

Animal Care and Protection and Other Legislation Amendment Bill 2012

Annotated Bill

A Bill

for

An Act to amend the *Animal Care and Protection Act 2001* to ensure animal welfare obligations apply to acts done under Aboriginal tradition or Torres Strait Islander custom, and to make consequential amendments to the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, the *Aurukun and Mornington Shire Leases Act 1978* and the *Nature Conservation Act 1992*.

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Animal Care and Protection and Other Legislation Amendment Act 2012*.

Clause 1 states that the short title of the Act is the *Animal Care and Protection and Other Legislation Amendment Act 2012*.

Part 2 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

2 Act amended

This part amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Clause 2 states that this part amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

3 Amendment of s 61 (Right of Aborigines and Torres Strait Islanders to particular natural resources)

(1) Section 61(1), ‘Subject’—

omit, insert—

‘Subject to the *Animal Care and Protection Act 2001* and’.

(2) Section 61(1), after ‘consumption’—

insert—

‘, in the community government or IRC area,’.

Clause 3 amends section 61 (Right of Aborigines and Torres Strait Islanders to particular natural resources) so that an authorisation to deal with animals under section 61 is subject to the *Animal Care and Protection Act 2001* and sections 62 and 93 of the *Nature Conservation Act 1992* but is not subject to any other provisions of any Act. Previously an authorisation under section 61 was not subject to the *Animal Care and Protection Act 2001*.

Clause 3 also clarifies that the marine animals taken under section 61 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* are to be consumed in the community government or Indigenous Regional Council area by members of that community.

Part 3 Amendment of Animal Care and Protection Act 2001

4 Act amended

This part amends the *Animal Care and Protection Act 2001*.

Clause 4 states that this part amends the *Animal Care and Protection Act 2001*.

5 Amendment of s 5 (Act binds all persons)

Section 5(1), ‘8’—

omit, insert—

‘7’.

Clause 5 amends section 5 (Act binds all persons) to remove references to section 8 of the *Animal Care and Protection Act 2001*. This is necessary as a consequence of the amendment of section 8 by clause 8 of the Bill.

The effect of the amended section 5 is that the *Animal Care and Protection Act 2001* binds all persons, except where sections 6, 6A or 7 apply. Previously, section 8 was also included in section 5 as an exception to the general application of the Act.

6 Insertion of new s 6A

After section 6—
insert—

‘6A Relationship with Nature Conservation Act 1992

‘(1) This Act does not affect the application of the *Nature Conservation Act 1992* other than to the extent expressly provided for in this Act.

‘(2) This Act applies to an act done, or omission made, by a person for the purposes of either of the following if authorised under the *Nature Conservation Act 1992*—

- (a) taking, keeping or using an animal to exercise Aboriginal tradition or Island custom;
- (b) using an animal for a scientific purpose.

‘(3) A person does not commit an offence under this Act only because the person does an act or makes an omission that—

- (a) is authorised under the *Nature Conservation Act 1992*, other than an act or omission mentioned in subsection (2); and
- (b) would, apart from this subsection, constitute an offence under this Act.’.

Clause 6 inserts new section 6A (Relationship with Nature Conservation Act 1992) which concerns the relationship between the *Animal Care and Protection Act 2001* and the *Nature Conservation Act 1992*.

The effect of the new section 6A is that the *Animal Care and Protection Act 2001* applies where a person acting under the *Nature Conservation Act 1992* takes, keeps or uses an animal to exercise Aboriginal tradition or Islander custom or uses an animal for scientific purposes. A person who lawfully does any other act authorised under the *Nature Conservation Act 1992* is taken not to commit an offence under the *Animal Care and Protection Act 2001* by reason only of doing that act.

The new section 6A generally preserves the substantive relationship between the *Animal Care and Protection Act 2001* and the *Nature Conservation Act 1992* that was previously provided under section 7 of the *Animal Care and Protection Act 2001* except to provide that a person acting under the *Nature Conservation Act 1992* who takes, keeps or uses an animal to exercise Aboriginal tradition or Islander custom must comply with the *Animal Care and Protection Act 2001*. There are several provisions under the *Nature Conservation Act 1992* which authorise (or upon commencement would authorise) dealings with animals in accordance with Aboriginal tradition and Torres Strait Islander custom.

7 Amendment of s 7 (Relationship with certain other Acts)

(1) Section 7(1)(b)—
omit.

(2) Section 7(1)(c)—

renumber as section 7(1)(b).
(3) Section 7(2), ‘but for’—
omit, insert—
‘apart from’.

Clause 7 amends section 7 (Relationship with certain other Acts) to remove references to the *Nature Conservation Act 1992* as a consequence of the insertion by Clause 6 of new section 6A. As a result section 7 will only apply to acts done under the *Fisheries Act 1994* or the *Racing Act 2002*. In effect, section 7 as amended will mean a person who lawfully deals with animals under either of these Acts, unless they are used for a scientific purpose, is taken not to commit an offence under the *Animal Care and Protection Act 2001* by reason only of doing that act.

