the powers of authorised officers to enter premises. The term ***premises*** is defined in Part 1, clause 4 of the Act and refers to a building or part of; or a temporary or permanent structure on land; or land whether or not belonging to a building; or a water body that is on land (e.g. a lake). Furthermore, in this Part of the Bill, the term *premises* also includes vehicles and other forms of transport.

Clause 83(1) sets out the three ways in which an authorised officer may lawfully enter premises. These include: (a) with the consent of the occupier of the premises; (b) or by using the authority of a search warrant (issued by a Justice of the Peace); or lastly, (c) being able to enter a premises or land adjoining, under certain circumstances, without either the occupier's authority or that provided by a search warrant.

Clauses 83(2)(a) to (e) set out the circumstances whereby an authorised officer may enter without the occupier's consent or a search warrant. These include: (a) if the entry is not into a building itself, rather to a backyard or an area of land around the building, to determine whether or not an animal is suffering (e.g. following up a report by a neighbour that the dog next door is tangled up in its chain, at risk of suffocation, and the home occupier is away and uncontactable); (b) if the officer believes on reasonable grounds that the premises are being used for greyhound racing, training or related activities and the entry is undertaken at a reasonable time (e.g. during working hours);

(c) if the premises are being used for scientific purposes and the entry is undertaken at a reasonable time; (d) if an animal welfare direction (see clause 92) has been issued to the occupier and the purpose of the entry is to check compliance with the direction; and (e) in a situation where an authorised officer reasonably believes that circumstances are so serious and urgent that immediate entry is necessary (e.g. to remove animals from inside a burning building, to gain entry into a locked car to remove a confined cat or dog at risk of heat stress etc.).

If costs are incurred in gaining access to execute a lawful power of entry, then such costs may be recoverable from the occupier of the premises, as a debt owed to the Territory (e.g. the government).

Clause 83(3) requires an authorised officer to give at least 48 hours advanced notice to an occupier of the officer's intention to enter the premises to conduct an inspection. This is unless the officer has: obtained a search warrant; or is entering a backyard or surrounding land [as per sub-clause (a)]; is entering a premises at a reasonable time where a registered person is keeping or using animals for scientific purposes [as per sub-clause (c)]; or the occupier agrees to a shorter notice period sought by the officer. In relation to a vehicle the requirement to give at least 48 hours advanced notice does not apply.

Clause 83(4) is important as it puts an obligation on an authorised officer, before exercising a power of entry into land surrounding a building (e.g. a backyard or a paddock) - to determine whether or not an animal is suffering – to first take reasonable steps to contact an occupier of the premises in relation to the inspection. While not specified, reasonable steps would include (but are not limited to) trying to contact the occupier beforehand by telephone (if the person is known and a telephone number obtainable); if at the premises, knocking on the door (or waiting at a front entrance to a property) to see if the occupier is home (or trying to telephone the person again if no-one is home); asking nearby neighbours if they know the occupier and if so, when the person may be returning to the premises. If visiting a rural property, driving to the entry building or homestead and asking to speak to the occupier to inform him/her of the reason for the authorised officer's visit.

Clause 83(5) states that a requirement to provide 48 hours advanced notice to a premises does not apply in relation to an inspection of a motor vehicle, a trailer or a caravan, an aircraft, a boat or vessel, or a train or rolling stock on a railway.

Lastly, clause 83(6) allows the Territory (i.e. the government) to recover from the occupier the reasonable costs of expenses incurred in gaining access to premises, if the entry was lawful.

Clause 84 Consent to entry

Clause 84(1) requires an authorised officer who is seeking an occupier's consent to enter a premises to: show the officer's identify card to the occupier; provide the reasons to the occupier as to why the entry is being sought; and inform the occupier that he/she may refuse to give the authorised officer consent to enter the premises. If an authorised officer does not show his/her identity card then the officer cannot remain on a premises. If access to a premises is gained, an officer can only remain on the premises for as long as reasonably necessary to perform the required functions.

Clause 84(4) states that this section of the Act does not affect any powers a police officer may exercise under another law (such as their powers of entry under the *Police Administration Act*).

Clause 85 Application for and issue of warrant

Clause 85(1) allows an authorised officer to seek a search warrant from a justice of the peace, either by appearing in person before the justice of the peace; or if not practicable, by telephone or other means of communication. If satisfied there are reasonable grounds for an entry, the justice of the peace may issue the warrant. Remaining sub-clauses deal with technical matters relating to the signing, certification and distribution of copies of the issued warrant.

