



Queensland

Criminal Code and Another Act (Stock) Amendment Act 2014

Act No. 13 of 2014



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Criminal Code and Another Act (Stock) Amendment Act 2014

Act No. 13 of 2014

An Act to amend the Criminal Code in relation to the disposal of stock seized in connection with a charge and to increase penalties for particular offences, and to amend the Police Powers and Responsibilities Act 2000 to provide for the forced muster of stray stock and for other particular purposes

[Assented to 9 April 2014]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Code and Another Act (Stock) Amendment Act 2014*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Criminal Code

3 Code amended

This part amends the Criminal Code.

4 Amendment of s 398 (Punishment of stealing)

Section 398, under the heading ‘Punishment in special cases’, section 2(1), ‘\$1000’—

omit, insert—

10 penalty units

5 Amendment of s 444A (Killing animals with intent to steal)

(1) Section 444A(2), ‘\$200’—

omit, insert—

10 penalty units

- (2) Section 444A(3), '\$50000'—
omit, insert—

455 penalty units

6 Amendment of s 444B (Using registered brands with criminal intention)

- (1) Section 444B(2), '\$200'—
omit, insert—

4 penalty units

- (2) Section 444B(3), '\$50000'—
omit, insert—

455 penalty units

7 Amendment of s 445 (Unlawfully using stock)

- (1) Section 445(1), '\$200'—
omit, insert—

4 penalty units

- (2) Section 445(2), '\$50000'—
omit, insert—

455 penalty units

8 Amendment of s 446 (Suspicion of stealing stock)

- (1) Section 446(1), '\$200'—
omit, insert—

4 penalty units

- (2) Section 446(2), '\$50000'—
omit, insert—

[s 9]

455 penalty units

9 Amendment of s 447 (Illegal branding)

(1) Section 447(1), '\$200'—

omit, insert—

4 penalty units

(2) Section 447(2), '\$50000'—

omit, insert—

455 penalty units

10 Amendment of s 448 (Defacing brands)

(1) Section 448(1), '\$200'—

omit, insert—

4 penalty units

(2) Section 448(2), '\$50000'—

omit, insert—

455 penalty units

11 Amendment of s 448A (Having in possession stock with defaced brand)

(1) Section 448A(1), '\$200'—

omit, insert—

4 penalty units

(2) Section 448A(2), '\$50000'—

omit, insert—

455 penalty units

12 Insertion of new ch 44A, ch div 1, hdg

Before section 450D—

insert—

Chapter division 1 Preliminary

13 Amendment of s 450D (Definition for ch 44A)

(1) Section 450D, heading, ‘Definition’—

omit, insert—

Definitions

(2) Section 450D—

insert—

adequate prescribed record, of an animal, means a prescribed record that is a true representation of the animal.

prescribed record, of an animal, means a record of the animal (including of any brands, permitted brand imprinting positions, ear marks, or tags on the animal) consisting of photographs, tapes, films, digital imagery or any other means of visual reproduction (or any combination of them).

stock disposal order see section 450EB(1).

14 Replacement of s 450E (Animals not tendered in certain cases)

Section 450E—

omit, insert—

Chapter division 2 Prescribed records

450E Duty of police officer who seizes an animal connected with a charge

- (1) A police officer who seizes an animal connected with a charge—
 - (a) must as soon as reasonably practicable after the seizure cause an adequate prescribed record of the animal to be made; and
 - (b) if an adequate prescribed record of the animal is caused to be made by the police officer or is otherwise available to a police officer, may cause the animal to be returned to its owner if the defendant does not object to its return.
- (2) However, subsection (1)(a) does not apply if an adequate prescribed record of the animal is already available to a police officer.

450EA Admissibility of adequate prescribed record

- (1) An adequate prescribed record of an animal is admissible in a proceeding on the charge in relation to which the prescribed record was made by, or made available to, a police officer or on a related charge, as evidence of the matters it depicts, including any of the following—
 - (a) the existence of the animal when the prescribed record was made;
 - (b) the condition of the animal at that time;
 - (c) a brand or other mark or feature of identification on the animal at that time.
- (2) Subsection (3) applies if an adequate prescribed record of an animal connected with a charge and seized by a police officer is tendered as evidence

of matters depicted by the record in a proceeding on the charge or a related charge.

- (3) No objection can be taken or allowed to the admission as evidence of matters depicted by the adequate prescribed record.
- (4) Subsections (1) and (3) apply in relation to a proceeding whether it is started before or after the commencement of this section.
- (5) In this section—

related charge, for a charge, means a charge based on the same act or omission as the act or omission that charge is based on.

