Western Australia

Animal Welfare and Trespass Legislation Amendment Bill 2020

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Western Australia

LEGISLATIVE ASSEMBLY/COUNCIL

Animal Welfare and Trespass Legislation Amendment Bill 2020

A Bill for

An Act:

- to amend the Animal Welfare Act 2002 to make provision for designated inspectors; and
- to amend The Criminal Code and the Restraining Orders Act 1997 to make provisions relating to trespass on a place where animal source food production is carried out.

The Parliament of Western Australia enacts as follows:
Part 1 — Preliminary

1. Short title

This is the Animal Welfare and Trespass Legislation Amendment Act 2020.

2. Commencement

This Act comes into operation as follows —

(a) Part 1— on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on the 14th day after that day.
Part 2 — Animal Welfare Act 2002 amended

3. Act amended
This Part amends the Animal Welfare Act 2002.

[The following text is Part 1 and Part 4 Divisions 1 and 2 of the Animal Welfare Act 2002 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]

Part 1 — Preliminary

1. Short title
This Act may be cited as the Animal Welfare Act 2002.

2. Commencement
(1) This Act comes into operation on a day fixed by proclamation.
(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 —
   (aa) regulating the conduct of people in relation to animals, including the manner in which animals are treated, cared for and managed; and
   (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; and
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(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.

[Section 3 amended: No. 35 of 2018 s. 4.]

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. Terms used

(1) In this Act —

Agriculture WA means the department of the Public Service principally assisting with the administration of the Biosecurity and Agriculture Management Act 2007;

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;

Biodiversity Conservation Department means the department of the Public Service principally assisting with the administration of the Biodiversity Conservation Act 2016;

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;

designated inspector means a general inspector designated under section 35A(1) as a designated inspector;

fauna has the meaning given in the Biodiversity Conservation Act 2016 section 5(1);

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

inspector means a general inspector or a scientific inspector;

lawfully taken, in relation to fauna, means taken in circumstances that do not involve a contravention of the Biodiversity Conservation Act 2016 or any other written law;

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; or
    (b) a person who has actual physical custody or control of the animal; or
(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; and
(b) research; and
(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; and
(b) if the person is a scientific establishment, all the people who use the establishment’s facilities for scientific purposes; and
(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.

(1A) In this Act unless the contrary intention appears a reference to Part 3 includes a reference to regulations referred to in section 18B.

(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: No. 28 of 2006 s. 352; No. 24 of 2007 s. 9; No. 24 of 2016 s. 310(2) and (3); No. 35 of 2018 s. 5.]

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; or

(ii) Agriculture WA; or

(iii) the Biodiversity Conservation Department; or

(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); or

(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: No. 28 of 2006 s. 354; No. 24 of 2016 s. 310(5).]

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
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; or

(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: No. 28 of 2006 s. 354.]

35A. Designated inspectors

(1) The CEO may, by written notice, designate a general inspector who is a member of the staff of the Department as a designated inspector.

(2) A designation under subsection (1) remains in force for the period specified in the notice of designation unless before then —

(a) the designation is cancelled by the CEO by written notice to the inspector; or

(b) the inspector ceases to be a general inspector.

(3) The CEO may, by written notice, restrict the authority of a designated inspector to exercise a power under section 38(1A) or 39(1A) by limiting all or any of the following —

(a) the places where the power may be exercised;

(b) the times when the power may be exercised;

(c) the circumstances in which the power may be exercised.

(4) When the authority of a designated inspector is restricted under subsection (3) the power conferred on the inspector under section 38(1A) or 39(1A) is limited to the extent set out in the notice.

(5) A restriction under subsection (3) —

(a) may be imposed when the inspector is designated under subsection (1) or at a later time; and

(b) may be varied or cancelled by the CEO by written notice to the inspector.
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: No. 28 of 2006 s. 354.]

