

**Amendment defeated.****House divided on motion:***Ayes, 46*

Allan, Ms	Ingram, Mr
Andrews, Mr	Kosky, Ms
Batchelor, Mr	Langdon, Mr
Beattie, Ms	Languiller, Mr
Brooks, Mr	Lim, Mr
Brumby, Mr	Lupton, Mr
Cameron, Mr	Maddigan, Mrs
Campbell, Ms	Marshall, Ms
Carli, Mr	Merlino, Mr
Crutchfield, Mr	Morand, Ms
D'Ambrosio, Ms	Munt, Ms
Donnellan, Mr	Nardella, Mr
Duncan, Ms	Neville, Ms
Eren, Mr	Noonan, Mr
Foley, Mr	Pallas, Mr
Graley, Ms	Pandazopoulos, Mr
Green, Ms	Pike, Ms
Haermeyer, Mr	Richardson, Ms
Hardman, Mr	Scott, Mr
Harkness, Dr	Seitz, Mr
Helper, Mr	Stensholt, Mr
Holding, Mr	Trezise, Mr
Hudson, Mr	Wynne, Mr

*Noes, 30*

Asher, Ms	Northe, Mr
Baillieu, Mr	O'Brien, Mr
Blackwood, Mr	Powell, Mrs
Burgess, Mr	Ryan, Mr
Clark, Mr	Shardey, Mrs
Crisp, Mr	Smith, Mr K.
Delahunty, Mr	Smith, Mr R.
Fyffe, Mrs	Sykes, Dr
Hodgett, Mr	Thompson, Mr
Jasper, Mr	Tilley, Mr
Kotsiras, Mr	Victoria, Mrs
McIntosh, Mr	Wakeling, Mr
Morris, Mr	Walsh, Mr
Mulder, Mr	Weller, Mr
Napthine, Dr	Wells, Mr

**Motion agreed to.****Read second time.***Third reading***Motion agreed to.****Read third time.****ANIMALS LEGISLATION AMENDMENT  
(ANIMAL CARE) BILL**

16:17

*Statement of compatibility***Mr HELPER (Minister for Agriculture) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:**

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Animals Legislation Amendment (Animal Care) Bill 2007.

In my opinion, the Animals Legislation Amendment (Animal Care) Bill 2007, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

**Overview of bill**

The purpose of the Animals Legislation Amendment (Animal Care) Bill 2007 ('the bill') is to improve the administration and enforcement of animal welfare legislation and provide for more effective management and protection of animals in Victoria.

The bill amends the Impounding of Livestock Act 1994 ('the Livestock Act'), the Domestic (Feral and Nuisance) Animals Act 1994 ('the DFNA Act'), and the Prevention of Cruelty to Animals Act 1986 ('the POCTA act') to:

implement government's pre-election commitment to increase penalty levels for animal cruelty offences;

strengthen the POCTA act to better handle investigations and prosecutions;

provide wider powers of search and seizure, and disposal of animals that are abandoned or neglected;

establish microchip animal identification standards to underpin voluntary permanent identification of horses;

provide for notices to be issued to owners to control their trespassing animals;

create a power to impound suspected restricted breed dogs pending the declaration process;

provide for infringement notices to be issued for minor dog attacks and other minor offences;

make it an offence to undertake prohibited procedures on an animal;

make it an offence to use, set or sell non-approved harmful animal traps;

make it an offence to breed animals that have a proved heritable defect that causes serious welfare consequences in their offspring;

provide for an annual licence for accredited rodeo operators; and

make a number of machinery amendments to facilitate the administration of powers and enforcement.

The bill also rearranges existing provisions setting out the powers of authorised officers and inspectors in the DFNA Act and the POCTA Act to improve the structure of the enforcement powers.

### Human rights issues

#### 1. *Human rights protected by the charter that are relevant to the bill*

The bill engages four of the human rights provided for in the Charter of Human Rights and Responsibilities ('the charter').

##### *Section 11: Freedom from forced work*

Section 11 establishes a right for an individual not to be held in slavery or servitude, and not to be made to perform forced or compulsory labour.

