Western Australia

Animal Welfare Act 2002

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Western Australia

Animal Welfare Act 2002

An Act to provide for the welfare, safety and health of animals, to regulate the use of animals for scientific purposes, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Animal Welfare Act 2002* [1].

2. Commencement

(1) This Act comes into operation on a day fixed by proclamation [1].

(2) Different days may be fixed under subsection (1) for different provisions.

3. Content and intent

(1) This Act provides for the protection of animals by —

(a) regulating the people who may use animals for scientific purposes, and the manner in which they may be used; and

(b) prohibiting cruelty to, and other inhumane or improper treatment of, animals.

(2) This Act intends to —

(a) promote and protect the welfare, safety and health of animals;

(b) ensure the proper and humane care and management of all animals in accordance with generally accepted standards; and

(c) reflect the community's expectation that people who are in charge of animals will ensure that they are properly treated and cared for.

4. Act binds the Crown

This Act binds the Crown in right of the State and, so far as the legislative power of Parliament permits, in all its other capacities.

5. Interpretation

(1) In this Act —

"Agriculture WA" means the department of the Public Service principally assisting with the administration of the *Agriculture Act 1988*;

"animal" means —

(a) a live vertebrate; or

(b) a live invertebrate of a prescribed kind,

other than a human or a fish (as defined in the *Fish Resources Management Act 1994*);

"animal ethics committee" means an animal ethics committee established by a scientific establishment in accordance with the scientific use code;

"CALM" means the department of the Public Service principally assisting with the administration of the *Conservation and Land Management Act 1984*;

"CEO" means the chief executive officer of the Department;

"code of practice" means a code of practice adopted under section 94(2)(d);

"Department" means the department of the Public Service principally assisting the Minister in the administration of this Act;

"fauna" has the same meaning as in the *Wildlife Conservation Act 1950*;

"Fisheries Western Australia" means the department of the Public Service principally assisting with the administration of the *Fish Resources Management Act 1994*;

"general inspector" means a police officer or a person appointed as a general inspector under section 33;

"harm" includes —

(a) injury;

(b) pain; and

(c) distress evidenced by severe, abnormal physiological or behavioural reactions;

"inspector" means a general inspector or a scientific inspector;

"licence" means a licence issued under Part 2;

"non-residential place" —

(a) means any place except a building, vehicle or other structure in which a person ordinarily lives; and

(b) includes gardens, yards or other land surrounding, and sheds or other outbuildings near, such a building or other structure;

"person in charge", in relation to an animal, means —

(a) the owner of the animal;

(b) a person who has actual physical custody or control of the animal;

(c) if the person referred to in paragraph (b) is a member of staff of another person, that other person; or

(d) the owner or occupier of the place or vehicle where the animal is or was at the relevant time;

"place" means anywhere at all, whether or not that place can be moved, but does not include a vehicle;

"RSPCA" means The Royal Society for the Prevention of Cruelty to Animals, Western Australia (Incorporated);

"scientific establishment" means a person who uses, or whose staff or students use, animals for scientific purposes;

"scientific inspector" means a person appointed as a scientific inspector under section 33(5) or 34;

"scientific purposes" means acquiring, developing or demonstrating knowledge or techniques in a scientific discipline, other than in prescribed circumstances, and includes —

(a) teaching;

(b) research;

(c) product development or testing; and

(d) carrying out a prescribed activity;

"scientific use code" means the prescribed code of practice for the care and use of animals for scientific purposes;

"staff", in relation to a person, includes —

(a) all the people working for, or engaged by, that person whether as officers, employees, agents, contractors, volunteers or in any other capacity;

(b) if the person is a scientific establishment, all the people who use the establishment's facilities for scientific purposes;

(c) if the person is a body corporate, its directors, secretary and executive officers; and

(d) if the person is a partnership, the partners;

"vehicle" includes a train, vessel, aircraft and any other thing used as a means of transport;

"veterinary surgeon" means a veterinary surgeon registered under the *Veterinary Surgeons Act 1960*.

(2) Regulations cannot be made to prescribe pearl oysters (as defined in the *Pearling Act 1990*) for the purposes of paragraph (b) of the definition of "animal".

[Section 5 amended by No. 28 of 2006 s. 352.]

Part 2 — Use of animals for scientific purposes

6. Unlicensed use of animals for scientific purposes prohibited

(1) A person must not use animals for scientific purposes unless —

(a) the person is —

(i) a scientific establishment that holds; or

(ii) a member of staff of, or a student at, a scientific establishment that holds,

a licence authorising that use;

(b) the animal ethics committee of the scientific establishment has given approval, in accordance with the scientific use code, for that person to so use the animals; and

(c) the person uses the animals in accordance with that licence and approval.

Penalty: $50 000 and imprisonment for 5 years.

(2) A licensed scientific establishment must not allow animals to be used for scientific purposes at a place to which that licence relates unless that use is permitted under subsection (1).

Penalty: $50 000 and imprisonment for 5 years.

7. Carrying on business supplying animals for scientific purposes

(1) Subject to subsection (2), a person must not carry on a business of supplying animals for use for scientific purposes except in accordance with a licence authorising the person to do so.

Penalty: $50 000 and imprisonment for 5 years.

(2) Subsection (1) does not apply to a person carrying on a business of supplying fauna that the person is licensed or authorised under the *Wildlife Conservation Act 1950* to take for the purposes of that business.

8. Application for issue or renewal of licence

(1) An application for the issue or renewal of a licence is to be made to the Minister in the prescribed form and manner and is to be accompanied by the prescribed fee and any prescribed information.

(2) An applicant must provide to the Minister any other information relating to the application that the Minister reasonably requires for the proper consideration of the application.

(3) An application for the renewal of a licence must be made no later than 42 days before the day on which the licence is due to expire or at such later time as the Minister, having regard to section 10(2)(b), allows.

9. Matters to be considered

(1) The Minister must not issue or renew a licence to use animals for scientific purposes unless the Minister is satisfied that —

(a) the scientific establishment either —

(i) has an animal ethics committee; or

(ii) has made arrangements for the animal ethics committee for another scientific establishment to act as its animal ethics committee;

and

(b) the scientific establishment complies with, and will continue to comply with, the scientific use code.

(2) When considering an application for the issue or renewal of a licence the Minister is to have regard to —

(a) whether the applicant and the applicant's staff are experienced and competent —

(i) in the case of a licence to use animals for scientific purposes, in using animals for scientific purposes; and

(ii) in all cases, in caring for and handling animals of the kind to be used or supplied;

(b) whether the applicant has, or any of the applicant's staff or students have, been convicted of an offence under this Act in the previous 3 years;

(c) whether a licence held by the applicant has ever been suspended or revoked or the applicant has ever been disqualified from holding a licence;

(d) whether the welfare, safety and health of the animals is adequately protected;

(e) any prescribed matters; and

(f) whether, in all other respects, the Minister considers it appropriate for the applicant to hold the licence.

10. Minister to issue or renew or decline to issue or renew

(1) After considering an application in accordance with section 9 the Minister is to —

(a) issue or renew the licence in the prescribed form; or

(b) decline to issue or renew the licence.

(2) If the Minister declines to issue or renew a licence the Minister is to give to the applicant written notice setting out the decision and the reasons for it —

(a) in the case of an application for the issue of a licence, no more than 28 days after the decision is made; and

(b) in the case of an application for a renewal, at least 21 days before the current licence expires.

11. Conditions on licences

(1) Every licence is subject to the conditions prescribed in respect of licences of a class to which the licence belongs.

(2) Conditions prescribed for the purposes of subsection (1) may deal with any matter relating to the welfare, safety and health of the animals including —

(a) the place at which the animals may be used or kept;

(b) codes of practice (other than the scientific use code) that must be complied with;

(c) the conditions under which the animals are, or are not, to be kept;

(d) the facilities and equipment that are, or are not, to be used in relation to the animals;

(e) the procedures to be followed by the licensee and the licensee's staff and students in specified situations; and

(f) the people who are, or are not, to be involved in the care of the animals.