Clause 86 Effect and term of warrant

This clause deals with the purpose of a warrant, which is to allow an authorised officer (and any assisting persons) to enter the premises specified in the warrant, and exercise the powers of an authorised officer under the Act. A warrant issued remains in force for 1 month from its date of issue.

Clause 87 Entry on Aboriginal land

This clause allows an authorised officer to enter Aboriginal Land (as defined under section 3 of the *Aboriginal Land Act*) without the officer holding a permit for such entry. Entry is afforded to the officer to perform his/her functions under the Act.

Clause 88 Powers of inspection

Clause 88 provides authorised officers with the required powers of inspection to assist with the collection of evidence if there is a belief on reasonable grounds that an offence under the Act has been committed, is being committed, or is likely to be committed. Clause 88(1) provides a detailed list of the actions that an officer may do which includes (in part): the examining of any animals in or on a premises; the taking of photographs and/or film footage; taking copies of documents; and the seizing of animals and things that may be connected with an offence.

Under clause 88(2)(g) an officer may require a person on the premises to answer questions, produce documents and take reasonable steps to help the officer to exercise his/her powers under the Act. Clause 88(3) makes it an offence for a person not to take reasonable steps to comply with a requirement given under clause 88(2)(g), attracting a maximum fine of up to 100 penalty units. Such an offence is one of strict liability.

It is noted that clause 88 of the Bill is not intended to override a natural person's common law right of the privilege against self-incrimination.

Clause 89 Reports

Clause 89(1) requires an authorised officer, who enters a commercial premises using entry powers under clause 83, and with the occupier's consent provided under clause 84, to provide a written report to the occupier about the inspection that was undertaken. Other sub-clauses include: a requirement for the report to be given to the occupier no later than 30 days after the inspection; information included in the report detailing the inspection undertaken, as well as any actions taken by the authorised officer or the CEO; and any comments reasonably requested by the occupier and other matters relevant to the welfare of animals kept on the premises.

Clause 90 Power to alleviate suffering

Clause 90(1) sets out the process for how an authorised officer would deal with an animal that the officer on reasonable grounds believes: has not been provided with sufficient food or drink; is in such poor physical condition (e.g. due to severe injury, disease etc.) that it is necessary for the animal to receive veterinary treatment; or is being treated in a way likely to cause or contribute to its suffering.

Clauses 90(2) and (3) provides powers for an officer to take action to alleviate the animal's suffering and/or its reasonable care. Such actions may include: providing the animal with food and drink; and/or seizing and removing the animal to an appropriate place to reduce suffering and/or provide required care. Additional powers include: giving a written notice to the person in control of the animal requiring that the person obtain veterinary treatment for the animal within a specified time period; and authorising another person to take necessary action that the officer considers is appropriate.

Clause 90(4) allows the authorised officer to require a person in control of the animal to: give the officer a report on what action has been taken to care for the animal or comply with an imposed requirement; be available to present the animal for inspection; and be available to answer questions regarding the welfare of the animal. Clause 90(5) gives the power to seek from the person the contact details of a veterinarian that has examined and treated the animal, the type of treatment administered, and the date when the treatment was provided.

Clause 90(6) makes it an offence for a person, who has been given a written notice or who is subject to a requirement, to intentionally engage in conduct that contravenes such obligations imposed by an authorised officer. The maximum fine imposed is 100 penalty units. Strict liability applies as to whether or not a person received a written notice or was subject to a requirement. If an authorised officer acting under this clause incurs a debt (e.g. payment of veterinary treatment for a seized animal), then the Territory (i.e. the government) may recover these costs from the person in control of the animal.

Clause 91 Power to destroy an animal

Clause 91 allows an authorised officer to destroy an animal (or have it destroyed) in a way that causes it to die quickly and without unnecessary additional suffering. This power is only to be used if the officer believes that the animal: is so severely injured, diseased or in such poor physical condition that it is cruel to keep it alive; and that the animal would otherwise not be destroyed, or destroyed in way that may cause or contribute to unnecessary suffering.

Clause 91(4) requires an authorised officer, before taking any further action, to first seek the consent of the person in control of the animal. If that person has refused or failed to provide consent, and the officer believes on reasonable grounds that immediate action needs to be taken to alleviate the animal's suffering, then the officer has the power to destroy the animal. This is also the case if the officer has been unable to identify, or to make contact with the person in control of the suffering animal, despite taking reasonable steps to do so.