In the bill, the following two provisions engage the right to freedom from forced work:

Where an authorised officer of a council reasonably believes that livestock are not adequately confined on a property, he or she may serve a notice on the owner of the livestock under the Livestock Act, directing the owner to undertake measures set out in the notice to ensure the livestock are adequately confined. A failure to comply with the notice will result in a penalty not exceeding 50 penalty units. The requirement to adequately confine the animal is in the general interest of the community, since trespassing livestock, particularly on roads, can pose a danger to the public, as well as to the animal itself. For this reason, the requirement to confine the animal falls within the exemption for forced work in section 11(3)(c) of the charter as it forms part of normal civil obligations.

As part of the restructure of the enforcement powers under the DFNA Act, the bill provides that the Magistrates' Court may order the owner of a dog or cat to perform works, where the owner is found guilty of certain trespassing offences under the DFNA Act, for the purpose of ensuring the animal is not able to escape from the owner's premises again. Since the owner is ordered to perform work in the community under a lawful court order, this is exempt from the prohibition on forced labour.

The bill does not limit the right to freedom from forced work. Therefore, the right is not discussed further in this statement.

##### *Section 13: Privacy and reputation*

Section 13 establishes a right for an individual not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

In the bill, there are a number of provisions which engage the right to privacy. However, in each instance, the interference with privacy is neither unlawful or arbitrary for the reasons set out below:

Where an authorised officer reasonably suspects that there is an abandoned animal in or on private premises, including residential premises under the DFNA Act, but not including a building occupied as a residence under the Livestock Act, that officer has the power to enter the premises and impound the animal. The power can only be exercised at the request of the owner or occupier of the premises under the DFNA Act, and cannot be exercised in relation to a building occupied as a residence under the Livestock Act. Therefore, if a person resides at the premises, there is no interference with their right. Further, the interference with privacy under the DFNA Act and the Livestock Act is nevertheless lawful and not arbitrary, because the power to enter the person's home is confined to circumstances where the authorised officer has a reasonable suspicion that there is an abandoned animal in or on the premises.

The bill provides that an authorised officer under the DFNA Act may require the owner of an animal suspected of committing an offence, to provide his or her current address. The power is only available in defined circumstances, where the officer reasonably suspects the owner has committed an offence under the act and does not have sufficient information about the owner to enable the commencement of prosecution for the offence.

An authorised officer that believes, on reasonable grounds, certain infringement offences under the DFNA Act have been committed, may request a person to give his or her name and place of residence, and ask questions. This requirement is a re-enactment of an existing provision, except for the inclusion of additional infringement offences. Further, the decision to interfere with privacy in these cases can only occur where the officer has a reasonable belief an offence has been committed.

The bill authorises an inspector to enter any premises, not including a person's dwelling, under the POCTA Act and seize or dispose of an animal if he or she believes on reasonable grounds that the animal is abandoned, distressed or disabled. However, since an inspector may not exercise this power of entry in relation to a person's dwelling, this ensures that there is no or minimal interference with a person's rights under section 13 of the charter.

The bill provides an inspector the power to enter and search premises, including residential premises, as well as a person's vehicle, where the inspector believes on reasonable grounds that there is in or on the premises or vehicle evidence of a contravention of the POCTA Act. This power of entry and search can only be exercised if a warrant has been issued by a court. Importantly, the warrant can only be granted by a court in accordance with the rules relating to search warrants under the Magistrates' Court Act 1989. The power is only available in discretely defined circumstances, whereby the court determines that it is necessary to support the objectives of the POCTA Act to protect the welfare of animals.

A POCTA inspector may request that a person provide information when exercising a power of entry under the act, as well request a person to provide their name and address. These powers are largely a re-enactment of existing powers. The power to request information may only be exercised to the extent that is reasonably necessary to determine whether

an offence against the act or regulations has been or is about to be committed. The power to request a person's name and address can only be exercised where an inspector believes on reasonable grounds the person has committed an offence against the act.

A magistrate may by order, authorise an inspector under the POCTA Act to enter premises and search for an animal. This power is only available where the magistrate is satisfied by the evidence of an inspector that there are reasonable grounds to believe the person is contravening a banning order under the act.

A POCTA inspector may enter premises, not including a person's dwelling, under the POCTA Act in certain emergency situations. Since an inspector may not exercise this power of entry in relation to a person's dwelling, this ensures that there is minimal interference with a person's privacy. This power is re-enacted as a result of the improved restructure of the enforcement powers. The power of entry can only be exercised where the inspector suspects on reasonable grounds that on the premises, baiting, trap-shooting or the use of animals as lures is occurring, that animals are confined without food or water, that the animals are in an entanglement, tether or bog, showing signs of pain or suffering, or that they are likely to cause death or serious injury to any person or another animal.