(3) It is also a condition of each licence to use animals for scientific purposes that animals must not be used for scientific purposes unless they are used in accordance with the scientific use code.

12. Further conditions may be imposed

(1) When issuing or renewing a licence the Minister may impose such other conditions as are set out in, or provided to the licensee with, the licence.

(2) The Minister may amend or remove the conditions imposed on a licence under this section by giving at least 21 days written notice of the amendment to the licensee.

(3) Conditions imposed under this section may deal with any matter in respect of which conditions could be prescribed for the purposes of section 11(1).

13. Licensee to ensure staff and students comply with conditions

A licensee must take all reasonable steps to ensure that the licensee's staff and students comply with the conditions to which the licence is subject.

Penalty: $20 000 and imprisonment for one year.

14. Display of licence and code of practice

(1) Subject to subsection (2), a licensee must cause a copy of the licence to be exhibited to the public at each place where —

(a) animals are used for scientific purposes; or

(b) animals to be supplied for use for scientific purposes are kept.

Penalty: $2 000.

(2) A licensee need not cause a copy of the licence to be exhibited at places where field work is being carried out (**"field site"**) but if a copy of the licence is not exhibited —

(a) the licensee must ensure that a person at the field site has a copy of the licence with him or her at that site; and

(b) that person must make the copy of the licence available to a member of the public on request.

Penalty: $2 000.

(3) If a licence is subject to a condition that a code of practice be complied with the licensee must —

(a) cause a copy of the code to be exhibited to; or

(b) make copies of the code available to,

all the licensee's staff and students at each place, other than field sites, where —

(c) animals are used for scientific purposes; or

(d) animals to be supplied for use for scientific purposes are kept.

Penalty: $2 000.

(4) If a licence to use animals for scientific purposes is subject to a condition that a code of practice be complied with the licensee must give a copy of the code to the relevant animal ethics committee.

Penalty: $2 000.

15. Duration of a licence

A licence remains in force for 3 years or any shorter period specified in it, unless before then it is suspended or revoked or the licensee is disqualified from holding the licence.

16. Licence not transferable

A licence is not transferable.

17. Suspension and revocation

(1) The Minister may, by giving written notice to the licensee, suspend a licence for up to 3 months if the Minister is satisfied that —

(a) the licensee has, or any of the licensee's staff or students have, committed an offence under this Act since the licence was issued or last renewed;

(b) if the licence was due for renewal, the Minister would not, having regard to the criteria set out in section 9, renew it;

(c) in the case of a licence to use animals for scientific purposes, the relevant animal ethics committee has failed to comply with the scientific use code in relation to the licensee's use of animals; or

(d) for any other reason the welfare, safety and health of an animal would be under threat if the licence remained in force.

(2) The Minister may, by giving written notice to the licensee, revoke a licence if —

(a) the Minister is satisfied that the licence was obtained by fraud or misrepresentation; or

(b) the licence is suspended and the Minister is satisfied, during the 14 days before the end of the suspension period, that the licensee has not taken reasonable steps to ensure that the grounds for the suspension have been remedied and will not recur.

(3) When revoking a licence the Minister may also disqualify the licensee from applying for another licence before the date on which the revoked licence would have lapsed if it had not been revoked.

(4) Before exercising a power referred to in subsection (1) or (2) the Minister is to —

(a) give the licensee written notice —

(i) stating the intention to suspend or revoke the licence;

(ii) setting out the grounds for the intended suspension or revocation; and

(iii) advising that the licensee has 7 days (or any longer period the Minister considers appropriate) within which to respond to the notice;

and

(b) have due regard to any response to the notice made within that time.

(5) A licensee must deliver a suspended or revoked licence to the Minister as soon as practicable, and in any event within 7 days, after the suspension or revocation.

Penalty: $2 000.

(6) Subject to subsection (2)(b), a suspended licence delivered to the Minister under subsection (5) is to be returned to the licensee as soon as practicable after the end of the suspension period.

18. Register of licences

(1) The CEO is to keep a register of all licences showing, for each licence —

(a) the name of the licensee;

(b) whether it is a licence —

(i) to use animals for scientific purposes; or

(ii) to carry on business supplying animals for use for scientific purposes,

and in the case of subparagraph (i), the scientific purposes for which the animals are or may be used;

(c) details of the places where the animals are or may be used or kept;

(d) the dates of issue, renewal and expiry;

(e) any conditions to which the licence is subject (other than those imposed by section 11);

(f) details of any suspension or revocation of the licence or disqualification of the licensee; and

(g) any prescribed details.

(2) A licensee must notify the CEO of any change in the details referred to in subsection (1)(a), (c) or (g) within 14 days of the change occurring.

Penalty: $2 000.

(3) A person may, at any time during office hours —

(a) inspect the register free of charge; and

(b) purchase a copy of, or an extract from, the register.

(4) The CEO is to ensure that copies of, or extracts from, the register are available and that the price at which they are sold does not exceed the cost of providing them.

[Section 18 amended by No. 28 of 2006 s. 354.]

Part 3 — Offences against animals

19. Cruelty to animals

(1) A person must not be cruel to an animal.

Penalty: Minimum — $2 000.

Maximum — $50 000 and imprisonment for 5 years.

(2) Without limiting subsection (1) a person, whether or not the person is a person in charge of the animal, is cruel to an animal if the person —

(a) tortures, mutilates, maliciously beats or wounds, abuses, torments, or otherwise ill-treats, the animal;

(b) uses a prescribed inhumane device on the animal;

(c) is otherwise ill-treats, the animal;

(b) uses a prescribed inhumane device on the animal;

(c) is otherwise ill-treats, the animal;

(e) is not provided with such shelter, shade or other protection from the elements as is reasonably necessary to ensure its welfare, safety and health;

(f) is abandoned, whether at the place where it is normally kept or elsewhere;

(g) is subjected to a prescribed surgical or similar operation, practice or activity;

(h) suffers harm which could be alleviated by the taking of reasonable steps;

(i) suffers harm as a result of a prescribed act being carried out on, or in relation to, it; or

(j) is, in any other way, caused unnecessary harm.

20. Defence — self-defence or protecting another person or an animal

(1) Subject to subsections (2) and (3), it is a defence to a charge under section 19 for a person to prove that —

(a) the animal was attacking, or threatening to attack, the person, another person or another animal;

(b) the person was defending himself or herself, another person or an animal against the attack or threatened attack; and

(c) the person did not use more force than was reasonably necessary.

(2) Subsection (1) does not provide a defence to a person who, in the course of, or for the purpose of, committing an unlawful act, enters or attempts to enter a place or vehicle —

(a) of which the person who has actual physical custody or control of the animal is the occupier or a guard; or

(b) occupied by the animal.

(3) Subsection (1) does not provide a defence to a person if —

(a) the person provoked the attack or threatened attack;

(b) the person permitted or encouraged another animal to attack or threaten the animal the subject of the charge; or

(c) the animal the subject of the charge was being used by —

(i) a police officer;

(ii) a prison officer under the *Prisons Act 1981*; or

(iii) a member of —

(I) the armed forces of the Commonwealth;

(II) the Australian Federal Police;

(III) the Australian Quarantine and Inspection Service; or

(IV) the Australian Customs Service,

in the course of his or her duties and the use of the animal was not unreasonable in the circumstances.

21. Defence — veterinary care

It is a defence to a charge under section 19(1) (other than an offence committed in circumstances described in section 19(3)(g)) for a person to prove that the person was a veterinary surgeon, or was acting on the instructions of a veterinary surgeon, and was providing the animal with veterinary care in accordance with generally accepted veterinary practices.