Division 2 — Functions and powers of inspectors

36A. Terms used

(1) In this Division —

_____ abattoir —

_____ (a) means any place used for or in connection with the slaughtering of animals for sale for human consumption; and

_____ (b) includes a holding yard or other place used in or in connection with the slaughtering of those animals;

_____ animal source food production facility has the meaning given in The Criminal Code section 70A;

_____ externally sourced food, in relation to an animal, means food that is not grown or manufactured in the building, paddock, pen, yard or other structure or enclosure where the animal is confined;

_____ intensive production means an activity that is carried out —

_____ (a) at an animal source food production facility; and

_____ (b) for the purpose of, or in connection with, commercial food production; and
(c) that, in the ordinary course of production, involves an animal being fed wholly with externally sourced food (other than in an emergency or a drought);

intensive production place means a non-residential place where intensive production is carried out;

knackery —
(a) means any place used for or in connection with the slaughtering of animals for sale for animal consumption; and
(b) includes a holding yard or other place used in or in connection with the slaughtering of those animals.

37. Functions and powers of inspectors

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

(a) to enforce Part 3; and

(aa) if the inspector is a designated inspector, to monitor compliance with Part 3, directions given under section 40(1) or 47(1) and orders made under section 55(1), in relation to any of the following —

(i) intensive production;

(ii) an activity carried out at an abattoir;

(iii) an activity carried out at a knackery;

and

(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); and

(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; and

(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; and

(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: 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; or

(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; or

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

(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.

(1A) In addition, a designated inspector may, for the purpose of carrying out the function referred to in section 37(1aa), enter at any time any of the following places —

(a) an intensive production place;

(b) an abattoir;

(c) a knackery.

(2) In order to enter a place under subsection (1)(b), (c), (d) or (e) or (1A) 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; and

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

(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.

(1A) In addition, a designated inspector may, for the purpose of carrying out the function referred to in section 37(1aa), enter a vehicle that is used in relation to any of the following —

(a) intensive production;

(b) an activity carried out at an abattoir;

(c) an activity carried out at a knackery.

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

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

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

(c) enter a non-residential place for the purpose of reaching the vehicle.
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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 the Biodiversity Conservation Department; 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.
[Section 41 amended No. 24 of 2016 s. 310(6).]
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.

   (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: No. 59 of 2004 s. 141; No. 28 of 2006 s. 354; No. 24 of 2016 s. 310(7).]

45. Dealing with seized fauna

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

[Section 44 amended: No. 24 of 2016 s. 310(8).]

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; and
(b) examine and take samples from an animal, place, vehicle or thing; and
(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; and
(d) direct a person to take an animal to a specified place, or to put it in a specified vehicle, within a specified time; and
(e) direct a person not to remove an animal from a specified place or vehicle for a specified period; and
(f) take photographs, video recordings or other recordings of an animal, place, vehicle or thing; and
(g) take measurements or recordings of any sort; and
(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;

and

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

(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; and

(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.
Part 3 — The Criminal Code amended

4. Act amended

This Part amends The Criminal Code.

[The following text is section 70A of the Criminal Code showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]

70A. Trespass

(1) In this section —

**abattoir** has the meaning given in the Animal Welfare Act 2002 section 36A;

**animal source food production** means an activity carried out —

(a) at an animal source food production place; and

(b) for the purpose of, or in connection with, commercial food production;

**animal source food production facility** means any of the following places, operated for the purpose of commercial food production —

(a) a farm or other place where an animal is reared or fattened;

(b) a dairy farm;

(c) an egg farm or other place where poultry are kept to produce eggs;

**animal source food production place** means any of the following places —

(a) an animal source food production facility;

(b) an abattoir;

(c) a knackery;

**circumstances of aggravation**, in relation to a trespass on an animal source food production place, means circumstances in
which a person, in the course of, or as a result of committing the trespass —

(a) interferes with, or intends to interfere with, animal source food production; or

(b) in the context of another person’s engagement in animal source food production, assaults, intimidates or harasses, or intends to assault, intimidate or harass —

(i) the other person; or

(ii) a family member of the other person;

