

# Statement of Compatibility with Human Rights

*Prepared in accordance with the Thirteenth Assembly Sessional Orders (Part 12.3) as adopted on 24 August 2017.*

## Animal Protection Bill 2018

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

### Overview of the Bill

The Bill repeals the *Animal Welfare Act* and creates a new Animal Protection Act. While the new Act shares many of the effective provisions of its predecessor, some of the key new initiatives and improvements include:

- clarifying responsibility and accountability by vesting the administrative power of the Act with the Chief Executive of the regulatory agency, rather than with an Animal Welfare Authority;
- the ability to now prescribe by regulation codes of practice and standards relevant to animal welfare;
- 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;
- 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, 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
- ensuring appropriate offences and penalty levels that are proportionate to the seriousness of the proscribed conduct. All offences have been drafted to comply with the criminal responsibility provisions in Part IIAA of the Criminal Code.

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.

### **Human rights implications**

This Bill engages the following rights:

- Presumption of innocence, contained in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR);
- Right to be free from self-incrimination, contained in Article 14(3)(g) of the ICCPR;

- Right to enjoy and benefit from culture, contained in Article 27 of the ICCPR and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- Privacy and reputation, contained in Article 17 of the ICCPR.

### Presumption of innocence

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The right to presumption of innocence is also a fundamental common law principle.

When 'strict liability' or 'absolute liability' applies to an offence, the prosecution is only required to prove the physical elements of an offence, not the fault elements, beyond reasonable doubt in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact is available to the defendant (see section 43AX of the Criminal Code) where strict liability applies. It is not available where absolute liability applies.

Strict liability is used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the person was aware of their duties and obligations. Absolute liability is used very rarely. Strict and absolute liability can be considered a limitation of the presumption of innocence because the defendant can be found guilty, or an element of an offence can be proven, without the prosecution being required to prove fault.

Strict and absolute liability provisions will not necessarily be inconsistent with the presumption of innocence provided that removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective.

Whether a strict or absolute liability provision impermissibly limits the right to the presumption of innocence will depend on the circumstances of the case and the particular justification for an offence or an element of an offence being strict or absolute liability.

### Absolute liability offences

The Bill contains two provisions with absolute liability offence elements:

- Clause 24 sets out the various offences for cruelty to an animal. In this clause absolute liability applies to one element of one offence in this provision – that certain conduct is prescribed by regulation to constitute cruelty.
- Clause 108 provides for the criminal liability of an executive officer of a body corporate. Absolute liability applies to the element of an offence under the section which states that an executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision. For example a director will be liable for the actions of their company if it intentionally engages in cruelty to an animal. For clarity, an executive officer is a director or other person who manages, or takes part in the management of, the body corporate.

These absolute liability provisions are not unreasonable considering they are essentially a precondition of the offence and the state of mind of the offender is not relevant, i.e. the offence is prescribed by regulation or the executive officer is liable for the offence committed by their body corporate. Clause 108 goes further to provide some defences for an offence.

An example would be if the executive officer was not in a position to influence the conduct of the body corporate, or took reasonable steps to prevent the contravention, or could not have been reasonably expected to know that the contravention would happen. This clause reflects the COAG standard for directors' liability provisions, established as part of the set of principles agreed on as the basis for the reform of these laws across Australia. Such provisions appear throughout the Northern Territory statute book and the legislation of other Australian jurisdictions.

### Strict liability offences

The Bill also contains 31 offences that are either strict liability or contain at least one element to which strict liability applies. These are noted below in two lists. The first list contains the clauses that are completely strict liability, and the second is of those where strict liability applies to one or more of the elements in the provision.

Clauses where strict liability applies to all the elements of an offence.

- Clause 12 provides the CEO with investigative powers to obtain relevant information from persons, consult with persons and make inquiries of persons. Strict liability applies where the CEO requires a person to give information and documents in a specified manner.
- Clause 17 provides for the return of identity cards. Strict liability applies to the requirement for an authorised officer to return their identity card to the CEO within 21 days of ceasing to be an authorised officer.