However before an authorised officer makes a final decision, under clause 91(5) the officer must first take reasonable steps to contact a veterinarian to see if the veterinarian is able to attend within a reasonable time period (to provide veterinary care which may include destroying the animal); or to try to obtain advice or guidance from a veterinarian on what steps the officer should take. This is not required if the authorised officer is also a veterinarian.

Lastly, if an authorised officer acting under this clause incurs a debt (e.g. paying for veterinary treatment including to destroy the animal), then the Territory may recover these costs from the person in control of the animal.

Clause 92 Animal welfare direction

Clause 92(1) provides the power to an authorised officer to issue a written ***animal welfare direction*** ('a direction') to a person in control of an animal, if the officer believes on reasonable grounds that: the person has committed an offence against an animal, or is committing, or about to commit an offence of the same nature (i.e. against the animal).

An authorised officer can also issue a direction if an animal: is not being properly cared for; or is experiencing undue pain; or requires veterinary treatment; or is being inappropriately worked; or if the animal's welfare is being adversely affected in some way (and an action is reasonably justified).

Clause 92(2) sets out the nature of the requirement imposed by the notice of the recipient. This may include (in part): to care for or treat the animal in a specified way; the provision of rest, exercise, food, drink, shelter or treatment to the animal, including veterinary treatment within a specified time period; the moving or not moving of the animal from (or to) a specified place; and other specified actions within specified periods that an authorised officer believes is reasonable to protect the animal or improve its welfare.

Clauses 92(3) and (4) deal with a number of matters including requiring a person issued with a direction to: give the authorised officer a report on what action has been taken to care for the animal or comply with an imposed requirement contained in the direction; be available to present the animal for inspection; be available to answer questions regarding the welfare of the animal; and provide the contact details of a veterinarian that has examined and treated the animal.

Clause 92(6) makes it an offence for a person, who has been given an animal welfare direction, to intentionally engage in conduct that contravenes the direction. The maximum fine imposed is 100 penalty units. Strict liability applies as to whether or not a person received an animal welfare direction.

Division 4 Dealing with seized animals and things

Clause 93 Definition

This clause defines what is meant by *person entitled*. For the purposes of Division 4 this term means any of the following: the owner of an animal or thing; a person authorised by the afore-mentioned owner to possess the animal or thing; or another person who is legally entitled to the possession of the animal or thing.

Clause 94 CEO to keep and care for seized animal or thing

This clause allows for the CEO to take possession of an animal or thing that has been seized by an authorised officer (using a power under the Act). However while the animal or thing is in possession of the CEO, reasonable steps must be taken to ensure it is kept safely, and if an animal, is provided with a minimum level of care. The CEO can choose to enter into an arrangement with another person to keep and care for the animal or thing.

Clause 95 Retention of animal or thing seized under section 88(2)(f)

Clause 95 sets out how the CEO must deal with an animal or thing seized under section 88 of the Act. Clause 95(2) allows the CEO to retain the animal or thing until one of the following circumstances occurs: a period of 2 years has elapsed from the seizing of the animal or thing and a prosecution has not been commenced (which the animal or thing is connected to); the CEO decides not to prosecute an offence; if all proceedings relating to the prosecution (including appeals) have been determined; or a Court makes a return or disposal order for the animal or the thing. Clause 95(3) sets out how the CEO must deal with the animal or thing once the CEO no longer has a legal right to retain it.

Clause 96 Retention of animal seized under section 90

This clause sets out how the CEO must deal with an animal seized under section (clause) 90(3)(b) of the Act – which is when an authorised officer uses his/her powers to seize an animal to alleviate its suffering, by removing it to a place the officer considers to be appropriate (e.g. a veterinarian practice, the RSPCA dog shelter etc.). If the CEO believes that on reasonable grounds the seized animal is connected with an offence, then the CEO may deal with the animal under clause 95.

Clause 96(3) allows the CEO to retain the animal as long as reasonably necessary for the purpose of alleviating its suffering. Once it is no longer necessary to retain the animal then the CEO must deal with it under clause 97.

Clause 97 Animal or thing to be returned to person entitled

This clause sets out how the CEO must deal with an animal or thing that has been seized by an authorised officer, and may be returned to the person entitled [e.g. the owner of the animal etc. (see clause 93)].