8 Replacement of s 8 (Aboriginal tradition and Island custom)

Section 8—
omit, insert—

‘8 Relationship with native title

‘A person does not avoid liability to be prosecuted for an offence under this Act only because the act or omission that constitutes the offence happens in the exercise or enjoyment of native title rights and interests.’

Clause 8 replaces the provisions of section 8 (Aboriginal tradition and Island custom) with a new provision.

Previously, section 8 excluded from the application of the *Animal Care and Protection Act 2001*, acts done or omissions made by Aboriginal or Torres Strait Islander people in accordance with Aboriginal tradition or Islander custom.

The amended section 8 (Relationship with native title) makes it clear that a person does not avoid liability for prosecution for an offence under the Act only because the act or omission that constituted the offence happens in the exercise or enjoyment of native title rights or interests.

9 Amendment of s 38 (Operation of pt 6)

Section 38(1), ‘42’—
omit, insert—
‘41A’.

Clause 9 amends section 38 (Operation of pt 6) to include the new section 41A as an offence exemption to the general animal offences set out in Chapter 3 of the Act. Where an offence exemption applies to an act or omission, it protects a person from committing the offence that would otherwise be committed by the act or omission.

10 Insertion of new s 41A

After section 41—

insert—

‘41A Killing an animal under Aboriginal tradition, Island custom or native title

(1) This section applies for an offence if the act that constitutes the offence—

(a) involves the killing of an animal; and

(b) is done—

(i) in the exercise of native title rights and interests; or

(ii) under the authority of another law of the State or the Commonwealth to take the animal to exercise Aboriginal tradition or Island custom; or

(iii) under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 61; or

(iv) under the *Aurukun and Mornington Shire Leases Act 1978*, section 26.

Example—

hunting and killing an animal for personal consumption

‘(2) It is an offence exemption for the offence if the act is done in a way that causes the animal as little pain as is reasonable.

‘(3) In this section—

take, under the authority of another law, includes take, keep or use under the authority of the *Nature Conservation Act 1992*

Clause 10 inserts new section 41A (Killing an animal under Aboriginal tradition, Island custom or native title) to apply specific animal welfare obligations to certain activities that involve the killing of an animal in order to balance the interests and rights of Aboriginal and Torres Strait Islander people in maintaining traditional and customary practices with the welfare of animals.

The offence exemption applies to a person who kills an animal in the exercise of native title rights or interests or under the authority of a Queensland or Commonwealth law to take the animal under Aboriginal tradition or Islander custom, under section 61 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* or under section 26 of the *Aurukun and Mornington Shire Council Leases Act 1978*.

To ensure that “take” in the context of the new section 41A is construed broadly, subsection (3) makes it clear that for the purposes of the new section 41A, “take” includes “taking” “keeping” and “using” within the meaning of the *Nature Conservation Act 1992*.

The effect of new section 41A is that a person who hunts an animal in such circumstances does not commit an offence provided the act that would otherwise

constitute an offence is done in a way that causes the animal as little pain as is reasonable.

Part 4 Amendment of Aurukun and Mornington Shire Leases Act 1978

11 Act amended

This part amends the *Aurukun and Mornington Shire Leases Act 1978*.

Clause 11 states that this part amends the *Aurukun and Mornington Shire Leases Act 1978*.

12 Amendment of s 26 (Preservation of Aborigines' hunting and gathering rights)

Section 26(1), after '93,'—
insert—

'and, for paragraph (a), subject also to the *Animal Care and Protection Act 2001*,'.

Clause 12 amends section 26 (Preservation of Aborigines' hunting and gathering rights) so that an authorisation to deal with native fauna under section 26(1)(a) is subject to the *Animal Care and Protection Act 2001* and sections 62 and 93 of the *Nature Conservation Act 1992* but is not subject to any other provisions of any Act. Previously an authorisation under section 26(1)(a) was not subject to the *Animal Care and Protection Act 2001*.

Part 5 Amendment of Nature Conservation Act 1992

13 Act amended

This part amends the *Nature Conservation Act 1992*.

Clause 13 states that this part amends the *Nature Conservation Act 1992*.

14 Amendment of s 93 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife)

Section 93(1), after 'Act,'—
insert—

'but subject to the *Animal Care and Protection Act 2001*,'.

Clause 14 amends section 93 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife) so that any dealings with protected wildlife under that section

are subject to the *Animal Care and Protection Act 2001* but not any other Act. Section 93 previously applied despite any other Act.

As yet, section 93 of the *Nature Conservation Act 1992* has not commenced. However, if it commenced in its previous form, it could prevent the *Animal Care and Protection Act 2001* from applying to dealings with animals under Aboriginal tradition or Islander custom in places other than protected areas (within the meaning of the *Nature Conservation Act 1992*).