- Clause 26 provides for the notification of an injury to a domesticated animal. Strict liability applies to the requirement that the person inform a person in control of the animal about the injury and if the person is unable to do so that they inform an authorised officer instead.
- Clause 28 provides the offences related to laying poison. Strict liability applies to laying poison where there is a reasonable likelihood that an animal may be killed or be caused suffering. Exceptions will be provided in the regulations.
- Clause 29 relates to traps. Strict liability applies to where the person sets or uses a metal jawed trap or prohibited trap, if the person sells a metal jawed trap or prohibited trap, or if the person possesses a metal jawed trap or prohibited trap. There are some exclusions to this provision as the person could be authorised to set, use, sell or possess the trap; the trap could be excluded by regulation; the trap could be a bow trap or soft-jawed trap; or possessed solely for display or as part of a collection.
- Clause 30 relates to electrical devices. Strict liability applies to using, selling and possessing an electrical device. An electrical device is anything used for administering an electric shock to an animal.
- Clause 31 relates to spurs that are attached to animals to inflict injury on another animal during a fight. Strict liability applies to using, selling and possessing spurs. There are exceptions for possessing spurs for display as a curio or as part of a collection.
- Clause 34 makes it an offence for a person to fail to restrain their dog in the tray of or trailer attached to a motor vehicle driven on a public street.

Strict liability applies to the requirement that the person must be transporting a dog by a motor vehicle or trailer on a public street, the dog is not inside the motor vehicle and is not secured in a way that prevents it from being injured by falling. There is an exception if the dog is being used to assist the movement of stock animals.

- Clause 72 requires a registered person to give an annual report to the CEO for each calendar year, or part year, for which the person is registered. Strict liability applies to this provision.
- Clause 74 requires a registered person to report contraventions of Part 4 of the Act, relating to the regulation of scientific users of animals, to the CEO and relevant accredited animal ethics committee within a specified timeframe. Strict liability applies to this provision, namely: that the person required to make the report is a 'registered person', and that the report must be made in the prescribed manner within 7 days of the person becoming aware of the contravention. The Act states that a person who intentionally uses or allows an animal to be used for scientific purposes must be registered.
- Clause 81 provides an authorised officer with the power to require a name and address from a person they believe has committed, is committing or is about to commit an offence under this Act. Strict liability applies to this provision.
- Clause 88 provides an authorised officer with the power to inspect the premises they have entered for the purposes of the Act. Strict liability applies to the failure of a person to take reasonable steps to comply with a requirement of an authorised officer.

Clauses where strict liability applies to one or more elements of an offence.

- Clause 23 states that a person in control of an animal must provide it with a minimum level of care. Strict liability applies to the element that the person must have been in control of an animal.
- Clause 24 sets out the various offences for cruelty to an animal. Strict liability applies to a number of the elements in this provision. They are that: the suffering or harm is unjustifiable, unnecessary or unreasonable in the circumstances; certain conduct is unjustifiable, unnecessary or unreasonable in the circumstances; certain conduct is prescribed by regulation to constitute cruelty; the person is in control of an animal; the person intentionally fails to take action that is reasonable in the circumstances and would alleviate the animal's suffering (for example obtaining veterinary treatment).
- Clause 32 provides that it is an offence when a person intentionally uses an animal in a prohibited activity (e.g. an organised dog fight) or allows their premises to be used for the prohibited activity. Strict liability applies to the elements that the person must have been in control of an animal or the person must be the owner, manager or occupier of the premises.
- Clause 33 provides for offences relevant to greyhounds. Strict liability applies to the elements of the offence that the person must be in control of the greyhound and that the person keeps another animal on the same premises. This offence relates to the use of other animals to blood a greyhound.

- Clause 40 provides the requirement for registration for people that use or allow an animal to be used for scientific purposes. Strict liability applies to the element of the offence that the person is not registered.
- Clause 44 provides for the conditions of registration. Strict liability applies to the offence elements that the person is a registered person and the registration is subject to a condition.
- Clause 69 makes it an offence where a person uses or allows an animal to be used for scientific purposes without project approval or in contravention of that approval or a condition of the project approval. Strict liability applies to the element that there is no project approval or there is project approval but it has been contravened.
- Clause 74 contains strict liability elements as well as the absolute liability element mentioned above. This clause requires a registered person to report contraventions relating to the regulation of scientific users of animals. Strict liability applies to the elements of the offence where the person fails to make a report to the CEO as required and fails to make a report to its accredited animal ethics committee.
- Clause 75 relates to improvement notices. An improvement notice may be issued for contravention of the scientific use code or a requirement of an animal ethics committee; for contravention of the code or requirement in circumstances that make it likely that the contravention will continue or be repeated; or for performing an activity that has unreasonably threatened the welfare of an animal. Strict liability applies to the element of the offence that the person is given an improvement notice.