Chapter division 3 Stock disposal orders

450EB Application for stock disposal order

- (1) A police officer or Crown prosecutor may apply to the District Court or a Magistrates Court for an order (a *stock disposal order*) for the sale of an animal that is—
 - (a) seized; and
 - (b) connected with a charge that has not finally been disposed of.
- (2) An application for a stock disposal order for an animal may be made only if—
 - (a) a police officer has caused an adequate prescribed record of the animal to be made, or an adequate prescribed record of the animal is otherwise available to a police officer; and
 - (b) either—

[s 14]

- (i) the defendant objects to the animal's return to its owner; or
- (ii) all of the following apply—
 - (A) the defendant has indicated to a police officer that the defendant does not object to the animal's return to its owner;
 - (B) a police officer has offered the owner the return of the animal;
 - (C) the owner declined the offer.
- (3) However, subsection (2)(b) does not apply if the defendant and the person claiming ownership of the animal can not reasonably be located.
- (4) The applicant must, at least 28 days before the hearing of the application, give each person who has a legal or equitable interest in the animal a copy of the application, unless the person can not reasonably be located.
- (5) Each person who has a legal or equitable interest in the animal may be a party to the application.

450EC Affidavit to accompany application

An application for a stock disposal order for an animal must be accompanied by 1 or more affidavits stating the following—

- (a) a description of the animal;
- (b) the charge with which the animal is connected;
- (c) the name of the defendant, the police officer or Crown prosecutor, and the person claiming to own the animal;
- (d) details of the adequate prescribed record of the animal;

- (e) the value of the animal as valued under section 450F;
- (f) the number of animals connected with the charge;
- (g) the date and place of the animal's seizure;
- (h) the persons to whom the applicant gave a copy of the application under section 450EB(4);
- (i) the persons to whom the applicant could not give a copy of the application under section 450EB(4) because the person could not reasonably be located.

450ED When order may be made if party disputes making of order

If a party to an application for a stock disposal order for an animal disputes the making of the order, the court may make the order only if it is satisfied of the following—

- (a) section 450EB(2) is satisfied in relation to the application;
- (b) the applicant gave each person who has a legal or equitable interest in the animal a copy of the application as required under section 450EB(4);
- (c) the animal has been valued under section 450F;
- (d) the animal is not registered breeding stock;
- (e) the defendant has had a reasonable time to conduct his or her own inquiries about the identification and value of the animal;
- (f) there is no good reason for not making the order.

[s 14]

450EE Order if no dispute

If no party to an application for a stock disposal order for an animal disputes the making of the order, the court may make the order, unless there is a good reason for not making the order.

450EF Content of order

- (1) A stock disposal order for an animal must—
 - (a) identify the animal; and
 - (b) direct the commissioner of the police service to sell the animal—
 - (i) by auction at market value; or
 - (ii) in another stated way; and
 - (c) direct that the net proceeds of the sale be paid into the court.
- (2) Subsection (3) applies if—
 - (a) the defendant is acquitted or convicted of the charge with which the animal is connected; or
 - (b) the prosecution of the defendant in relation to the charge with which the animal is connected is discontinued.
- (3) The prosecutor or the defendant may apply for, or the court in which the charge was heard or to be heard may on its own initiative make, an order that the net proceeds of the sale be paid out of the court, in which the proceeds are held, in a stated way.
- (4) In deciding how the net proceeds of sale are to be paid out of the court, 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* (Cwlth).

- (5) Payment out of court under an order under subsection (3) is stayed—
 - (a) for 1 month after the making of the order; or
 - (b) if an appeal against the defendant's conviction is started, until the end of the appeal.
- (6) The appeal court may vary an order made under subsection (3).

450EG Security for costs of keeping animal

- (1) Subsection (2) applies if—
 - (a) a party to an application for a stock disposal order for an animal disputes the making of the order; and
 - (b) no stock disposal order is made.
- (2) The court may order the party to provide security, for the benefit of the person keeping the animal, for the amount of the costs decided by the court of keeping the animal for the relevant period.
- (3) In this section—

relevant period means the period—

 - (a) starting on the day the hearing of the application starts; and
 - (b) ending on the later of the following—
 - (i) the day judgment is delivered in an appeal relating to the charge with which the animal is connected;
 - (ii) the day on which any right to appeal relating to the charge with which the animal is connected expires.

450EH Clear title to animal for sale under order

A stock disposal order for an animal is sufficient authority for the commissioner of the police service to convey clear title to the animal to any buyer under the order.