Clause 97(1) requires the CEO to deal with the animal or thing – if required to do so by section (clause) 95(3) or 96(4) - in accordance with any return or disposal order made by a Court; or return the animal or thing to a person the CEO believes to be a person entitled to it. However under clause 97(2) the CEO may choose to deal with the animal or thing under section 98 if: the CEO has been unable to find out who is the person entitled; or no person entitled is willing to take possession; or if the owner (or a person with a legal right to sell it) authorises the CEO in writing to deal with it under section 98.

Clause 98 Sale or disposal of animal or thing

This clause sets out how the CEO must deal with an animal or thing, under this section that has been seized by an authorised officer. Clause 98(1) allows the CEO to consider a range of options including: selling the animal or thing; giving it to a charitable organisation; if useful to the agency retaining it (or giving it to another agency); or if not reasonable or practicable to do any of the above, destroying the animal or thing.

Under clause 98(2), if the animal or thing is sold, and any costs associated with its seizure and retention have incurred, then these costs are to be reimbursed to the person who has incurred the costs from the proceeds of the sale (unless already reimbursed).

Clause 98(3) requires that any balance of the proceeds from the sale must be paid to the owner or another person who is legally entitled. If such a person cannot be found, or the animal or thing has been forfeited, then proceeds will go to the Territory. However, if a Court makes an order that proceeds are to be distributed differently, then the CEO is to follow the Court order.

Clause 99 Return or disposal orders

This clause sets out how the CEO must deal with an animal or thing seized under the Act that: has not be forfeited to the Territory (i.e. the government); and has not been sold or disposed of under section 98. In such a circumstance the CEO or the person entitled may make an application to an appropriate Court for a return or a disposal order. However if the person has been charged with an offence connected with the animal or thing, then the Court hearing the charge will also make any order regarding reimbursement. In the latter circumstance the Court may make an interim order, or an order after it has determined the matter. Such an order can be made whether or not the person is found guilty of an offence.

For this clause an appropriate Court could be the Youth Justice Court (if the person entitled is a youth and the monetary value of the animal or thing does not exceed the jurisdictional limit of the Local Court); or the Local Court (if within its jurisdictional limit), or the Supreme Court.

Division 5 Recovery of seizure and management costs

Clause 100 Meaning of *seizure and management costs*

Clause 100 sets out what are considered to be the reasonable costs associated with the seizure and management (i.e. the looking after) of an animal or thing.

In part these include: taking possession of the animal or thing; its transportation, if it's an animal then the costs associated with providing it with an appropriate level of care (e.g. feeding, housing, veterinary treatment etc.); and the costs associated with returning, selling or disposing the animal or thing in accordance with the Act.

If an animal has been seized under Clause 90 to alleviate its suffering, Clause 100(2) provides that the costs associated with seizing and managing the animal are considered to be reasonable costs incurred in taking the action.

Clause 101 Order for reimbursement of seizure and management costs

This clause allows for a person to make an application to a Court to seek an order for the reimbursement of seizure and management costs that the person has incurred. It also applies to an animal or thing seized by an authorised officer - to alleviate its suffering - as provided for under section 90 of the Act.

Under clause 101(2) a person, who incurs seizure and management costs, can apply to an appropriate Court for a reimbursement order against a **person in charge** of the animal or thing. A reimbursement order requires the person in charge of the animal (or thing) to reimburse the applicant for incurred seizure and management costs. For an animal, as per clause 101(6), a person in charge means the person who was in charge of the animal when it was seized or the action taken. For a thing then it is the person who was in possession or had possession at the time it was seized. If that person (in charge of the animal or thing) has been charged with an offence connected with the animal or thing, then the Court hearing the charge will also make any order regarding reimbursement.

The Court may make an interim order, or an order after it has determined the matter. Such orders can be made whether or not the person is found guilty of an offence. However, before making such orders, the Court must be satisfied that any seizure was reasonable in the circumstances, and that it is reasonable to require the person, against whom the order is sought, to pay the seizure and management costs. It should be noted that nothing in this clause limits any right of recovery of costs that may be available elsewhere under this Act.

As with clause 99, an appropriate Court could be the Youth Justice Court (if the person entitled is a youth and the monetary value of the animal or thing does not exceed the jurisdictional limit of the Local Court); or the Local Court (if within its jurisdictional limit), or the Supreme Court.

PART 6 MISCELLANEOUS MATTERS

Clause 102 Protection from liability

This clause serves to protect a designated person from civil or criminal liability for actions or omissions by the person, carried out in good faith, while exercising a power or performing a function under the Act. However, apart from a designated person, this protection does not alter the liability the Territory (i.e. the government) would have for the person's act or omission.