A specialist inspector may enter premises, not including a person's dwelling, under the POCTA Act for the purpose of exercising enforcement powers under the act and regulations. This power is a re-enactment of an existing power under the act. The power can only be exercised with the written authority of the minister, and not in relation to a person's dwelling, therefore minimising the interference with privacy.

An authorised officer of a council under the DFNA Act and a POCTA inspector may apply to the magistrate for the issue of a warrant to enter and search premises. These powers are re-enacted as a result of the improved re-structure of the enforcement powers. This power of entry and search can only be exercised if a warrant has been issued by a court, and the warrant can only be granted by a court in accordance with the rules relating to search warrants under the Magistrates' Court Act 1989. Further, an officer may only apply for a warrant under the DFNA Act where he or she believes on reasonable grounds an animal is present on premises, which the officer is entitled to seize under the act. Similarly, an inspector may apply for a warrant under the POCTA Act only where the inspector believes on reasonable grounds that there is on the premises an abandoned, diseased, distressed or disabled animal, the inspector believes on reasonable grounds the welfare of the animal is at risk, or a contravention of the act is occurring or has occurred.

A person must not refuse admission to a POCTA inspector exercising a power of entry under the act. This is an existing requirement, and must only be complied with in respect to inspector's powers of entry under the act.

Accordingly, the bill does not provide for the unlawful or arbitrary interference with privacy and therefore there is no limitation on the right to privacy. Therefore, this right is not discussed further in this statement.

#### *Section 20: property rights*

Section 20 establishes a right for an individual not to be deprived of his or her property other than in accordance with

law. This right ensures that the institution of property is recognised and acknowledges that the state of Victoria is a market economy that depends on the institution of private property. The right in section 20 of the charter only prohibits a deprivation of property that is carried out other than in accordance with law. This requires that the powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than arbitrary or unclear, and are accessible to the public and formulated precisely.

In the bill, there are a number of provisions which engage the right to property. However, in each instance, the deprivation of property meets the conditions for lawfulness described above and is therefore in accordance with law, as discussed below:

The bill permits an authorised officer under the DFNA Act or the Livestock Act to seize and dispose of an animal the officer reasonably suspects to be abandoned on any private property. The power to seize and dispose of an abandoned animal found on any private premises can only be exercised if certain articulated criteria under the act are met. An officer can impound an animal where the officer reasonably suspects the owner of the animal has absconded and the animal is abandoned and at peril. An officer must leave a notice in writing at the premises or with the occupier at the time of seizing the animal, stating that the animal has been seized and the contact details of the person holding the animal. A further notice must be served under the DFNA Act on the owner of the animal within four days of seizure stating that the animal will be disposed of by sale, re-housing arrangements or humane euthanasia if the animal is not reclaimed within 14 days. The provisions permitting the impounding and disposal of animals in these cases are therefore limited and subject to a number of safeguards.

The bill provides that an authorised officer under the DFNA Act may seize a dog suspected of being a restricted breed dog, until such time the breed is determined. This provision is designed to supplement existing restricted breed legislation regulating the ownership and keeping of dogs whose importation into Australia is prohibited under the Customs (Prohibited Imports) Regulations 1956 (Commonwealth). An animal will only be seized if the authorised officer has a reasonable belief the dog is a restricted breed. If it is found that the seized dog is not a restricted breed dog, the animal will be returned to its owner, and the owner will not be liable for any costs to council for retaining custody of the dog. Where the dog is found to be a restricted breed dog, the animal may be recovered in limited circumstances or disposed of in accordance with disposal powers under the act.

The bill provides that where an animal is found abandoned, distressed or disabled on private premises, not including a person's dwelling, an inspector under the POCTA Act may either immediately seize the animal, or seize the animal within two days of first finding the animal. The inspector must reasonably believe the animal is at risk before immediately seizing the animal and a notice must be served on the owner, stating that animal may be recovered within 14 days after service of the notice and the contact details of the person holding the animal. Where an animal is found abandoned on private premises, an inspector must leave notice in writing at the premises before seizing the animal, stating that the inspector intends to seize the animal within two days of giving the notice if the animal is not recovered.

