

12 March 2014

Our ref 339/39

Mr Rob Hansen, Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email to: arec@parliament.qld.gov.au

Dear Research Director

Criminal Code and Another Act (Stock) Amendment Bill 2014

Thank you for inviting the Society to provide comment on the *Criminal Code and Another Act (Stock) Amendment Bill 2014* (the Bill). The Society has prepared this submission with the assistance of our Criminal Law Committee.

As highlighted in the Explanatory Notes, the Society was a representative organisation on the Stock Working Group, and was also provided a consultation copy of the draft Bill.

The Society has long advocated that good legislation is the product of good consultation. We are grateful to the Government for the opportunity to contribute our views through this extensive review process.

Given the timeframes available for making submissions and the commitments of our Committee members, it has not been possible to conduct an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended consequences or fundamental legislative principles which we have not identified.

1. Forced muster orders

Removal of stock on to a person's land

The Society notes that it may be beneficial to ensure that a person can apply to the court to have stock removed from his or her land where it has strayed.

Whilst local laws may deal with this issue to an extent, laws between council areas may differ and amalgamation of council areas is constantly occurring. As such, the Society considers

that it would be beneficial to introduce a consistent state-wide regime that is capable of legislative review. This would address any jurisdictional conflicts that may be created by having separate regulations and rules and also provide the opportunity for the legislation to be amended, if required.

Treatment of animal or equipment for disease or pest

We suggest that the legislation should make provision for the court's forced muster order to mandate that any horses, dogs or equipment used to muster stray stock must have the animal or equipment treated for disease or pest. This could form a new subsection in proposed s789AE.

Length of order

We note proposed s789AE(h) states that the order lapses 6 months after it is made.

A default expiration period of 6 months may be too long. A more equitable arrangement, which will provide greater clarity for the parties as to when a muster will occur, is to make the default position a shorter period (perhaps of 30 days), with the option for the stock owner to request further time (up to 6 months) where it is shown to be necessary. This will allow the stock owner to make submissions as to when more time may be needed to execute the order.

2. Stock disposal orders

Proposed s450EF – Content of order

The Society highlights that the *Personal Property Securities Act 2009* and the Personal Property Securities Register may impact on the operation of the Bill. The Bill provides that the court must give priority to any amount owing, immediately before the sale, to an entity under a security interest registered for the animal under the *Personal Property Securities Act 2009*. Issues which we suggest should be considered are:

- Ensuring that the Register is checked to ascertain the identity of secured parties;
- Providing notice to parties regarding any potential order that might be made; and
- Whether secured parties have a right to be heard on the order.

Due to the short timeframes to provide feedback we have been unable to consider these issues in detail, however we suggest that this is a matter which should be further investigated and addressed in the legislation to ensure there is a mandated process for secured parties to be notified of proceedings.

We also note proposed s450EH suggests that a stock disposal order for an animal is sufficient authority for the Commissioner of the Police Service to convey clear title of the animal to any buyer under the order. However, we are unsure how this will impact interests of secured parties and again suggest that clarification may be required.

3. Amendments to monetary penalty amounts for stock offences

The Society understands the rationale behind converting the dollar amounts of fines to penalty units. This will contribute to consistency with the rest of the Code. However, we note two issues.

First, for some offences, the proposed minimum fines are double or more than the current minimum fines. Second, the *Penalties and Sentences (Indexation) Amendment Bill 2013* (recently passed by Parliament) could affect the actual value of the fine amounts (particularly those with high prescribed maximum penalty units), where indexation is envisaged to occur on a yearly basis. For example the offence of 'unlawfully using stock' under s445 will now prescribe a maximum penalty of 455 penalty units. The amount of this penalty, with a 3.5% increase over 10 years, will raise the penalty from \$50,000 to approximately \$70,000. We suggest that though the value of penalty unit itself may rise incrementally, this could have substantial effect on larger penalties. This may not be in line with the expectation of the penalty to be imposed as was envisioned in the drafting of the maximum penalty unit.

The Society suggests that the Parliamentary Committee may wish to review all the recommendations from the Stock Working Group, and consider the legislative changes proposed in this context.

Thank you for the opportunity to provide these comments. Please contact our policy solicitors for further inquiries.

Yours faithfully



Ian Brown
President