For the purpose of this clause the **exercise** of a power also includes the purported (i.e. the supposed or attempted) exercise of that power; and the **performance** of a function, as also including the purported performance of the function.

Clause 103 Unauthorised disclosure of confidential information

This clause is included to prevent the unauthorised disclosure of confidential information collected. Clause 103(1) makes it an offence for a person who obtains confidential information in the course of performing functions under the Act, and knows that the information is confidential, to intentionally engage in conduct that results in the disclosure of that information, other than where the disclosure is authorised under another Act or the information is available to the public. The maximum penalty fine is 200 penalty units or 2 years imprisonment. Strict liability applies to the obtaining of information (i.e. the person either obtained information or the person did not).

Clause 104 Obstruction of designated persons

This clause is included to discourage a person from intentionally trying to obstruct, hinder or resist a designated person (e.g. an authorised officer) from exercising powers and performing functions under the Act. Clause 104(1) creates the offence which has a maximum fine of 200 penalty units or imprisonment for 12 months. Strict liability applies to whether or not the obstructed person was a designated person.

Clause 105 Misleading information

This clause is to discourage a person from intentionally giving false information to a designated person (e.g. an authorised officer). Clause 105(1) creates an offence for a person to intentionally give false information to a designated person, knowing that the information provided is misleading, and that the designated person is acting in his/her official capacity.

Clause 105(2) creates another offence, with respect to intentionally giving a document that contains misleading information. Both offences under clause 105(1) and (2) have a maximum fine of 100 penalty units or imprisonment for 12 months. Strict liability applies in respect to whether or not a person receiving the misleading information or document was a designated person. If a person provides a misleading document to a designated person, but draws the misleading aspects to the designated person's attention, and provides information necessary to remedy the misleading aspect, then the offence under Clause 105(2) does not apply. For the purposes of this clause, ***misleading information*** means information that is misleading either materially from its content, or misleading if it is omitted (e.g. removed).

Clause 106 Falsely representing to be an authorised officer

This clause makes it an offence for a person to intentionally represent him or herself, or another person, as an authorised officer. The maximum fine is 100 penalty units or 12 months imprisonment.

Clause 107 Criminal liability of executive officer of body corporate

Clause 107 (1) sets out what would constitute an offence committed by an executive officer of a body corporate, and includes: if the body corporate contravened a declared provision (a **relevant offence**) and the executive officer was reckless in this regard; and if the executive officer was in a position of influence in relation to the contravention; and if the executive officer recklessly failed to take reasonable steps to prevent the contravention. The penalty in this case would be the maximum that could be imposed on an individual for the relevant offence. Strict liability is applied as to whether or not the executive officer was in a position to influence the conduct of the body corporate in relation to the contravention.

Clause 107(3) sets out what a Court needs to consider in deciding whether or not the executive officer took reasonable steps to prevent the contravention. In part these would include whether the executive officer took any actions to ensure that the body corporate had regular professional assessments of compliance with the declared provision, and had implemented any appropriate recommendations arising from such assessments. Other steps would include ensuring that the body corporate's representatives, employees, agents, contractors etc. had a reasonable knowledge and understanding of the requirement to comply with the declared provision. Finally, a Court could consider what action the executive officer took, once he/she became aware that the contravention was, or could be, about to happen. The Court can also take into account any other considerations it believes necessary.

Clause 107(6) states that this section does not affect the liability of the body corporate (i.e. it remains accountable for the actions of its executive officer). Under 107(6) the criminal liability of the executive officer of a body corporate still applies, irrespective of whether or not the body corporate itself is prosecuted for, or found guilty of the relevant offence. However this clause does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

Lastly, clause 107(8), for the purposes of this clause, sets out what constitutes a **declared provision** and these are listed in full [e.g. clause 40(1) – a person who uses, or allows to be used, an animal for scientific purposes and the person is not registered]. A declared provision can also be one prescribed by regulation.

Clause 108 Criminal liability of executive officer of body corporate – evidential burden of proof on defence

This clause provides an opportunity for an executive officer of a body corporate not to be held criminally liable for an offence committed by the body corporate. Clause 108(1) states that an executive officer of a body corporate commits an offence, if the body corporate commits an offence by contravening a declared provision (a **relevant offence**). The penalty in this case would be the maximum that could be imposed on an individual for the relevant offence. In this particular instance an offence of absolute liability applies [i.e. the body corporate either committed the offence (by contravening a declared provision), or it did not].

