

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

ANIMAL DISEASES REGULATION 2006

SUBORDINATE LAW NO SL2006-39

EXPLANATORY STATEMENT

Circulated with the authority of
Mr John Hargreaves MLA
Minister for the Territory and Municipal Services

Overview of the Regulation

The *Animal Diseases Act 2005* is concerned with the health of animals and the management of animal diseases. Section 90(2) of the Act provides that regulations may be made for the prevention or introduction of exotic or endemic diseases. This Regulation provides for measures to deal with Identification of Stock, Vaccination of Commercial Poultry Flock and management of Honey Bees to prevent the spread of disease.

Use of Strict Liability

The Regulation includes a number of offences where strict liability applies to a specific element of the offence or to the offence. Strict liability offences are primarily aimed at conduct on the less serious side of the criminal spectrum. Strict liability offences have two essential features. The first is that there is no requirement to prove a fault element, such as intention or recklessness. However, the prosecution is still required to prove the physical elements of the strict liability offence beyond a reasonable doubt and disprove beyond a reasonable doubt any defences that the defendant has put in issue.

Strict liability can be applied to the whole of an offence or to just a particular element of the offence. If strict liability only applies to a particular element of the offence, it means that there is no fault element for that physical element, but there will be a fault element for each other physical element of the offence. In effect, the offence remains a fault element offence, though in relation to one of the physical elements, fault does not have to be proven.

For the purposes of this Regulation, the rationale is that people who are engaged in the conduct of for example a business of selling or trading stock, managing or owning a commercial poultry flock or the sale or production of honey, can be expected to be aware of their duties and obligations. The provisions are drafted so that, if a particular set of circumstances exists, a specified person (e.g. a person who works or is engaged in a particular industry whether it be stock, poultry or bees) is guilty of an offence. Unless some knowledge or intention is required to commit a particular offence, the defendant's frame of mind at the time is irrelevant.

Clauses

Clause 1 – Name of regulation

This clause provides that the regulation is the *Animal Diseases Regulation 2006*.

Clause 2 – Commencement

This clause provides that the regulation commences on the day after its notification day.

Clause 3 – Dictionary

This clause provides that the dictionary at the end of this regulation is part of the regulation.

Clause 4 – Notes

This clause provides that a note included in this regulation is explanatory and is not part of this regulation

Clause 5 – Offence against regulation – application of Criminal Code

This section provides that other legislation applies in relation to offences against this regulation.

Part 2 – Identification of Stock

Division 2.1 – Approved Tags

Clause 6 – Approved tags – Act, dict, definition of approved tag

This clause provides that an approved tag for stock is a tag under section 7, section 9, section 29 and section 25 of the regulation. A NLIS device issued or approved under a corresponding law in relation to stock is an approved tag for stock that is kept or intended to be kept in the ACT.

Clause 7 – Chief executive may approve tag

This clause provides that the chief executive may approve a tag for tagable stock. A tag may be approved in relation to a holding, public road, an area of public land, saleyard where stock is sold or an abattoir where the stock is to be slaughtered.

Clause 8 – Approved ways of using tags

This clause provides that the chief executive may approve a way of using an approved tag. For example, this would include where a tag must be placed or attached or how and NLIS device may be implanted. An approval is a disallowable instrument.

Division 2.2 – NLIS Devices

Clause 9 – Chief executive may approve NLIS device

This clause provides that the chief executive may approve an NLIS device for tagable stock. An NLIS device may be approved for tagable stock in relation to a holding, a public road, an area of public land, a saleyard or an abattoir where the stock is to be slaughtered.

Clause 10 – Registering details of NLIS device

This clause provides that the chief executive must enter identification particulars for each approved NLIS device (other than special purpose tag) and any information given to the chief executive under sections, 17, 18, 19, 20, 21, 22 or 23 of the regulation. The chief executive may allow a person to have access to records at any reasonable time if satisfied that the information will be used with the object of the Act.

Clause 11 – Sale and supply of NLIS device

This clause provides that a person commits an offence if the person sells or supplies an NLIS device and the person is not the approved manufacturer of the NLIS device. A manufacturer commits an offence if the manufacturer sells or supplies an NLIS device and the device is not an approved NLIS device.

A person also commits an offence if the person fails to give the authorised administrator (before the end of the next working day) after the day the device is sold or supplied, identification particulars and details of when and to whom the device was sold.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 12 – Use of NLIS device

This clause provides that a person commits an offence if the person uses an NLIS device to identify stock and the device is not an approved NLIS. A person also commits an offence if the person uses an NLIS device to identify stock in a way that contravenes an approval under section 8 of the regulation.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 13-Loss or theft of NLIS device

This clause provides that a person commits an offence if the person owns or is in charge of the stock or is the owner or occupier of a holding and the person becomes aware that the NLIS device (which has been approved) is lost or stolen before it is used to tag stock and the person does not within 7 days after the day the person becomes aware of the loss or theft (i) tell the authorised administrator about the loss or theft and (ii) give the authorised administrator the identification particulars of the device.

The maximum penalty is 10 penalty units.

Clause 14-Alteration of NLIS equipment

This clause provides that a person commits an offence if the person alters equipment and the equipment is equipment used for attaching or reading an approved NLIS device and the alteration changes or modifies the way in which identification particulars of an NLIS device are read, recorded or shown.

The maximum penalty is 10 penalty units.