The bill provides that an inspector has the power to apply to the court to order the disposal of a seized animal where the owner or person in charge of the animal has been charged with an offence against the POCTA Act or regulations, proceedings have commenced against the person for an offence under the act or regulations, where that person has been found guilty for an offence under the act or regulations, or the welfare of the animal is at risk. An order for the disposal of an animal will only be made where the return of the animal to its owner or carer will put the animal's welfare at risk, the person has been found guilty of an offence under the act or regulations, or fails to pay a bond ordered by the court. The disposal of a seized animal will therefore only occur in confined circumstances on a case by case basis.

The bill provides that an inspector may dispose of an animal where an animal has been seized under the POCTA Act and the owner or person in charge is able to be contacted or a notice of seizure has been sent to their last known address, and that person fails to recover the animal within the specified time. Only if these criteria are satisfied can the inspector dispose of the animal. Further, the costs for maintaining an animal for a full 12-month period can be considerable, and often the council will not have the resources to provide ongoing care.

The bill provides that an authorised officer under the DFNA Act, and an inspector under the POCTA Act, may seize, retain and dispose of animals and other things in specified circumstances. These powers are mainly existing powers and have been re-enacted to improve the structure of the enforcement powers under the acts. The law clearly articulates the circumstances in which the property may be seized, retained or disposed of. The power to seize an animal or thing may be exercised in such cases where the owner of the animal is guilty of an offence or suspected of committing an offence under the act, the animal is found trespassing, the animal's welfare is at risk, the animal poses a danger to the community, to provide support and care to the animal, or to assist in the investigation of an offence under the act. Further, the power to seize an animal or thing is often exercised under a warrant issued by a magistrate or in emergency situations where an animal is in need of urgent care. The power to retain or dispose of an animal only occurs if certain criteria are satisfied, and includes where court proceedings are on foot, where a veterinary practitioner has certified that the animal should be immediately destroyed, where the owner or person in charge has failed to recover the animal, or where returning the animal to places its welfare at risk.

A magistrate may order the forfeiture of seized animals or things to the Crown under the POCTA Act. This is an existing power under the act and in accordance with the law. Further, a magistrate may only order the forfeiture of an animal if a person found guilty of an offence under the act or regulations is the owner or person in charge of the animal, or the seized thing was used by a person in connection with an offence against the act or regulations.

The right not to be deprived of property other than in accordance with the law is therefore not limited by the bill. Accordingly, this right is not discussed further in this statement.

*Section 25(1): The right to be presumed innocent*

Section 25(1) provides that an individual charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

The bill limits this right because it makes section 15A of the POCTA Act an 'operator onus' offence under Part 6AA of the Road Safety Act 1986. Section 15A of the POCTA Act makes it an offence for a person to drive a motor vehicle with a dog travelling unsecured in the tray or trailer of the vehicle. The operator onus enforcement system applies to certain traffic, parking and tolling offences where the identity of the offender is not established at the time the offence is detected. The system provides that the person last known to have possession or control of the vehicle is liable for the offence unless the person can identify another person to whom they had passed control of the vehicle, can demonstrate that the vehicle was stolen or that the next person in the chain of control cannot be identified for a legitimate reason.

## 2. *Consideration of reasonable limitations — section 7(2)*

*Section 25(1): The right to be presumed innocent*

### (a) *the nature of the right being limited*

The right to be presumed innocent until proven guilty is a fundamental common law principle and a fundamental value of a free and democratic society based on human dignity, equality and freedom. It requires that the prosecution has the burden of proving that the accused committed the charged offence and must prove all elements of a criminal offence. However the right is not absolute and may be subject to reasonable limitations.

### (b) *the importance of the purpose of the limitation*

Driving a vehicle with an unrestrained dog on an open tray or trailer has a high likelihood of causing an unnecessary serious injury or death to the dog. It can also lead to serious road safety risks for other road users if a dog falls off a vehicle. Society is increasingly concerned with protecting animal welfare and attitudes have changed such that driving a vehicle with an unrestrained dog is generally considered unacceptable by society. Without the proposed utilisation of the operator onus system, it is very difficult for the prosecution to provide evidence as to the driver of the vehicle because the general public or inspector that witnesses the offence often cannot identify the driver and cannot pull the vehicle over.