*family member*, in relation to a person, means —

(a) the spouse or de facto partner of the person; or

(b) a parent, child, brother, or sister of the person or of the person’s spouse or de facto partner; or

(c) the spouse or de facto partner of a person referred to in paragraph (b); or

(d) a grandchild or grandparent of the person or of the person’s spouse or de facto partner;

*interfere with*, in relation to animal source food production, includes any of the following —

(a) negatively impact biosecurity, as defined in the *Biosecurity and Agriculture Management Act 2007* section 6, in relation to the animal source food production;

(b) create a risk to the welfare, safety or health of an animal involved in the animal source food production;

(c) create a risk to the integrity or safety of meat, eggs or dairy products, in the course of the animal source food production;

(d) release an animal involved in the animal source food production, or cause it to escape, from an animal source food production place or an enclosure at that place;

(e) destroy, damage, steal or otherwise interfere with property used in the animal source food production;
(f) give a person engaged in animal source food production reasonable grounds to believe that something referred to in paragraph (a) to (e) has occurred or is likely to occur;

knackery has the meaning given in the Animal Welfare Act 2002 section 36A;

trespass on a place, means —

(a) to enter or be in the place without the consent or licence of the owner, occupier or person having control or management of the place; or

(b) to remain in the place after being requested by a person in authority to leave the place; or

(trespass) on a place, means —

(a) to enter or be in the place without the consent or licence of the owner, occupier or person having control or management of the place; or

(b) to remain in the place after being requested by a person in authority to leave the place; or

(c) to remain in a part of the place after being requested by a person in authority to leave that part of the place.

(2) A person who, without lawful excuse, trespasses on a place is guilty of an offence and is liable to imprisonment for 12 months and a fine of $12,000.

(2) A person who, without lawful excuse, trespasses on a place commits an offence.

Penalty for this subsection: imprisonment for 12 months and a fine of $12,000.

(2A) A person who, without lawful excuse, trespasses on an animal source food production place, in circumstances of aggravation, commits an offence.
Penalty for this subsection: imprisonment for 2 years and a fine of $24,000.

(2B) If a court sentencing an adult offender for an offence under subsection (2A) does not impose a term of imprisonment then, except as provided in subsection (2C) and despite the Sentencing Act 1995, the court must impose —

(a) a community order under the Sentencing Act 1995 that includes —

(i) a supervision requirement with a direction that the offender must not enter or remain on an animal source food production place specified, or of a kind specified, in the order; and

(ii) a community service requirement;

and

(b) a fine of at least $2,400.

(2C) Subsection (2B) does not apply in a particular case if the court is satisfied that exceptional circumstances exist in that case.

(3) In a prosecution for an offence under subsection (2) or (2A), the accused has the onus of proving that the accused had a lawful excuse.
Part 4 — Restraining Orders Act 1997 amended

5. Act amended

This Part amends the Restraining Orders Act 1997.

[The following text is section 5 and Part 3 of the Restraining Orders Act 1997 showing proposed amendments in track changes. A formal amending instrument will be drafted at a later stage.]

5. Term used: family order

(1) A reference in this Act to a family order is a reference to —

(a) a parenting order made under the Family Law Act 1975 of the Commonwealth or the Family Court Act 1997, as is relevant to the case, that deals with —

(i) the person or persons with whom a child is to live; or

(ii) the time a child is to spend with another person or other persons; or

(iii) the communication a child is to have with another person or other persons;

[(b) deleted]

(c) any of the things set out in subsection (2) —

(i) to the extent that the thing deals with the person or persons with whom a child is to live; or

(ii) to the extent that the thing requires or authorises (expressly or impliedly) contact between a child and another person or other persons;

(d) a right or liability within the meaning of the Family Court of Western Australia (Orders of Registrars) Act 1997 of the Commonwealth that —

(i) is in respect of a matter to which paragraph (a) or (c) paragraph (a), (b) or (c) applies; and

(ii) is conferred, imposed or affected by section 5 of that Act.
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Note:
The effects of the transitional provisions of the Family Law Reform Act 1995 of the Commonwealth apply to rights and liabilities referred to in the Family Court of Western Australia (Orders of Registrars) Act 1997 of the Commonwealth — s. 4(5) of the latter Act.