22. Defence — authorised by law

It is a defence to a charge under section 19(1) for a person to prove that the person —

(a) was authorised by or under a written law to do the act that is alleged to constitute the offence; and

(b) did the act in a humane manner.

23. Defence — normal animal husbandry

It is a defence to a charge under section 19(1) for a person to prove that the act alleged to constitute the offence was done —

(a) in accordance with a generally accepted animal husbandry practice, other than a prescribed practice, that is used in —

(i) farming or grazing activities;

(ii) the management of zoos, wildlife parks or similar establishments;

(iii) the management of animal breeding establishments; or

(iv) the training of animals;

and

(b) in a humane manner.

24. Defence — killing pests

(1) It is a defence to a charge under section 19(1) for a person to prove —

(a) that the act alleged to constitute the offence was done while the person was attempting to kill pests;

(b) that the person was attempting to kill pests in a manner that is generally accepted as usual and reasonable for killing pests of the kind the person was attempting to kill; and

(c) if the animal the subject of the charge was not a pest, that the person took reasonable steps to ensure that animals other than pests would not be harmed.

(2) In this section —

"pest" means a prescribed animal, fish or invertebrate.

25. Defence — code of practice

It is a defence to a charge under section 19(1) for a person to prove that the person was acting in accordance with a relevant code of practice.

26. Defence — stock fending for itself

(1) It is a defence to a charge under section 19(1) committed in circumstances described in section 19(3)(d), (e) or (f) for a person to prove that —

(a) the animal is stock of a kind that is ordinarily left to roam at large on a pastoral property and to fend for itself;

(b) the act alleged to constitute the offence does not involve anything more than allowing the animal to so roam and fend for itself; and

(c) the property on which the animal was roaming was reasonably capable of sustaining all the animals that were roaming on it.

(2) In this section —

"stock" has the meaning it has in the *Stock (Identification and Movement) Act 1970*.

27. Defence — releasing animals into the wild

It is a defence to a charge under section 19(1) committed in circumstances described in section 19(3)(f) for a person to prove that —

(a) the animal is fauna;

(b) the act alleged to constitute the offence does not involve anything more than releasing the animal into the wild; and

(c) the release occurred in circumstances in which it was reasonable to expect the animal to be able to fend for itself.

28. Defence — where person in charge is not in actual custody

(1) It is a defence to a charge under section 19(1) committed in circumstances described in section 19(3)(d), (e), (f) or (h) for a person to prove that the person —

(a) is a "person in charge" by reason of paragraph (a), (c) or (d), but not paragraph (b), of the definition of that term; and

(b) took reasonable steps to ensure that the animal would be properly treated and cared for.

(2) It is a defence to a charge under section 19(1) committed in circumstances described in section 19(3)(d), (e), (f) or (h) for a person to prove that the person —

(a) is a "person in charge" by reason only of paragraph (d) of the definition of that term; and

(b) did not know, and could not reasonably be expected to have known, that —

(i) the animal was at a place, or in a vehicle, owned or occupied by the person; or

(ii) the animal was not being properly treated and cared for.

29. Defence — prescribed use of devices

It is a defence to a charge under section 19(1) committed in circumstances described in section 19(2)(b) for a person to prove that the person was a prescribed person, or was in a prescribed class of persons, and used the device in a prescribed manner.

30. Defence — prescribed surgical or similar operations, practices and activities

It is a defence to a charge under section 19(1) committed in circumstances described in section 19(3)(g) for a person to prove that the person was a prescribed person, or was in a

prescribed class of persons, and carried out the operation, practice or activity in a prescribed manner.

31. Possession of things intended to inflict cruelty

(1) A person must not be in possession of any thing with the intention of using the thing to inflict cruelty on an animal.

Penalty: $20 000 and imprisonment for one year.

(2) It is a defence to a charge under subsection (1) for a person to prove that the thing was a prescribed thing and that the person was a prescribed person, or was in a prescribed class of persons, in respect of the thing.

(3) It is a defence to a charge under subsection (1) for a person to prove that if the person had used the thing on or in relation to an animal the person would have had a defence to a resulting charge under section 19.

32. Shooting, hunting or fighting captive animals

(1) A person must not engage in a prohibited activity.

Penalty: Minimum — $2 000.

Maximum — $50 000 and imprisonment for 5 years.

(2) Without limiting subsection (1), a person engages in a prohibited activity if the person —

(a) takes part in it;

(b) spectates at it;

(c) organises it;

(d) promotes it;

(e) keeps an animal for the purpose of it;

(f) allows it to occur at a place owned or operated by the person; or

(g) in the case of the activities described in paragraphs (c) and (d) of the definition of "prohibited activity", encourages an animal to participate in it.

(3) It is a defence to a charge under subsection (1) for a person to prove that the activity the subject of the charge was a prescribed activity.

(4) It is a defence to a charge under subsection (1) where the activity the subject of the charge is the releasing of an animal for the purposes of it being hunted by another animal for a person to prove that —

(a) the animal was released as food for a predatory animal kept in captivity;

(b) the diet of captive predatory animals of that kind ordinarily includes animals of the kind released; and

(c) the captive predatory animal will not ordinarily eat dead meat.

(5) In this section —

"prohibited activity" means an activity that involves releasing an animal, or putting an animal somewhere, for the purpose of enabling the animal to be —

(a) shot at (whether with a firearm or any other weapon);

(b) hunted by a person or another animal;

(c) fought by a person or another animal; or

(d) chased by another animal, other than an animal of the same species.

Part 4 — Inspectors

Division 1 — Appointment of inspectors

33. Appointment of general inspectors

(1) The CEO is to appoint as general inspectors —

(a) those members of the staff of the RSPCA nominated by the RSPCA; and

(b) in accordance with subsection (2), as many other people whom the CEO considers to be suitably qualified or experienced as the CEO considers necessary for the purposes of the Act.

(2) The CEO may appoint under subsection (1)(b) —

(a) a member of the staff of —

(i) the Department;

(ii) Agriculture WA;

(iii) CALM;

(iv) Fisheries Western Australia; or

(v) a local government,

who is nominated by the chief executive officer of that department or local government; or

(b) any other person whom the CEO considers it appropriate to appoint.

(3) The terms of appointment of a general inspector are to be determined by the CEO and set out in the instrument of appointment.

(4) An appointment under subsection (1) remains in force for 5 years unless before then —

(a) the inspector (other than an inspector appointed under subsection (2)(b)) ceases to be a member of the staff of the RSPCA or of the department or local government the

chief executive officer of which nominated him or her (as the case requires);

(b) the inspector resigns by written notice to the CEO; or

(c) the appointment is revoked by the CEO.

(5) The CEO may appoint a general inspector as a scientific inspector in relation to schools.

[Section 33 amended by No. 28 of 2006 s. 354.]

34. Appointment of scientific inspectors

(1) The CEO is to appoint as many scientific inspectors as are required for the purposes of this Act.

(2) The CEO may appoint under subsection (1) any person the CEO considers to be suitably qualified or experienced.

(3) The terms of appointment of a scientific inspector are to be determined by the CEO and set out in the instrument of appointment.

(4) An appointment under subsection (1) remains in force for 5 years unless before then —

(a) the inspector resigns by written notice to the CEO; or

(b) the appointment is revoked by the CEO.

[Section 34 amended by No. 28 of 2006 s. 354.]

35. Restricted appointments

(1) A general inspector who is an employee of a local government —

(a) is an inspector only for the district of that local government; and

(b) may only exercise the powers of an inspector outside that district if —

(i) the exercise of the power relates to an offence reasonably suspected to have been committed in the inspector's district;

(ii) the local government of the district where the power is to be exercised has authorised the exercise of the power by the inspector in its district; or

(iii) the inspector considers the situation to be an emergency.