Chapter division 4 Other provisions

450EI Unavailability of animal at trial

- (1) An animal connected with a charge and seized by a police officer is not required to be made available at the defendant's trial if an adequate prescribed record of the animal is available to the prosecutor for the trial.
- (2) A defendant's trial is not unfair merely because an animal is unavailable at trial because it has been—
 - (a) sold under a stock disposal order; or
 - (b) returned to its owner under section 450E(1)(b) after its seizure.

450EJ Effect of defendant not objecting to animal's return to its owner

- (1) This section applies if a police officer seizes an animal connected with a charge and the defendant does not object to the return of the animal to its owner.
- (2) In a proceeding on the charge the court can not draw an inference adverse to the defendant from the fact that the defendant does not object to the animal's return to its owner.

15 Amendment of s 450F (Animal valuers and valuations)

- (1) Section 450F(3)(d), ‘according to districts’—
omit.
- (2) Section 450F(3)(e)—
omit.
- (3) Section 450F(3)(f), from ‘in districts’—
omit.
- (4) Section 450F(3)(g)—
omit.
- (5) Section 450F(3)(h)—
omit, insert—
 - (h) the selection of panels of animal valuers;
- (6) Section 450F(3)(i), (n) and (o), ‘tribunals’—
omit, insert—
 - panels
- (7) Section 450F(3)(i), ‘tribunal’—
omit, insert—
 - panel
- (8) Section 450F(3)(m), ‘tribunal’—
omit, insert—
 - a panel
- (9) Section 450F(3)(t)(ii)—
omit.
- (10) Section 450F(3)(t)(iii), ‘and tribunals’—
omit.
- (11) Section 450F(3)(t)(iii) and (iv)—
renumber as section 450F(3)(t)(ii) and (iii).

[s 16]

- (12) Section 450F(3)(f) to (u)—
renumber as section 450F(3)(e) to (s).

16 Omission of s 450G (Identification of animals and return to owners prior to tender in certain cases)

Section 450G—

omit.

17 Amendment of s 468 (Injuring animals)

- (1) Section 468(4), ‘4 penalty units’—

omit, insert—

the prescribed penalty units

- (2) Section 468—

insert—

- (6) In this section—

prescribed penalty units means—

- (a) for stock—10 penalty units; or
(b) otherwise—8 penalty units.

18 Insertion of new ch 93

After section 731—

insert—

Chapter 93 Transitional provision for Criminal Code and Another Act (Stock) Amendment Act 2014

732 Tendering, return or disposal of stock

- (1) If an undertaking under former section 450E was given for an animal before the commencement, the section continues to apply to the animal as if the amendment Act had not been enacted.
- (2) If an undertaking under former section 450G was given for an animal before the commencement, the section continues to apply to the animal as if the amendment Act had not been enacted.
- (3) The prescribed provisions apply to an animal seized before the commencement, other than an animal for which an undertaking mentioned in subsection (1) or (2) was given before the commencement.
- (4) In this section—

amendment Act means the *Criminal Code and Another Act (Stock) Amendment Act 2014*.

animal see section 450D.

commencement means the commencement of this section.

former, in relation to a provision, means the provision as in force before the commencement.

prescribed provisions means the following—

- (a) chapter 44A, chapter division 1;
- (b) sections 450E(1)(b) and 450EA;
- (c) chapter 44A, chapter division 3;
- (d) sections 450EI and 450EJ.

being searched that are reasonably needed to be used in the management of stock.

23 Insertion of new ch 22A

After section 789—

insert—

Chapter 22A Forced muster orders

789AA Application for forced muster order

- (1) The owner of stock may apply to a Magistrates Court for an order (a *forced muster order*) for the mustering and removal of stock from a place managed or controlled by a person other than the owner.
- (2) The applicant must, at least 28 days before the hearing of the application, give a copy of the application to—
 - (a) the commissioner by registered post; and
 - (b) the person managing or controlling the place, unless it is impracticable to do so.
- (3) The person managing or controlling the place is a party to the application.

789AB Affidavit to accompany application

An application for a forced muster order must be accompanied by 1 or more affidavits that—

- (a) describe the stock; and
- (b) state the name of—
 - (i) the applicant; and
 - (ii) the place; and

[s 23]

- (iii) the person managing or controlling the place; and
- (c) state the applicant's information and belief as to the grounds on which the applicant believes the stock is at a place managed or controlled by another person (the *other person*); and
- (d) state the applicant's information and belief as to the grounds on which the applicant believes either of the following—
 - (i) it is impracticable for the applicant to seek permission from the other person to enter the place and remove the stock from it;
 - (ii) the other person unreasonably refuses to permit the applicant to enter the place to search for, locate and remove the stock; and
- (e) evidence who owns the stock; and
- (f) evidence of the applicant's compliance with section 789AA(2).