- Clause 90 relates to the power of authorised officers to alleviate suffering. Strict liability applies to the elements of the offence that the person in control of an animal is given a notice to take the animal to a vet within a specified time; that the person is given a notice to provide a report about action taken to care for the animal or to comply with a requirement; be available to present the animal for inspection, or be available to answer questions about the welfare of the animal.
- Clause 92 relates to the issue of an animal welfare direction to a person to take an action in relation to an animal's wellbeing. Strict liability applies to the element that the person is given an animal welfare direction.
- Clause 103 relates to the unauthorised disclosure of confidential information by a person in the course of performing functions connected with the administration of the Act. Strict liability applies to the element that the information was obtained in the course of administering the Act.
- Clause 104 provides for an offence if a person intentionally obstructs, hinders or resists a designated person, e.g. the CEO, an authorised officer, a veterinarian or person assisting an authorised officer. Strict liability applies to the element that the other person is a designated person.
- Clause 105 relates to the provision of misleading information. Strict liability applies to the element that the misleading information is given to a designated person.

- Clause 107 relates to the criminal liability of an executive officer of a body corporate. Strict liability applies to the element that the officer was in a position to influence the conduct of the body corporate in relation to the contravention.
- Clause 112 provides that an animal will be forfeited to the CEO when found guilty by a court for an offence in relation to an animal they were in control of at the time of the offence. The CEO has the discretion to allow the owner to retain the animal subject to conditions and it is an offence for the owner to contravene the conditions. Strict liability applies to the element of the offence that the person possesses an animal subject to a condition applied to it by the CEO.
- Clause 114 relates to additional orders on a finding of guilt by a court in relation to the future possession of animals and contravention of an order. Strict liability applies to the element of the offence that the person is subject to an order.
- Clause 115 relates to an automatic ban for multiple offences and its contravention. Strict liability applies to the element of the offence that the person is subject to a ban.

As mentioned, the elements to which strict liability applies are those where the need to prove fault is not required, although the prosecution must prove the physical elements of the offence beyond reasonable doubt. As illustrated above, the elements in this Bill to which strict liability applies are those which are straight-forward and where it can reasonably be expected that a person is aware of their duties and obligations, for example, that they were registered or that they were in possession of an animal subject to a condition. Notwithstanding this, the defence of mistake of fact is available to the accused for these offences.

The offences where strict or absolute liability apply are not punishable by imprisonment. They are punishable by fines which are considered consistent with similar provisions across the statute book.

The absolute liability and strict liability offences in the Bill are regulatory in nature and act as a deterrent to behaviour that would compromise the welfare of an animal. They are compatible with Article 14(2) of the ICCPR, as they pursue a legitimate objective in acting as a deterrent to unauthorised activities that may otherwise represent a risk to the protection of animals, and they are reasonable and proportionate to achieving that objective.

#### Right to be free from self-incrimination

Article 14(3)(g) of the ICCPR protects the right of an individual to be free from self-incrimination in the determination of a criminal charge by providing that a person cannot be compelled to testify against him or herself or confess guilt. The common law also recognises the privilege against self-incrimination, which applies unless expressly or impliedly overridden by statute. The privilege against self-incrimination may be subject to permissible limits but any such limitations must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.

This Bill limits the right for an individual to be free from self-incrimination where the exercise of this right could seriously undermine the effectiveness of the regulatory scheme and prevent the collection of evidence.

Clause 12(6) abrogates the privilege by providing that a person is not excused from providing information or producing documents to the CEO when required by the CEO, even though that information might incriminate the person or expose them to a penalty. This limitation serves the public interest in having information revealed for the purpose of investigating serious contraventions of the Act.

Clause 12(7) limits the abrogation of the privilege so that self-incriminatory disclosures cannot be used against the person making the disclosure in any civil or criminal proceedings (so-called 'use immunity').

Clause 12 does not include a 'derivative use immunity' (which would otherwise protect information provided by the individual from being used to investigate unlawful conduct by that person and could be used to investigate third parties).

These limitations of the right to be free from self-incrimination under Article 14(3)(g) of the ICCPR are permissible as protections apply to ensure the exercise of these powers is reasonable and proportionate to achieving the legitimate objective, and adequate safeguards apply to prevent the risk of abuse or arbitrary exercise of discretion.

### Right to enjoy and benefit from culture

The right to enjoy and benefit from culture includes:

- the rights of individuals belonging to ethnic, religious and linguistic minorities within a country to enjoy their own culture, practise their own religion and use their own language
- the right of all persons to take part in cultural life.