(2) The CEO may, by written notice, restrict the authority of an inspector, other than a police officer, by limiting all or any of the following —

(a) the functions that may be performed by the inspector;

(b) the —

(i) places where;

(ii) times when;

(iii) circumstances in which,

the inspector may perform the inspector's functions.

(3) When the authority of an inspector is restricted under subsection (2) the functions conferred on the inspector by or under this Act are limited to the extent set out in the notice.

(4) A restriction under subsection (2) —

(a) may be imposed when the inspector is appointed or at a later time; and

(b) may be varied or cancelled by the CEO by written notice to the inspector.

[Section 35 amended by No. 28 of 2006 s. 354.]

36. Identification card

(1) The CEO is to issue an identification card to each inspector, other than police officers.

(2) An inspector, other than a police officer, must produce his or her identification card if requested to do so by a person in

respect of whom the inspector is about to exercise, is exercising or has exercised, any of the inspector's powers.

(3) A person who ceases to be an inspector must, as soon as practicable, return his or her identification card to the CEO.

[Section 36 amended by No. 28 of 2006 s. 354.]

Division 2 — Functions and powers of inspectors

37. Functions and powers of inspectors

(1) Subject to subsection (3), the functions of a general inspector are —

(a) to enforce Part 3;

(b) if the inspector has been appointed under section 33(5) as a scientific inspector in relation to schools, to enforce Part 2 in relation to schools (as defined in the *School Education Act 1999*);

(c) to provide assistance to scientific inspectors if requested under section 48(1); and

(d) to provide information and assistance to the CEO in relation to matters arising under this Act.

(2) The functions of a scientific inspector are —

(a) to enforce Part 2;

(b) to enforce Part 3 in relation to things done, purported to be done or required under this Act to be done, under a licence;

(c) to provide information and assistance to the CEO in relation to matters arising under this Act; and

(d) to provide information and assistance to the Minister in relation to licensing matters.

(3) Subject to subsection (1)(b) and section 48(3), a general inspector must not exercise the inspector's powers in relation to

things done, purported to be done, or required under this Act to be done, under a licence.

(4) A scientific inspector may only exercise the inspector's powers in relation to things done, purported to be done, or required under this Act to be done, under a licence.

[Section 37 amended by No. 28 of 2006 s. 354.]

38. Power to enter a place

(1) An inspector may enter a place —

(a) with the consent of the occupier or person apparently in charge of the place;

(b) if a notice has been given in accordance with subsection (3) and the period specified in the notice as the period within which objections may be made has elapsed with no objection being made;

(c) under a warrant issued under section 59;

(d) in the case of a place occupied by a scientific establishment, at any time; or

(e) in the case of any other non-residential place, if the inspector reasonably suspects that an offence under Part 3 —

(i) has been, or is being, committed at the place; or

(ii) is likely to be, or to continue to be, committed at the place if entry is not effected.

(2) In order to enter a place under subsection (1)(b), (c), (d) or (e) an inspector may —

(a) use such force as is reasonably necessary; and

(b) enter any other non-residential place for the purpose of reaching the place to be entered.

(3) An inspector wishing to enter a place may give to the owner or occupier of the place a notice —

(a) stating that the inspector wishes to enter the place;

(b) specifying the purpose for which entry is required; and

(c) specifying the period (being not less than 24 hours) within which the owner or occupier may object to the inspector.

(4) Where a notice has been given under subsection (3) and no objection has been made to the inspector within the time specified in the notice —

(a) the notice continues to have effect until —

(i) the purpose for which entry was required has been effected; or

(ii) 7 days after the end of the objection period specified in the notice,

whichever occurs first; and

(b) successive entries for that purpose are to be regarded as entries to which the notice relates.

39. Power to enter vehicles

(1) An inspector may enter a vehicle —

(a) with the consent of the occupier or person apparently in charge of the vehicle;

(b) under a warrant issued under section 59; or

(c) unless the vehicle is a residence, if the inspector reasonably suspects that the vehicle —

(i) has been, or is being, used in the commission of an offence under Part 3; or

(ii) is likely to be, or to continue to be, used in the commission of an offence under Part 3 unless entry is effected.

(2) In order to enter a vehicle under subsection (1)(b) or (c) an inspector may —

(a) stop and detain the vehicle for as long as is reasonably necessary;

(b) use such force as is reasonably necessary; and

(c) enter a non-residential place for the purpose of reaching the vehicle.

40. Care of animals

(1) An inspector may —

(a) provide to an animal; or

(b) direct a person in control of an animal to provide to the animal,

any food, water, shelter, care or treatment the inspector considers necessary to ensure the welfare, safety and health of the animal.

(2) A person must comply with a direction given under subsection (1)(b).

Penalty: $20 000 and imprisonment for one year.

41. Humane destruction of animals

(1) An inspector who reasonably believes an animal is suffering so severely that destroying it would be a humane thing to do, may destroy the animal in a humane manner.

(2) An inspector destroying an animal under subsection (1) must notify —

(a) if the animal is fauna, the chief executive officer of CALM; or

(b) otherwise a person in charge of the animal,

of the destruction and the reason for it —

(c) if it is reasonable to do so, before destroying the animal; or

(d) otherwise, as soon as practicable after destroying the animal.

42. Seizure of animals

(1) An inspector may seize an animal —

(a) if the inspector reasonably suspects that an offence under Part 3 is being, or has been, committed in respect of the animal; or

(b) under a warrant issued under section 60.

(2) An inspector who seizes an animal is to ensure that it is properly treated and cared for (including the provision of veterinary care if that is appropriate) until it is dealt with in accordance with section 44 or 45.

43. Seizure of other property

(1) An inspector may seize any other thing that the inspector reasonably suspects —

(a) is being, or has been, used to commit; or

(b) may afford evidence of the commission of,

an offence under this Act.

(2) An inspector who seizes any thing under subsection (1) is to —

(a) keep it in safe custody; and

(b) to the extent that it is practicable to do so, maintain it in the condition it was in when it was seized,

until it is dealt with in accordance with section 44.

44. Dealing with seized property

(1) This section does not apply in relation to a seized animal that is fauna, unless the animal had been lawfully taken under the *Wildlife Conservation Act 1950*.

(2) As soon as practicable after seizing property an inspector must take reasonable steps to notify the owner or a person in charge of the property that it has been seized and of the owner's rights under subsection (6).

(3) An inspector may retain seized property until required by subsection (5), or by an order under subsection (9) or section 55, to return it to the owner or to dispose of it.

(4) Subject to an order of a court to the contrary, an inspector may return seized property to the owner at any time if the inspector is satisfied —

(a) that no useful purpose will be served by retaining it; and

(b) in the case of an animal, that it will be properly treated and cared for.

(5) Subject to subsection (9), an inspector must return seized property to the owner if —

(a) 4 months have elapsed since it was seized and no person has been charged with a relevant offence; or

(b) a charge of a relevant offence has been heard and determined but the court hearing the charge has made no order as to the return or forfeiture of the property.

(6) The owner of seized property may apply to the Magistrates Court for an order that it be returned.

(7) Where an inspector is required by subsection (5) to return seized property to the owner the inspector may apply to the Magistrates Court for an order that the property remain under seizure.

(8) An inspector may apply to the Magistrates Court for an order that the seized property be forfeited to the Crown.

(9) On an application under subsection (6), (7) or (8) a court may —

(a) make the order sought on such terms and conditions as the court thinks fit; or

(b) refuse to make the order.

(10) On an application under subsection (6), (7) or (8) in relation to a seized animal the court must have regard to the welfare, safety and health of the animal.