### (c) *the nature and the extent of the limitation*

A reverse onus provision may undermine the presumption of innocence because there is a risk that an accused can be convicted despite reasonable doubt of his or her guilt. By making section 15A of the POCTA Act an 'operator onus' offence, the onus of proof is reversed in respect of the identity of the offender, which is difficult for the prosecution to prove. It is within the knowledge of the person last known to be in possession or control of the vehicle to know who the next person to take possession or control of the vehicle was. If the person can provide sufficient information via a nomination, the onus shifts to the person nominated to disprove that they were in control of the vehicle. A chain of such nominations may be made until a responsible person is identified or until it is established that the identity of the person ultimately responsible cannot be identified. This mechanism minimises the risk that the person last known to be in possession or control of the vehicle can be convicted where there is a

reasonable doubt about whether he or she was driving the vehicle. The maximum court penalty for the offence is proposed under the bill to be 10 penalty units, which is at the low end of the scale of penalties and minimises the impact of the limitation.

*(d) the relationship between the limitation and its purpose*

The use of the operator onus system will significantly improve the ability to enforce this offence and therefore the limitation is strongly aligned to its purpose.

*(e) any less restrictive means reasonably available to achieve its purpose*

There are no less restrictive means reasonably available to achieve the purpose of securing convictions for the offence.

*(f) any other relevant factors*

The operator onus system is well established in Victoria for vehicle related offences.

**Conclusion**

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, although it does limit one human right, the limitation is reasonable and proportionate. The limitation strikes the correct balance by providing the person last known to be in possession or control of the vehicle with the ability to nominate who the next person to take possession or control of the vehicle was.

JOE HELPER, MP  
Minister for Agriculture.

*Second reading*

**Mr HELPER** (Minister for Agriculture) — I move:

That this bill now be read a second time.

The Animals Legislation Amendment (Animal Care) Bill 2007 makes amendments to three acts within the agriculture portfolio: the Domestic (Feral and Nuisance) Animals Act 1994, the Impounding of Livestock Act 1994, and the Prevention of Cruelty to Animals Act 1986.

Firstly, I will speak about the amendments to the Domestic (Feral and Nuisance) Animals Act 1994.

The amendments to the act will improve provisions relating to the administration and enforcement of that act, introduce higher penalties, provide the power to issue infringement notices for certain offences, and provide standards for permanent identification of horses by microchip implant in Victoria.

The act will be amended to increase the maximum penalty that can be prescribed under the regulations for an infringement notice offence from two penalty units to five penalty units. Also, the maximum penalty that can be imposed for an offence against the regulations

will be increased from 5 penalty units to 10 penalty units. This is consistent with current government policy, particularly in light of the Infringements Act 2006.

A primary purpose of the act is to identify cats and dogs through their registration with local council. Currently, the act provides that owners of a cat or dog must apply for registration or renewal of registration of the animal, a failure to do so resulting in a penalty not exceeding five penalty units. Despite its importance, some owners appear to risk being caught breaching this requirement given that it is cheaper to take the risk of paying the occasional low penalty rather than the annual registration fee. The act is therefore to be amended so the penalty is increased to a maximum court penalty of 10 penalty units for non-compliance.

Despite the minor nature of existing offences under the act relating to the permanent identification of cats and dogs, and the displaying of warning signs by owners of dangerous, menacing and restricted breed dogs, these offences can only be enforced by prosecution in court, which is costly and not always appropriate. Similarly, many dog attacks are quite minor in nature, yet such offences can only be prosecuted in court. Therefore, the act is to be amended to provide authorised officers with the power to issue infringement notices for these offences. The bill also increases the penalty for more serious dog attacks to a maximum court penalty of 20 penalty units.

As it stands, there is no head of power under the act to allow for the service of infringement notices for any offence against the regulations. Many of these offences are minor in nature and the cost to the department and local councils to prosecute is significant. It is therefore considered appropriate to include in the act the power to serve an infringement notice by an authorised officer for an offence against the regulations.

In 2003, the government introduced restricted breed dog legislation into Victoria regulating the ownership and keeping of those dogs whose importation into Australia is prohibited under the Commonwealth Customs (Prohibited Imports) Regulations 1956. Currently under the act, an authorised officer of a council may seize a restricted breed dog in certain non-compliance circumstances. To further support compliance with the government's restricted breed legislation, the bill will allow an authorised officer to seize a dog, solely on the basis that the officer reasonably believes the dog is a restricted breed dog, until such time that the breed is determined. This will provide immediate protection for the community and