This Bill contains a provision that could limit the ability of some Australians to observe and take part in cultural practices, including use and enjoyment of land and natural resources, for example, by engaging in traditional hunting and fishing practices; or could regulate the preparation and serving of food that may impact on the observance of religious or cultural practices.

Subsection 110(2) of the Bill provides that it is not a defence to a prosecution for an offence against the Act if the conduct constituting the offence, or an element of the offence, was in accordance with cultural, religious or traditional practices.

This provision does not restrict or prevent cultural, religious or traditional practices from taking place, e.g. traditional hunting. It does, however, make cruelty and inhumane treatment of animals an offence.

Alternatively, the regulations provided for in the Bill allow for the enforcement of a code of practice, including by providing that a contravention of the code is an offence against the regulation. In this way, the adoption of the code of practice can make a practice legally acceptable. For example, some religious customs, such as halal slaughter, affect the slaughter of animals and are considered by some to be inhumane. However, halal slaughter while the animal is conscious is covered by a strict code of practice and is therefore legally permitted.

The defence provision in clause 110(2) of the Bill is compatible with Article 27 of the ICCPR and Article 15 of the ICESCR. Clause 110(2) has a limited impact on the rights of minorities to enjoy their own culture and possibly practice their religion. Notwithstanding this, the rights of individuals to hunt, gather food and undertake ceremonies prevails and adequate safeguards are applied to the exercise of powers in the Act to prevent the risk of abuse or arbitrary exercise of discretion.

## Privacy and reputation

The prohibition on interference with privacy is impacted by some of the provisions in this Bill in relation to the authorised powers of entry to premises or search of persons or premises. It is also impacted by provisions that involve the collection, storage, security, use, disclosure or publication of personal information; and provisions that regulate information held on a public register.

The UN Human Rights Committee has not defined 'privacy'. However, it should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. This does not exclude those intrusions that are authorised by law and are necessary in a democratic society in the interests of national security, public order, the protection of rights and freedom of others, or other legitimate objective in appropriate circumstances.

Clause 83 provides that an authorised officer may enter premises with the consent of the occupier, under a search warrant, or where:

- the officer has reasonable grounds to believe that an animal is suffering through lack of food or water
- the premises is used for greyhound racing or training
- the premises is where a registered person is keeping or using animals for scientific purposes and the entry is at a reasonable time
- an animal welfare direction has been issued and a compliance check is being undertaken
- entry is to the surrounding area or yard of a building or other area to determine whether an animal is suffering
- the officer has reasonable grounds to believe that there are circumstances so serious that an immediate entry is justified.

Clause 88 provides powers of inspection to authorised officers who have entered premises pursuant to clause 83. An inspection could comprise of an examination of an animal, taking copies of documents, taking photographs or making films of the premises or animals, or seizing an animal in connection with an offence.

An authorised officer is a person appointed by the CEO by notice in the Gazette. Police officers also have the powers and functions of an authorised officer under the Act.

The limits imposed on a person's privacy with respect to the powers of authorised officers to enter and inspect a property are not arbitrary and go towards enforcement of the objectives of the Bill.

Other powers of authorised officers that may limit privacy include:

- Clause 81 the power to require a person's name and address
- Clause 88 the power to require a person to answer questions or produce documents. The privilege against self-incrimination is not abrogated in this provision, as such, a person is not compelled to answer questions or produce documents where it would incriminate them.

Also, clause 71 requires the CEO to keep a register of registered persons and accredited animal ethics committees, but not the names or contact details of committee members. The register is available for inspection by the public during normal business hours. The CEO may exempt certain information in the register from public disclosure, on application by a registered person. Where the CEO does not exempt the information the decision can be reviewed by the Civil and Administrative Tribunal. The review of this decision by the Tribunal reduces arbitrariness and therefore any potential limitation on a human right.

The *Information Act* provides for access to information held by government and sets out a legally enforceable mechanism for ensuring this access. The right to access is subject to certain limitations that ensure that sensitive information, including information unreasonably affecting personal privacy is properly protected. Adoption of this legislation provides further remedy to any limit on a person's privacy by a provision in this Bill.

The Bill is compatible with article 17 of the ICCPR as the provisions are authorised by law and are not arbitrary.

### **Conclusion**

The Bill is compatible with human rights as any limitations are reasonable, necessary and proportionate.