(11) In this section —

"owner", in relation to something that has been seized, means the person from whom the thing was seized or any other person who satisfies the CEO that he or she is entitled to possession of the thing;

"relevant offence" means an offence under this Act —

(a) if the seized property is an animal, the commission of which affected the welfare, safety or health of the animal; or

(b) if the seized property is not an animal —

(i) the commission of which involved the use of the seized property; or

(ii) in respect of the commission of which the seized property may afford evidence.

[Section 44 amended by No. 59 of 2004 s. 141; No. 28 of 2006 s. 354.]

45. Dealing with seized fauna

An inspector who seizes an animal that is fauna, other than an animal that has been lawfully taken under the *Wildlife Conservation Act 1950*, is to ensure that the animal is delivered to, or dealt with in accordance with the instructions of, the chief executive officer of CALM.

46. Power to require information

(1) An inspector who reasonably suspects a person is committing, or has committed, an offence under this Act may ask the person for the person's name, usual place of residence and date of birth.

(2) A person must not, without a reasonable excuse, fail to answer a question asked under subsection (1).

Penalty: $2 000.

47. Other powers of inspectors

(1) Subject to sections 38, 39, 42 and 43, for the purposes of this Act an inspector may —

(a) search a place or vehicle;

(b) examine and take samples from an animal, place, vehicle or thing;

(c) take an animal to a place, or put an animal in a vehicle, for the purpose of performing the inspector's functions in relation to it;

(d) direct a person to take an animal to a specified place, or to put it in a specified vehicle, within a specified time;

(e) direct a person not to remove an animal from a specified place or vehicle for a specified period;

(f) take photographs, video recordings or other recordings of an animal, place, vehicle or thing;

(g) take measurements or recordings of any sort;

(h) if the inspector reasonably suspects that there is, in a container, an animal or thing that may afford evidence of the commission of an offence under this Act —

(i) require the person apparently in charge of it to open the container; or

(ii) if that person is not available to do so, or fails to do so, use reasonable force to break open the container;

(i) examine, take extracts from or copy (and if necessary remove for the purpose of taking extracts or making copies) a record;

(j) give any directions to a person in control of an animal that the inspector considers are necessary to protect the welfare, safety and health of the animal;

(k) conduct examinations, and make inquiries, that the inspector considers are necessary to check whether this

Act is being complied with or to investigate a suspected offence; and

(l) request a person to assist the inspector in performing the inspector's functions.

(2) An inspector exercising, or proposing to exercise, a power under this section must, if asked by a person who is or will be affected by the exercise of the power, explain why the inspector is exercising the power.

(3) A person must comply with a requirement or direction made under subsection (1)(a) to (j).

Penalty: $20 000 and imprisonment for one year.

(4) In subsection (1)(i) —

"record" includes a document, tape, disc or other device or medium on which data is recorded or stored mechanically, photographically, electronically or otherwise.

48. Performance of an inspector's functions

(1) When performing a function under this Act an inspector may be accompanied or assisted by a person requested by the inspector to assist.

(2) A person accompanying or assisting an inspector may exercise a function of the inspector if, and to the extent, authorised by the inspector.

(3) A general inspector accompanying or assisting a scientific inspector under subsection (1) may exercise the general inspector's functions under this Act if, and to the extent, authorised by the scientific inspector.

(4) Subject to subsection (5), where an inspector is permitted under this Act to do an act in relation to an animal that is within the definition of "veterinary surgery" as defined in the *Veterinary Surgeons Act 1960* the inspector is to ensure that the act is done by a veterinary surgeon.

(5) Subsection (4) does not apply to an inspector acting under section 41 if, in the inspector's opinion, it is not reasonable to wait until a veterinary surgeon is able to do the act.

(6) When performing a function under this Act an inspector or person assisting an inspector must —

(a) take reasonable precautions to avoid the spread of disease;

(b) cause as little damage as is reasonably practicable to property; and

(c) cause as little disruption as is reasonably practicable to any business or activity that is being carried on in accordance with this Act.

Division 3 — Additional powers of scientific inspectors

49. Direction to suspend use and referral to animal ethics committee

(1) A scientific inspector who reasonably suspects a person is using animals for scientific purposes in a manner contrary to —

(a) the scientific use code; or

(b) the approval given by the relevant animal ethics committee,

may refer the matter to the relevant animal ethics committee for reconsideration.

(2) If a referral is made under subsection (1) the person using the animal must stop that use until the matter has been approved by the relevant animal ethics committee under subsection (3).

Penalty: $20 000 and imprisonment for one year.

(3) An animal ethics committee must consider a referral under subsection (1) as if it were an application under the scientific use code made by the person using the animals for approval to use animals for the purpose, and in the manner, referred to in that subsection.

50. Directions to licensees and their staff

(1) A scientific inspector who suspects that a licensee has, or any of the staff or students of a licensee have, failed to comply with a condition to which a licence is subject may give any directions the inspector considers necessary or desirable to remedy that failure.

(2) A direction is to be given by a scientific inspector —

(a) if the inspector considers the failure creates a serious and urgent threat to the welfare, safety or health of an animal, orally to the person who, at that time, has custody of the animal; or

(b) otherwise, in writing to the person who failed to comply with the condition.

(3) If a direction is given orally a scientific inspector must give a written copy of the direction to the person who failed to comply with the condition as soon as practicable, and in any event within 24 hours, after giving the oral direction.

(4) If the person to whom a direction is given is not the licensee, a scientific inspector must give a written copy of the direction to the licensee as soon as practicable, and in any event within 24 hours, after giving the direction.

(5) A direction must include the reasons for giving it.

(6) A direction —

(a) takes effect from the time it is first given; and

(b) remains in force until it has been complied with or a scientific inspector revokes it by written notice to the licensee.

(7) When a direction is in force the licensee and all of the licensee's staff and students must comply with it.

Penalty: $20 000 and imprisonment for one year.

(8) It is a defence to a charge under subsection (7) for a member of staff or a student to prove that the person did not know of, and could not reasonably have been expected to know of, the direction.

51. Power to require information

(1) A scientific inspector who reasonably suspects that a person is using animals for scientific purposes or is carrying on business supplying animals for use for scientific purposes may ask the person —

(a) for the person's name, usual place of residence and date of birth;

(b) whether the person is a licensee or a member of the staff or a student of a licensee; and

(c) in the case of a member of staff or a student, for the name and address of the licensee.

(2) A person must not, without reasonable excuse, fail to answer truthfully a question asked under subsection (1).

Penalty: $2 000.

52. Advice regarding licensing matters

(1) A scientific inspector may provide to the Minister written advice on —

(a) whether a scientific establishment —

(i) has an animal ethics committee; or

(ii) has made arrangements under which the animal ethics committee for another scientific establishment will act as its animal ethics committee;

(b) whether, in the inspector's opinion, the facilities and equipment at a scientific institution, and the procedures used by a licensee, comply with the scientific use code or any other relevant code of practice;

(c) whether, in the inspector's opinion, a licensee has, or any of the staff or students of a licensee have, failed to comply with the scientific use code or any other code of practice compliance with which is a condition of the licence; and

(d) other matters relating to a licensee that the inspector considers ought to be brought to the attention of the Minister.

(2) The Minister may rely on advice given under subsection (1) to satisfy himself or herself as to a matter referred to in section 9 or 17(1) or (2) without further investigation.

53. Attendance at meetings of animal ethics committees

(1) A scientific inspector may attend a meeting of an animal ethics committee as an observer.

(2) If requested to do so by a scientific inspector an animal ethics committee is to ensure that the inspector is notified of the dates and times when, and the places where, meetings of that committee are to be held.

Part 5 — Enforcement

Division 1 — Additional court orders

54. Court may order a post mortem

(1) A court hearing a charge under this Act may order that a post mortem be carried out on an animal by a veterinary surgeon specified in the order.