(2) The things referred to in subsection (1)(c) are —

(a) a recovery order or any other order (however described) made; or
(b) an injunction granted; or
(c) an undertaking given to, and accepted by, a court; or
(d) a parenting plan, whether registered or not; or
(e) a bond entered into in accordance with an order, under the Family Law Act 1975 of the Commonwealth or the Family Court Act 1997, as is relevant to the case, or any thing treated, under either of those Acts or the Family Law Reform Act 1995 of the Commonwealth, as an order or thing referred to in subsection (1).

Note:
Under clause 5 of Schedule 2 to the Family Court Act 1997 the effects of the transitional provisions in that clause apply to rights and liabilities referred to in the Family Court (Orders of Registrars) Act 1997.

[Section 5 inserted: No. 41 of 1997 s. 36; amended: No. 35 of 2006 s. 207.]

Part 3 — Misconduct restraining order

34. Grounds for misconduct restraining order

A court may make an MRO if it is satisfied that —

(a) unless restrained, the respondent is likely to —

(i) behave in a manner that could reasonably be expected to be intimidating or offensive to the person seeking to be protected and that would, in fact, intimidate or offend the person seeking to be protected; or
(ii) cause damage to property owned by, or in the possession of, the person seeking to be protected; or

(iii) behave in a manner that is, or is likely to lead to, a breach of the peace; or

(iv) commit an offence under The Criminal Code section 70A(2A);

(b) granting an MRO is appropriate in the circumstances.

[Section 34 amended: No. 38 of 2004 s. 54 and 56; No. 49 of 2016 s. 40.]

35. Matters to be considered by court generally

(1) When considering whether to make an MRO for reasons referred to in section 34(a)(i) or (ii) and the terms of the order a court is to have regard to —

(a) the need to ensure that —

(i) the person seeking to be protected is protected from intimidatory or offensive behaviour; and

(ii) property owned by, or in the possession of, the person seeking to be protected is protected from damage;

and

(b) the wellbeing of children who are likely to be affected by the respondent’s behaviour or the operation of the proposed order; and

(c) the accommodation needs of the respondent and the person seeking to be protected; and

(d) hardship that may be caused to the respondent if the order is made; and

[(e) deleted]

(f) other current legal proceedings involving the respondent or the person seeking to be protected; and
(g) any criminal convictions of the respondent; and
(h) any previous similar behaviour of the respondent
whether in relation to the person seeking to be protected
or otherwise; and
(i) other matters the court considers relevant.

(2) When considering whether to make an MRO for reasons
referred to in section 34(a)(iii) and the terms of the order a court
is to have regard to —
(a) the need to ensure that the public is protected from
breaches of the peace; and
(b) the wellbeing of children who are likely to be affected
by the respondent’s behaviour or the operation of the
proposed order; and
(c) the accommodation needs of the respondent; and
(d) hardship that may be caused to the respondent if the
order is made; and
[(e) deleted]
(f) any criminal convictions of the respondent; and
(g) other current legal proceedings involving the
respondent; and
(h) other matters the court considers relevant.

(2A) When considering whether to make an MRO for reasons
referred to in section 34(a)(iv) and the terms of the order, a
court is to have regard to —
(a) the need to ensure that the following persons are
protected from the effects of an offence under The
Criminal Code section 70A(2A) —
(i) a person engaged in animal source food
production, as defined in The Criminal Code
section 70A(1); and

(ii) a family member, as defined in The Criminal Code section 70A(1), of a person referred to in subparagraph (i); and

(b) the wellbeing of children who are likely to be affected by the respondent’s behaviour or the operation of the proposed order; and

c) the accommodation needs of the respondent; and

d) hardship that may be caused to the respondent if the order is made; and

e) any criminal convictions of the respondent; and

(f) other current legal proceedings involving the respondent; and

(g) other matters the court considers relevant.