Clause 108(3) provides a number of defences to an executive officer (or 'defendant' as termed in the clause itself) if the executive officer: was not in a position to influence the conduct of the body corporate to stop them contravening a declared provision; or if the executive officer took reasonable steps to prevent the contravention from happening; or if the executive officer did not know or could not reasonably be expected to know that the contravention would happen.

Clause 108(4) sets out what a Court needs to consider in deciding whether or not the defendant took reasonable steps to prevent the contravention. In part these would include if the officer took any actions to ensure that the body corporate had regular professional assessments of compliance with the declared provision, and had implemented any appropriate recommendations arising from such assessments. Other steps would include ensuring that the body corporate's representatives, employees, agents, contractors etc. had a reasonable knowledge and understanding of the requirement to comply with the declared provision.

Finally, a Court could consider what action the executive officer took, once he/she became aware that the contravention was, or could be, about to happen. The Court can also take into account any other considerations it believes necessary.

Clause 108(6) states that this section does not affect the liability of the body corporate (i.e. it remains accountable for its actions). Under 108(7) it states that this section of the Act still applies to the body corporate irrespective of whether or not the body corporate itself is prosecuted for, or found guilty of, the relevant offence. However clause 108 does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

Lastly, clause 108(9) sets out what offences in the Act are considered to be a **relevant offence** and these are listed in full [e.g. clause 24(2) – a person commits an offence if the person intentionally beats an animal that causes the animal pain]. A relevant offence can also be a prescribed provision of the regulations.

Clause 109 Continuing offences

This clause allows for a Court, who has found a person guilty of an offence under the Act, to impose a daily penalty against that person if the offending continues. This is in addition to any other penalty imposed by the Court for a particular offence. The maximum daily fine applied that can be applied, from the day after the original offence was committed, is not to exceed 10 penalty units.

Clause 110 Defences

This clause provides a defence to a prosecution (e.g. for cruelty) if the person undertaking the conduct that constituted the offence (or an element of the offence), was doing so to try to alleviate the suffering of an animal, and the conduct was reasonable in the circumstances. An example might be a driver in a remote location trying to destroy a critically injured kangaroo, which had been struck by a vehicle, in order to end the animal's suffering.

Clause 110(2) states that it is not a defence to a prosecution against this Act if the conduct constituting an offence (or an element of) was in accordance with cultural, religious or traditional practices (i.e. acts of animal cruelty and mistreatment are not justifiable under such circumstances).

Clause 111 Alternative verdicts

This clause provides for the use of alternate verdicts to apply in circumstances where a Court is not satisfied beyond reasonable doubt that a person before it has committed the offence being prosecuted, but is satisfied beyond reasonable doubt that the person has committed an offence specified in the provided Table of Alternative offences ('the Table') which appears below clause 111(c).

Clause 112 Immediate forfeiture in certain cases

This clause provides for the immediate forfeiture to the CEO of an animal under certain circumstances. In order for this clause to apply a Court must find a person guilty of an offence under the Act, committed against an animal that the person was in control of at the time of the offence.

Clause 112 provides a power to the CEO to consider a range of options, the first of which is to allow the owner to retain the animal, or return it to the owner, and cancel the forfeiture of it – but make the retention or return of the animal subject to any conditions that the CEO considers appropriate. Conditions imposed may be similar to those contained in an animal welfare direction issued by an authorised officer under clause 92 (e.g. to care for or treat the animal in a specified way; a requirement for the animal to receive veterinary care, including treatment within a specified time period; the moving or not moving of the animal from (or to) a specified place; agreeing to make the animal available for inspection by authorised officers; and any other specified actions within specified periods that the CEO believes is reasonable to protect the animal or improve its welfare).

Clause 112(3) makes it an offence for the person in possession of an animal, subject to the conditions imposed by the CEO, to engage in conduct that contravenes a condition. The offence has a maximum fine of 100 penalty units or 12 months imprisonment. Strict liability applies to the person in possession of the animal subject to a condition (i.e. the person either has possession of the animal, or does not).

Alternatively, the CEO may choose to sell the animal, or give it to a charitable organisation; or if useful to an agency give it to that agency; or if not reasonable or practicable to do any of the above, destroy the animal.