(2) If an order is made under subsection (1) —

(a) the results of the post mortem are to be given to the court, the prosecutor and the alleged offender; and

(b) the cost of the post mortem is a cost in respect of which an order may be made under section 58.

55. Orders additional to penalty

(1) A court convicting a person of an offence under this Act may, in addition to imposing a penalty, make any other orders against the offender that the court considers appropriate to protect the welfare, safety and health of an animal, a group of animals or animals in general.

(2) Without limiting subsection (1) a court may —

(a) prohibit the offender from —

(i) being in charge of; or

(ii) having contact with,

a specified animal, an animal of a specified kind, or an animal of any kind —

(iii) for a period the court thinks fit (which may be permanently); and

(iv) either absolutely or unless specified conditions are satisfied;

(b) order that an animal of which the offender is in charge —

(i) if the animal is fauna that has not been lawfully taken under the *Wildlife Conservation Act 1950*, be delivered to, or dealt with in accordance with the instructions of, the chief executive officer of CALM; or

(ii) otherwise, be removed to a place the court thinks fit;

(c) order the forfeiture to the Crown of —

(i) seized property owned by the offender;

(ii) an animal owned by the offender; or

(iii) anything used by the offender in the commission of the offence;

(d) order that property seized in relation to the offence be returned to the owner of that property;

(e) order the humane destruction of an animal that is suffering severe harm;

(f) order the offender to reimburse a person who incurred costs under section 40(1), 41 or 42 in relation to —

(i) the animal the subject of the offence; or

(ii) another animal of which the offender was in charge at the time of the offence and which was provided with care, destroyed or seized because of the commission of the offence;

(g) suspend, revoke or impose conditions on a licence held by the offender; and

(h) disqualify the offender from obtaining a licence, or a licence of a particular kind, for a period the court thinks fit (which may be permanently).

(3) If a licence is suspended or revoked under subsection (2)(g) the offender must deliver the licence to the Minister as soon as

practicable, and in any event within 7 days, after the order is made.

Penalty: $2 000.

(4) An offender must comply with an order made against him or her under subsection (1).

Penalty: $20 000 and imprisonment for one year.

(5) The court is to ensure that a copy of an order made under subsection (2)(g) or (h) is given to the CEO.

[Section 55 amended by No. 28 of 2006 s. 354.]

56. Order for reimbursement of costs

(1) A person who has incurred costs under section 40(1), 41 or 42 in relation to an animal may apply to the Magistrates Court for an order that the applicant be reimbursed for those costs by a person who was in charge of the animal immediately before the care was provided or the animal was destroyed or seized.

(2) On an application under subsection (1) the court is to make the order sought unless the respondent proves that there were no reasonable grounds on which an inspector could have considered the provision of care, destruction or seizure to be necessary.

(3) The court may adjourn an application under subsection (1) until after the determination of any relevant prosecution proceedings.

(4) If there is more than one person in charge of the animal at the relevant time —

(a) the applicant may apply under subsection (1) for an order against any or all of those people;

(b) a person against whom an order is sought may join any other of those people as parties to the proceedings; and

(c) a court making an order under subsection (2) may apportion the costs among so many of those people as

are parties to the proceedings in any manner as it thinks fit.

(5) An order cannot be made under subsection (1) in respect of costs for which an order has been made under section 55(2)(f).

(6) Costs ordered to be paid under subsection (1) are recoverable in a court of competent jurisdiction as a debt due to the person to whom they are to be paid.

[Section 56 amended by No. 59 of 2004 s. 141.]

57. Order for retention of seized property

(1) A court —

(a) imposing a fine as a penalty for an offence under this Act;

(b) making an order for reimbursement of costs of the kind referred to in section 55(2)(f);

(c) making an order for reimbursement of costs under section 56; or

(d) making an order for payment of costs under section 58(1),

may make an order that seized property owned by the offender or person ordered to pay those costs (as the case requires) remain under seizure until the fine or costs are paid.

(2) In an order under subsection (1) a court is to specify —

(a) the seized property to which the order relates; and

(b) the relevant date for the purposes of subsection (3).

(3) If an order is made under subsection (1) and the fine or costs to which it relates are not paid by the date specified in the order, the seized property to which the order relates is forfeited to the Crown.

58. Costs

(1) A court hearing proceedings for an offence under this Act or dealing with any other application under this Act may make such orders as to costs as it thinks fit.

(2) Costs ordered to be paid under subsection (1) are recoverable by the person to whom they are to be paid in a court of competent jurisdiction as a judgment debt due to that person.

Division 2 — Warrants

59. Grounds for a search warrant

A justice may issue a warrant authorising an inspector to enter a place or vehicle if satisfied, by an application supported by evidence on oath, that —

(a) there are reasonable grounds for suspecting that there is at the place or in the vehicle —

(i) an animal the welfare, safety or health of which is under threat; or

(ii) anything that may afford evidence of the commission of an offence under this Act;

or

(b) entry onto the place or into the vehicle is reasonably required to investigate a suspected offence.

[Section 59 amended by No. 84 of 2004 s. 80.]

60. Grounds for a warrant to seize animal

A justice may issue a warrant authorising an inspector to seize an animal if satisfied, by an application supported by evidence on oath, that there are reasonable grounds for suspecting that an offence under Part 3 is likely to be committed in respect of the animal if it is not seized.

[Section 60 amended by No. 84 of 2004 s. 80.]

61. Form of warrant

A warrant is to be in the prescribed form.

62. Urgent warrants

(1) If an inspector requires a warrant urgently, or a justice is not available within a reasonable distance of the inspector, the inspector may apply to a justice by telephone, fax, radio, video conference, electronic mail or another similar method or any combination of those methods as the justice thinks fit.

(2) Before applying for a warrant under subsection (1), the inspector must prepare an application (without the evidence on oath) setting out the grounds on which the warrant is sought.

(3) A justice who issues a warrant on an application under subsection (1) must —

(a) if it is reasonably practicable to do so, send a copy to the inspector by fax or another expedient method (including electronically if that allows the inspector to produce a written copy of the warrant); or

(b) otherwise, inform the inspector of the terms of the warrant, including the dates and times when it was issued and will cease to have effect.

(4) An inspector who is informed of the terms of a warrant under subsection (3)(b) must write those terms on a prescribed form of warrant and add the name of the justice.

(5) A copy of a warrant sent under subsection (3)(a), or a form of warrant completed in accordance with subsection (4), has effect as a warrant issued by the justice.

(6) As soon as practicable after applying for a warrant under subsection (1) the inspector must send the evidence on oath in support of the application to the justice.

[Section 62 amended by No. 84 of 2004 s. 80.]

Division 3 — Infringement notices

63. Interpretation for Division 3

In this Division —

"authorised person" means a person appointed under section 64(1).

64. Appointment of authorised persons

(1) The RSPCA, the Commissioner of Police and the chief executive officers of —

(a) the Department;

(b) Agriculture WA;

(c) CALM;

(d) Fisheries Western Australia; and

(e) every local government,

are each to appoint as authorised persons as many members of their staff as are required for the purposes of this Division.

(2) A person appointed under subsection (1) by the RSPCA or the Commissioner of Police is an authorised person only in respect of infringement notices given by the RSPCA or the Commissioner of Police respectively.

(3) A person appointed under subsection (1) by the chief executive officer of a department or a local government is an authorised person only in respect of infringement notices given by that department or local government.

(4) A person cannot be both an authorised person and an inspector.

65. Giving infringement notices

(1) An inspector who reasonably suspects that a person has committed a prescribed offence may give an infringement notice to that person within 28 days of when the offence was allegedly committed.

(2) An infringement notice is taken to have been given —

(a) if the inspector is a member of staff of the RSPCA, by the RSPCA;

(b) if the inspector is a police officer, by the Commissioner of Police;

(c) if the inspector is a member of staff of a department referred to in section 64(1)(a) to (d), by that department;

(d) if the inspector is a member of staff of a local government, by that local government; or

(e) if the inspector is any other person, by the Department.