(3) A court is to have regard to the matters set out in subsection (1)(a) and (b), or (2)(a) and (b) or (2A)(a) and (b) as being of primary importance.

[Section 35 amended: No. 38 of 2004 s. 19, 54, 55, 56 and 57(5); No. 49 of 2016 s. 41.]

35A. MROs not for persons in family relationship

A court is not to make an MRO unless it is satisfied that the person seeking to be protected by the order and the person bound by the order are not in a family relationship with each other.

[Section 35A inserted: No. 38 of 2004 s. 20; amended: No. 49 of 2016 s. 42.]
36. **Restraints on respondent**

(1) In making an MRO a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —

(a) behaving in a manner that could reasonably be expected to be intimidating or offensive to the person seeking to be protected and that would, in fact, intimidate or offend the person seeking to be protected; or

(b) causing damage to property owned by, or in the possession of, the person seeking to be protected; or

(c) behaving in a manner that is, or is likely to lead to, a breach of the peace; or

(d) committing an offence under *The Criminal Code section 70A*(2A).

(2) Without limiting the restraints that may be imposed for the purposes of subsection (1)(a) or (b), a court may restrain the respondent from doing all or any of the following —

(a) being on or near premises where the person seeking to be protected lives or works;

(b) being on or near specified premises or in a specified locality or place;

(c) approaching within a specified distance of the person seeking to be protected;

(ca) stalking the person seeking to be protected;

(d) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;

(e) [deleted]

(f) being in possession of a firearm or firearms licence, or applying for a firearms licence;

(g) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (f).
(3) Without limiting the restraints that may be imposed for the purposes of subsection (1)(c) or (d), subsection (1)(e), a court may restrain the respondent from doing all or any of the following —

(a) being on or near specified premises or in a specified locality or place; or

(b) engaging in behaviour of a specified kind, either at all or in a specified place, at a specified time or in a specified manner; or

(c) being in possession of a firearm or firearms licence, or applying for a firearms licence.

(4) A restraint may be imposed on the respondent on such terms as the court considers appropriate.

(5) An MRO may restrain the respondent from entering or remaining in a place, or restrict the respondent’s access to a place, even if the respondent has a legal or equitable right to be at the place.

(6) If an MRO restrains the respondent from being in possession of a firearm or firearms licence, or applying for a firearms licence, sections 14 and 62E apply as if the MRO were a VRO.

[Section 36 amended: No. 38 of 2004 s. 21, 43(4), 54 and 56; No. 49 of 2016 s. 43.]

37. Duration of MRO

(1) An MRO comes into force when it is served on the respondent, or if a later time is specified in the order, at that time.

(2) Subject to Part 5, an MRO remains in force for the period specified in the order or, if no period is specified, for one year from when it came into force.

[Section 37 amended: No. 49 of 2016 s. 44.]
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38. **Application for MRO**

(1) An application for an MRO may be made in person by —
   (a) the person seeking to be protected; or
   (b) a police officer on behalf of that person.

(2) An application for an MRO may also be made —
   (a) if the person seeking to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or
   (b) if the person seeking to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.

(3) If there is no particular person seeking to be protected an application for an MRO may be made by a police officer on behalf of the public generally.

(4) An application for an MRO is to be made in the prescribed form to —
   (a) if the respondent is a child, the Children’s Court; or
   (b) otherwise, the Magistrates Court.

[Section 38 inserted: No. 22 of 2000 s. 8; amended: No. 38 of 2004 s. 55; No. 59 of 2004 s. 124; No. 49 of 2016 s. 45.]

39. **Registrar to fix hearing and issue summons**

If an applicant makes an application for an MRO the registrar is to fix a hearing and summons the respondent to the hearing.

[Section 39 amended: No. 59 of 2004 s. 123; No. 49 of 2016 s. 46.]