If the animal is sold, any costs associated with looking after it are to be reimbursed to the CEO from the proceeds of the sale. Clause 112(6) requires that any balance of the proceeds from the sale must be paid to the Territory. Lastly clause 112(7) states that this section does not limit the operation of section 113.

Clause 113 Additional orders on finding of guilt – seizure of animals

This clause allows the Court discretion, upon finding a person guilty of an offence under the Act, to make an additional order to seize an animal that is in control of the person guilty of an offence – whether or not the animal is connected with the offence that the person was found guilty of (e.g. a person who has committed acts of cruelty on another person's animal, may in turn have his/her own animal taken away). Under clause 113(2) the Court may on its own initiative make a return or disposal order for the animal; and may make orders as it sees appropriate for the payment by the guilty person of the seizure and management costs for the animal incurred by another person (e.g. the government).

Clause 114 Additional orders on finding of guilt – future possession of animals

This clause allows the Court discretion, upon finding a person guilty of an offence under the Act, to make an additional order that the person must not, for the period specified in the order, be in control of an animal or allow an animal in or on the premises occupied by him/her. Clause 114(3) creates an offence for a person to intentionally engage in conduct that results in the contravention of a Court order issued under Clause 114(2). The offence has a maximum fine of 100 penalty units or 12 months imprisonment. Strict liability applies as to whether or not the person was subject to an order of the Court (i.e. the person either was under a Court order, or was not).

Clause 115 Automatic ban for multiple offences

If certain conditions are met, this clause serves to ban a person convicted of multiple animal welfare offences from being in control of an animal for a period of 5 years.

In order for this ban to apply a person must have been found guilty of 3 or more offences against Part 3 (Care and protection of animals) of the Act, within a period of 5 years or less. Clause 115(2) clarifies that 2 or more offences joined in the one complaint before the Court are to be considered as only 1 offence. The 5 year period of a ban commences from the date of finding the person guilty in relation to the third offence.

Clause 115(4) allows the Court, which finds the person guilty of the third offence, to consider an application from the person for an exemption from the 5 year ban applying. The Court may either grant a complete exemption, or a partial exemption in relation to a specified animal, or a specified class of animal. Any exemption granted is subject to any conditions the Court considers to be appropriate.

Clause 115(6) creates an offence for a person who is subject to a ban (or a condition of exemption), to intentionally engage in conduct that results in the contravention of the ban or the condition. The offence has a maximum fine of 100 penalty units or 12 months imprisonment. Strict liability applies as to whether or not the person was subject to the ban or a condition of exemption (i.e. the person either was under a ban or a condition, or was not).

Clause 116 Time for commencing prosecutions

This clause requires that a prosecution under this Act must be commenced within 2 years after the date on which it is alleged the offence occurred.

Clause 117 Authority to prosecute

Clause 117(1) requires those wishing to prosecute offences against this Act to first obtain approval from the CEO or a person authorised by the CEO (e.g. the Director of Biosecurity and Animal Welfare). The rationale for requiring this approval is two-fold. Firstly it serves to notify the CEO or delegate of an intention to prosecute an offence. Secondly, it provides an opportunity for the agency administering the Act [e.g. currently the Department of Primary Industries and Resources (DPIR)] to examine the complaint, from both a quality control and value-adding perspective.

Clause 117(4) removes the requirement for prior approval for prosecutions started by the Attorney-General or Director of Public Prosecutions.

Clause 118 Enforcement of orders to pay

This clause ensures that an order of the Court made under clause 101 (reimbursement of seizure and management costs), or under clause 113 (seizure of animals) - for the payment of money to those who have incurred costs - is to be considered an ancillary money order for Part 7 of the *Fines and Penalties (Recovery) Act*, and therefore recoverable under that Part.

Clause 119 Evidentiary certificate

This clause means that a certificate (e.g. a document) on a specified matter, that is tendered in Court proceedings for an offence against the Act, and which has purported (allegedly) been signed by the CEO, will be taken as evidence of that particular matter (i.e. a fact not in dispute).

For example, a photo identification card stating that the holder is an authorised officer appointed under the Act, and which bears the signature of the CEO and the authorised officer, will be regarded as evidence that the holder of the card has in fact been authorised by the CEO to exercise those powers provided to the authorised officer. Note: under Division 2 (Appointment of authorised officers) Clause 17(2)(a), if the authorised officer's appointment is subject to any limitation of powers, then these need to appear on the identification card issued to the person.