66. Content of infringement notice

(1) An infringement notice is to be in the prescribed form.

(2) The amount set out as the modified penalty must be the amount prescribed as the modified penalty for the relevant offence at the time the offence was allegedly committed.

67. Extension of time to pay

An authorised person may extend the period within which an alleged offender may pay the modified penalty even if the time allowed for payment has expired.

68. Withdrawal of infringement notice

(1) An authorised person may withdraw an infringement notice at any time by sending to the alleged offender a notice in the prescribed form.

(2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount paid is to be refunded.

69. Benefit of paying modified penalty

(1) If —

(a) a modified penalty is paid within 28 days of the notice being given (or any further time allowed under section 67); and

(b) the infringement notice has not been withdrawn,

the bringing of proceedings, and the imposition of other penalties, in relation to the alleged offence are prevented to the same extent as if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(2) Payment of a modified penalty is not an admission for the purposes of any civil or criminal proceedings.

70. Application of modified penalties paid

When a modified penalty is paid it is to be dealt with in accordance with section 86 as if —

(a) the modified penalty were a fine imposed by a court as a penalty for the alleged offence; and

(b) the offence had been prosecuted by the person or entity who or which is taken, under section 65(2), to have given the infringement notice.

Division 4 — Review of decisions

[Heading amended by No. 55 of 2004 s. 27.]

71. Interpretation for Division 4

(1) In this Division —

"reviewable decision" means a decision made by —

(a) the Minister —

(i) to decline to issue or renew a licence;

(ii) as to the period for which a licence is issued or renewed;

(iii) as to a condition to which a licence is to be subject; or

(iv) to suspend or revoke a licence or to disqualify a person from applying for a licence;

or

(b) an inspector to exercise, or as to the manner of exercising, a power under —

(i) section 40(1)(b) in relation to the provision of care or treatment;

(ii) section 42(1)(a);

(iii) section 43(1); or

(iv) section 47(1)(d), (e) or (j).

(2) In this Division a reference to the time when a right to object arose is, in the case of a decision made by —

(a) the Minister on a licensing matter, a reference to the time when the applicant or licensee (as the case requires) received notice of the decision;

(b) an inspector, a reference to the time when the power in question was exercised; and

(c) the Minister on an objection, the time when the person who made the objection received notice of the decision.

[Section 71 amended by No. 55 of 2004 s. 28.]

72. Aggrieved person may make an objection

(1) A person aggrieved by a reviewable decision may object to the decision if the person has not applied for a review of the decision.

(2) An objection is made by preparing it in the prescribed form and lodging it with the Minister in the prescribed manner within 28 days after the right to object arose, or such further time as the Minister may allow.

(3) When an objection has been made against a decision, the effect of the decision is suspended until the Minister deals with the objection under section 73(2), unless the Minister directs otherwise.

[Section 72 amended by No. 55 of 2004 s. 29.]

73. Dealing with an objection

(1) The Minister is to —

(a) give the person who made the objection a reasonable opportunity to make submissions in relation to the objection; and

(b) deal with the objection as expeditiously as possible.

(2) The Minister may —

(a) dismiss the objection;

(b) vary the decision objected to;

(c) revoke the decision objected to and substitute a different decision; or

(d) revoke the decision objected to and refer the matter, with or without directions, to the original decision maker for another decision.

(3) The Minister is to give to the person who made the objection written notice of his or her decision and the reasons for it.

74. Aggrieved person may apply for a review

(1) A person aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of that decision if the person —

(a) has not lodged an objection to the decision; or

(b) having lodged an objection, has not been given a notice under section 73(3) at the expiration of 35 days after the objection was lodged.

(2) A person who lodged an objection and has been given notice under section 73(3) may apply to the State Administrative Tribunal for a review of the Minister's decision on the objection.

[(3), (4) repealed]

(5) If an application for review has been made in relation to a decision —

(a) of the Minister on a licensing matter or of an inspector, the effect of that decision; or

(b) of the Minister on an objection, the effect of the decision that was the subject of the objection,

is suspended until the State Administrative Tribunal deals with the matter unless the Tribunal orders otherwise.

[Section 74 amended by No. 55 of 2004 s. 30.]

*[**75.** Repealed by No. 55 of 2004 s. 31.]*

Division 5 — Offences

76. Misleading information

A person must not give information that the person knows to be false or misleading in a material particular to —

(a) the Minister in relation to a licence or an application under Part 2;

(b) an animal ethics committee in relation to an approval of the type referred to in section 6(1)(b); or

(c) an inspector exercising a power under this Act, or a person assisting an inspector to exercise a power under this Act.

Penalty: $20 000 and imprisonment for one year.

77. Obstruction of inspectors

A person must not hinder, obstruct, abuse or threaten —

(a) an inspector exercising a power under this Act; or

(b) a person assisting an inspector to exercise a power under this Act.

Penalty: $20 000 and imprisonment for one year.

78. Pretending to be an inspector

A person must not pretend to be an inspector.

Penalty: $20 000 and imprisonment for one year.

79. Continuing offences

(1) If a person commits an offence by reason of —

(a) failing to do something that this Act requires to be done; or

(b) doing something that this Act prohibits,

that offence is taken to continue until the person does what is required or ceases to do what is prohibited (as the case requires).

(2) Where an offence is taken to continue, the offender commits an additional offence on each day during which the offence is taken to continue after written notice of the offence has been given to the offender by an inspector.

Penalty: $1 000 for every day on which the offence is taken to continue.

80. Liability of officers for offence by body corporate or scientific establishments

(1) If —

(a) a body corporate; or

(b) a scientific establishment,

commits an offence under this Act every person who was an officer of the body or establishment at the time the offence was committed, also commits the offence.

(2) It is a defence to a charge arising by operation of subsection (1) for an officer to prove that —

(a) the offence was committed without the officer's consent or connivance; and

(b) the officer exercised all such due diligence to prevent the commission of the offence as the officer ought to have exercised having regard to the officer's functions and to all the circumstances.

(3) In this section —

"officer" means a person (by whatever name called) who is concerned in, or takes part in, the management of a body corporate or scientific establishment, including —

(a) in the case of a body corporate, a director, secretary or executive officer of the body;

(b) in the case of a university, school or other educational institution, a member of the Senate or other governing body of the institution;

(c) in the case of a partnership, a partner; and

(d) in any case —

(i) a receiver or receiver and manager of the property of;

(ii) any other person who, for the purpose of enforcing a security, is in possession or control of the property of;

(iii) a liquidator, official manager or deputy official manager of; or

(iv) a trustee or other person administering a compromise or arrangement involving,

the body corporate or scientific establishment.

81. Partnerships

(1) Where a licence is issued for the purposes of a partnership each partner has the same rights and duties as a licensee, whether or not the partner is named on the licence.

(2) If a licence is issued in respect of a partnership and any of the partners commits an offence under this Act (other than an offence under Part 3 that is unrelated to the activity authorised

by the licence) every person who was a partner at the time the offence was committed, commits an offence.

(3) It is a defence to a charge arising by operation of subsection (2) for a person to prove that —

(a) the offence was committed without the person's consent or connivance; and

(b) the person exercised all such due diligence to prevent the commission of the offence as the person ought to have exercised having regard to the person's functions and to all the circumstances.

Division 6 — General

82. Commencement of proceedings for offences

(1) Proceedings for an offence under this Act may be commenced by —

(a) the CEO;

(b) subject to section 37(3) and (4), an inspector; or

(c) an officer of the Department authorised by the CEO.

(2) Proceedings for an offence under this Act may not be commenced more than 2 years after the offence was allegedly committed.