789AC Police officer wishing to give evidence at hearing

- (1) This section applies if a police officer wishes to give evidence at the hearing of an application for a forced muster order.
- (2) At least 5 days before the hearing, the police officer must ensure—
 - (a) an affidavit by the police officer containing information the police officer considers relevant to the application is filed; and

- (b) a copy of the affidavit is given to the applicant and the person managing or controlling the place.
- (3) The affidavit may state the police officer's information and belief as to particular matters.
- (4) A police officer who complies with subsection (2) may give evidence at the hearing and be cross-examined.
- (5) A police officer acting under this section does not become a party to the proceedings.

789AD When order may be made

The court may make a forced muster order if it is satisfied that—

- (a) the applicant has reasonable grounds for believing that the applicant's stock is at a place managed or controlled by a person other than the applicant; and
- (b) either—
 - (i) the person managing or controlling the place unreasonably refuses to permit the applicant to enter the place to search for, locate and remove the stock; or
 - (ii) it is impracticable for the applicant to seek permission from the person managing or controlling the place to enter the place and remove the stock from it; and
- (c) the applicant complied with section 789AA(2) for the application.

789AE Content of order

- (1) A forced muster order must—

[s 23]

- (a) identify the stock to be searched for by a stated brand or other stated identifying mark; and
- (b) state the applicant's name; and
- (c) state the applicant may enter a stated place, including the airspace above the place, to conduct, under the direction and supervision of a police officer, a muster of the stock identified in the order to locate and remove the stock; and
- (d) state a police officer may direct and supervise the muster and enter the place, including the airspace above the place, to direct and supervise the muster; and
- (e) state that for conducting the muster the applicant may—
 - (i) search for and take possession of stock found at the place matching the description of the stock identified in the order; and
 - (ii) draft, cut out, and take any other action necessary to identify and separate the stock from other stock; and
 - (iii) bring onto the place any agent, assistant, horse, dog, vehicle or equipment reasonably necessary for the search or taking possession; and
- (f) state a police officer may bring onto the place any horse, dog, vehicle or equipment that is reasonably necessary for directing and supervising the muster; and
- (g) state the order is not effective unless the applicant gives a copy of the order to—
 - (i) the commissioner by registered post; and

-
- (ii) the person managing or controlling the place stated in the order; and
 - (h) state that the order lapses 6 months after it is made.
- (2) Subsection (1)(d) and (f) do not limit any other powers of a police officer.

789AF Costs

- (1) A court that makes a forced muster order may—
- (a) order the payment of costs in relation to the application for the order; or
 - (b) reserve costs in relation to the application.

Example for paragraph (b)—

reserve costs of the application until the court is informed by affidavit of the result of any muster conducted under the order

- (2) Without limiting subsection (1)(a), if the court is satisfied by the result of any muster conducted under the forced muster order that it was inappropriate to apply for the order, the court may order the applicant to pay the costs of the application.

789AG Facilities at place of muster to be made available

- (1) This section applies if the applicant gives a copy of a forced muster order to the person managing or controlling the place stated in the order.
- (2) The person must make available relevant stock facilities at all reasonable times for the use of any of the following persons acting under the order—
- (a) the applicant;
 - (b) the applicant's assistants or agents;

[s 24]

(c) a police officer.

Maximum penalty—50 penalty units or 6 months imprisonment.

(3) In this section—

relevant stock facilities means cut out camps, stockyards, dips, dams, ramps, troughs or other facilities at the place that are reasonably needed to be used in the management of stock.

789AH Compensation for damage

(1) This section applies if a fence, rail, stockyard, dip, dam, ramp, trough or other facility at the place stated in a forced muster order is damaged because of action taken under the order.

(2) The owner of the facility is entitled to compensation from the applicant—

(a) as agreed between the applicant and the owner; or

(b) as assessed and ordered by the court.

789AI Frustrating order or obstructing person acting under order

A person who has knowledge of a forced muster order must not—

(a) do an act or make an omission with intent to frustrate action under the order; or

(b) obstruct a person acting under the order.

Maximum penalty—50 penalty units or 6 months imprisonment.

24 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

forced muster order, for chapter 22A, see section 789AA(1).

stock means any of the following animals or their young—

- (a) horses, asses, mules or camels;
- (b) cattle, oxen or buffalo;
- (c) sheep;
- (d) swine;
- (e) deer;
- (f) goats.

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