Clause 119 goes on to detail which matters signed by the CEO will be treated as evidence by the Court of that matter (e.g. an appointment of an authorised officer); that a specified document or notice was given at a particular date and time, or was not received back within a specified date and time; or whether a specified person was not registered under the Act at a specified date and time.

Clause 120 Power to conduct post-mortem examination

As stated, this clause allows a veterinarian to conduct a post-mortem examination of a deceased animal including the taking of samples if the veterinarian considers it necessary or desirable to do so for the purposes of the Act.

Clause 121 Regulations

As stated, Clause 121 allows for the Administrator to make regulations under the Act. Listed under clause 121(2) are the range of matters that may be the subject of a regulation. In part this includes: the prescribing of fees; the enforcement of codes of practice by making it an offence against a regulation to contravene a code; creating offences against a regulation that are either strict or absolute liability in nature (but with a fine not exceeding 100 penalty units); the setting of a maximum fine for an offence against a regulation (but not exceeding 200 penalty units); the exempting of a person or class of person from complying with the Act or specified provisions (e.g. allowing licensed pest exterminators to lay poison etc.); and provide for the Act (or specified provisions in it) not to apply in relation to an animal or a class of animal.

PART 7 REPEALS AND TRANSITIONAL MATTERS

Division 1 Acts repealed

Clause 122 Acts repealed

As stated, this clause repeals those Acts specified in Schedule 2, which include the *Animal Welfare Act 1999* and the *Animal Welfare Amendment Act 2004* and the *Animal Welfare Amendment Act 2012*. These Acts need to be repealed as they will be replaced by the new *Animal Protection Act*, once passed by the Legislative Assembly, assented to by the Administrator and upon the date of the Act's commencement.

Division 2 Transitional matters for Animal Protection Act 2018

Clause 123 Definitions

Clause 123 defines the terms used to facilitate any transitional arrangements between the **repealed Act** - which means the *Animal Welfare Act* and the two amending Acts (which were in force immediately before the new Act) – and the **commencement** of the new *Animal Protection Act*. Clause 122 is the arrangement that repeals the former Acts referred to in Schedule 2.

The term **Authority** is also defined and means the Authority that was operating under the repealed Act. In the new *Animal Protection Act* the former functions and powers of the Authority will be vested in the CEO (see Part 2, Division 1).

Clause 124 Acts of Authority

This clause allows for the CEO under the new Act to still exercise powers afforded to the Authority under the repealed Act, with respect to transitional arrangements.

Clause 125 Offences provisions – before and after commencement

This clause allows for those offence provisions under the repealed Act, to still apply to offences committed before commencement of the new Act. In other words a person who committed an offence prior to the commencement of the new Act, will be tried under the former Act even after it has been repealed. Under clause 125(3) the term **offence provision** means the provisions that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

Clause 126 Permits

As stated in this clause a permit in force under Part 5, Division 3 of the repealed Act (immediately before the commencement of the new Act), is taken to be a program approval as if granted by an accredited animal ethics committee under Part 4, Division 3 of this new Act.

The program approval remains in operation for the balance of the period for which the permit was granted under the repealed Act.

Clause 127 Transitional regulations

Clause 127 allows for the making of regulations that would assist and facilitate matters of a transitional nature (e.g. ensuring that an approval under the repealed Act remains valid under the new Act). Clause 127(3) ensures that a regulation made with a retroactive operation does not operate to disadvantage a person with respect to rights or the imposing of any liabilities. Any transitional regulation will expire 1 year after commencement of the new Act.

PART 8 CONSEQUENTIAL AMENDMENTS

Clause 128 Laws amended

As stated Schedule 3 amends the laws that are mentioned in it.

Clause 129 Expiry of Part

Clause 129 ensures that this Part of the new Animal Protection Act – which deals with consequential amendments – will expire on the day after the Act commences.

Schedule 1 Reviewable decisions and affected persons

Schedule 1 lists the specific decisions (and those persons affected) which are reviewable under the Act (see clause 76) by the Northern Territory Civil and Administrative Tribunal.

Schedule 2 Repealed Acts

Schedule 2 lists the former Acts that are repealed (see clause 122) upon commencement of this Act (i.e. the *Animal Welfare Act 1999* and the two amending Animal Welfare Acts of 2004 and 2012).

Schedule 3 Laws amended

Schedule 3 lists other current Northern Territory Acts which are to be amended as a result of repealing the above mentioned Act, and the new Act commencing. This is to ensure that any cross-referencing between these Acts is accurately captured.