(3) In proceedings for an offence under this Act, unless evidence is given to the contrary, proof is not required —

(a) of the authority of a person to institute proceedings for the offence; or

(b) that a signature on a prosecution notice is the signature of a person authorised to commence the proceedings.

(4) In proceedings for an offence under this Act an officer of the Department authorised by the CEO may appear on behalf of the CEO or any other officer of the Deparon authorised to commence the proceedings.

(4) In proceedings for an offence under this Act an officer of the

practice without proof of the appointment or signature of the CEO.

[Section 83 amended by No. 28 of 2006 s. 354.]

84. Breach of code of practice not sufficient to prove cruelty

Where a person is charged with an offence under Part 3 the fact that the person has failed to act in accordance with a relevant code of practice —

(a) must be taken into consideration by the court; but

(b) is not sufficient, on its own, to prove that the person committed the offence.

85. Death of animal not sufficient to prove cruelty

Where a person is charged with an offence under Part 3 the fact that the person killed the animal, or did something that contributed to the death of the animal —

(a) must be taken into consideration by the court; but

(b) is not sufficient, on its own, to prove that the person committed the offence.

86. Application of fines

A fine imposed as a penalty for an offence against this Act is to be paid or credited to, if the offence was prosecuted by —

(a) an inspector who is a member of the staff of a local government, that local government; or

(b) any other person, the Consolidated Account.

[Section 86 amended by No. 77 of 2006 s. 4.]

87. Disposal of forfeited property

(1) Property forfeited to the Crown under this Act may be sold, destroyed or otherwise disposed of in the prescribed manner.

(2) Proceeds from the sale of forfeited property are to be used —

(a) firstly, to pay any unpaid fines payable by the owner of the property;

(b) secondly, to pay any unpaid costs ordered under section 55(2)(f) or 56 to be paid by the owner; and

(c) thirdly, to pay any unpaid costs ordered under section 58(1) to be paid by the owner.

(3) Any of the proceeds remaining after the application of subsection (2) are to be credited to the Consolidated Account.

[Section 87 amended by No. 77 of 2006 s. 4.]

88. Penalties for body corporate

A body corporate that is convicted of an offence is liable to a penalty of —

(a) if a minimum penalty is specified in relation to that offence, not less than 5 times that minimum penalty; and

(b) in any event, a maximum penalty of not more than 5 times the maximum penalty specified in relation to that offence.

Part 6 — Miscellaneous

89. General power of CEO

The CEO may take such action as the CEO considers appropriate generally to protect and promote the welfare, safety and health of animals.

[Section 89 amended by No. 28 of 2006 s. 354.]

90. Delegation

(1) The Minister may delegate to the CEO any of the Minister's functions under this Act other than this power of delegation.

(2) The CEO may delegate to any person any of the CEO's functions under this Act other than —

(a) this power of delegation; or

(b) a function delegated by the Minister under subsection (1).

(3) A delegation —

(a) must be made in writing signed by the person making it; and

(b) may delegate a function either generally or as provided in the instrument.

[Section 90 amended by No. 28 of 2006 s. 353 and 354.]

91. Improper use of information

A person who performs a function under this Act must not improperly use information acquired in the course of doing so —

(a) to gain, directly or indirectly, an advantage for himself or herself or another person; or

(b) to cause detriment to a person.

Penalty: $20 000 and imprisonment for one year.

92. Protection from liability

(1) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

(2) If this section provides that an action does not lie against a person for doing anything, the RSPCA, a local government of which the person is a member of staff, and the Crown are also relieved of any liability that they might otherwise have had for the doing of the thing by the person.

(3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(4) A person who, at the request of an inspector, is assisting the inspector to perform a function under this Act is taken, for the purposes of this section, to be performing a function under this Act.

(5) In this section a reference to the doing of anything includes a reference to the omission to do anything.

93. Owner may claim compensation for injury or death

(1) If the malicious or negligent performance by a scientific inspector of a function under this Act causes an injury to, or the death of, an animal, the owner of the animal is entitled to compensation.

(2) A claim for compensation is to be made to the Minister in the prescribed form and manner within one year of the injury or death.

(3) The Minister must —

(a) if satisfied on reasonable grounds that the owner is entitled under subsection (1) to compensation, accept the claim; or

(b) otherwise, reject the claim.

(4) If the Minister accepts a claim the amount of compensation payable to the claimant is —

(a) the market value of the animal immediately before the injury or death as determined by the Minister; or

(b) such lesser amount as the Minister determines to be reasonable in the circumstances (including the extent, if any, to which the owner or another person contributed to the injury or death).

(5) Compensation payable under this section is to be paid out of the Consolidated Account and that Account is appropriated accordingly by this section.

(6) If a person is entitled to compensation under this section no amount is payable (other than under this section) to any person as compensation for the value of the animal.

(7) In this section —

"caused", in relation to an injury to, or the death of, an animal, means —

(a) significantly contributed to the injury to, or the death of, the animal; or

(b) in the case of an animal that was destroyed — significantly contributed to, or significantly exacerbated, the condition of the animal which necessitated its destruction.

[Section 93 amended by No. 77 of 2006 s. 4 and 5(1).]

94. Regulations

(1) The Governor may make regulations prescribing all matters that are permitted to be prescribed, or that are necessary or convenient to be prescribed to give effect to the purposes of this Act.

(2) Without limiting subsection (1) regulations made under this section may —

(a) provide that a contravention of a regulation is an offence and provide a penalty not exceeding $20 000;

(b) exempt a specified person, or specified class of persons, from the requirements of all or any of the provisions of this Act;

(c) provide for all or any of the provisions of this Act not to apply in relation to a specified animal or a specified class of animals;

(d) adopt codes of practice relating to the use, care, welfare, safety or health of animals either —

(i) as modified by the regulations;

(ii) as they exist at a particular date; or

(iii) as they are amended from time to time;

and

(e) prescribe the matters in respect of which fees are payable under this Act, the amount of those fees, and the persons who are to pay them.

[Part 7 omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]

Notes

[1] This is a compilation of the *Animal Welfare Act 2002* and includes the amendments made by the other written laws referred to in the following table [1a]. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Animal Welfare Act 2002	33 of 2002	15 Nov 2002	4 Apr 2003 (see s. 2 and *Gazette* 4 Apr 2003 p. 1023)
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 7 [2]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 12 Div. 1 [3]	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347)
Reprint 1: The *Animal Welfare Act 2002* as at 13 Oct 2006 (includes amendments listed above)			
Financial Legislation Amendment and Repeal Act 2006 s. 4 and 5(1)	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and *Gazette* 19 Jan 2007 p. 137)

[1a] On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement

Courts Legislation Amendment and Repeal Act 2004 s. 142 [4]	59 of 2004	23 Nov 2004	To be proclaimed (see s. 2)

[2] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[3] References in the Act to the Director General were replaced by references to the CEO, see the *Machinery of Government (Miscellaneous Amendments) Act 200*6 Pt. 12 Div. 1. The *Machinery of Government (Miscellaneous Amendments) Act 200*6 s. 454 is a general transitional provision that applies to references to the Director General in other written laws.

[4] On the date as at which this reprint was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which give effect to Sch. 2, had not come into operation. It reads as follows:

"

142. Other amendments to various Acts

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

".

Schedule 2 cl. 5 reads as follows:

"

Schedule 2 — Other amendments to Acts

5. ***Animal Welfare Act 2002***

s. 74(3) [5]	Delete "a Local Court" and insert instead — " the Magistrates Court ".
s. 75(1) [5]	Delete "A Local Court" and insert instead — " The Magistrates Court ".

".

[5] The amendments to s. 74(3) and 75(1) in the *Courts Legislation Amendment and Repeal Act 2004* s. 142 would not be included because the subsections it seeks to amend were repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 2 Div. 7.