Clause 15-When stock must be tagged with NLIS device

This clause provides that cattle do not need to be tagged if it is (i) a calf born at or travelling to a saleyard and is being sold with its dam and sent directly with its dam to a property, or (ii) a bull born before 1 July 2004 that weighs more than 750 kilograms or (iii) any other cattle born before 1 July 2004 and weighing more than 750 kilograms if (a) the animal was previously identified with an NLIS device that has been lost or damaged, or (b) an authorised officer decides it is impractical or too dangerous to tag the animal.

It is an offence under this clause if the owner of the stock does not tag the stock (unless the stock is already tagged with an approved NLIS) with an approved NLIS device if (i) the stock arrives in the ACT or (ii) before the stock leaves any holding where it is kept or (iii) if the director directs the owner to tag the stock in circumstances declared under this clause. A declaration is a notifiable instrument.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 16-Stock already identified

This clause provides that a person commits an offence if the person uses an NLIS device to identify stock and the stock is already tagged with an approved NLIS device.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 17 – Information about NLIS tagable stock – saleyards

This clause only applies to stock to which section 15 of the regulation applies. This clause provides that if stock arrives at a saleyard, the owner or person in charge of the stock must give the owner or person in charge of the saleyard (if the stock was held at a holding before being sent to the saleyard) the property identifier code for the holding or the address of the holding if there is no property identifier code for the holding.

This clause also provides that before stock leaves a saleyard, the person who has taken possession of the stock must give the owner or person in charge of the saleyard (i) the property identifier code for the holding, or (ii) the address of the holding if there is no property identifier code for the holding.

The owner or person in charge of a saleyard, must by the close of business, on the next working day after the sale of stock at the saleyard, give the authorised administrator the identification particulars for the stock.

It is an offence if the person fails to comply with a requirement that applies to the person under this clause. This is a strict liability offence.

Clause 18 – Information about NLIS tagable stock-stock and station agents

This clause only applies to stock to which section 15 of the regulation applies. This clause provides that if the stock is sent to a stock and station agent, the agent must by the close of business on the next working day after receiving the stock, make a record of (i) the identification particulars for the stock, and (ii) the address where the stock is held before being sent to a holding, abattoir or saleyard and keep any record for at least 2 years after the date when it was made and if asked to do by an authorised person, produce the record for inspection.

If stock is sent to a stock and station agent, the agent must, no later than 7 days after receiving the stock (i) send the stock to a holding, abattoir or saleyard, and (ii) give the authorised administrator the identification particulars for the stock.

It is an offence if the person fails to comply with a requirement that applies to the person under this clause. This is a strict liability offence.

Clause 19-Information about NLIS tagable stock – abattoirs

This clause only applies to stock to which section 15 of the regulation applies. This clause provides that if the stock is sent to an abattoir in the ACT, the owner or person in charge of the abattoir must, by the close of business on the next working day after the stock is slaughtered, give the authorised administrator (i) the identification

particulars for the stock; and (ii) for stock more than 6 weeks old when it is slaughtered, details of the weight of the carcass before chilling and after bleeding, skinning, evisceration and trimming.

It is an offence if the person fails to comply with a requirement that applies to the person under this clause. This is a strict liability offence.

Clause 20 – Information about NLIS tagable stock-lost etc

This clause only applies to stock to which section 15 of the regulation applies. This clause provides that if stock that arrives at an abattoir, saleyard or a stock and station agent, dies before slaughter or is lost or stolen, the owner or person in charge of the abattoir or saleyard, or the stock and station agent, must, by the close of business on the next working day after becoming aware of the death, loss or theft (i) tell the authorised administrator about the death, loss or theft, and (ii) give the authorised administrator the identification particulars for the stock.

It is an offence if the person fails to comply with a requirement that applies to the person under this clause. This is a strict liability offence.

Clause 21-Information about NLIS tagable stock-holdings without identifier code

This clause only applies to stock to which section 15 of the regulation applies. This clause provides that if the stock is sent to an abattoir, saleyard or stock and station agent from a holding that does not have a property identifier code, the owner or person in charge of the abattoir or saleyard, or the stock and station agent, must (i) make a record of the identification particulars for the stock, and the address of the holding from which the stock was sent, and (ii) keep the record for at least 7 years after the date when it was made or (iii) if asked to do so by an authorised person, produce the record for inspection.

This clause also provides that if stock is sent from a saleyard or by a stock and station agent to a holding that does not have a property identifier code, the owner or person in charge of the saleyard, or the stock and station agent must (i) make a record of the identification particulars for the stock, and the address of the holding from which the stock was sent and (ii) keep the record for at least 7 years after the date when it was made or (iii) if asked to do so by an authorised person, produce the record for inspection.

It is an offence if the person fails to comply with a requirement that applies to the person under this clause. This is a strict liability offence.

Clause 22-Information about NLIS tagable stock-exports

This clause only applies to stock to which section 15 of the regulation applies. This clause provides that if the stock is sent for overseas export, the owner or person in charge of the stock must, not later than 7 days after the date when the stock leaves the ACT for export, give the authorised administrator the identification particulars for the stock.

A person commits an offence if the person fails to comply with a requirement relating to the person under this section. The maximum penalty is 10 penalty units.

Clause 23-Information about NLIS tagable stock-arrival at holding

This clause only applies to stock to which section 15 of the regulation applies. This clause provides that if the stock arrives at a holding, the owner or person in charge of the stock at the holding must (i) if the stock has arrived directly from a saleyard or stock and station agent – give the authorised administrator the identification particulars for the stock no later than 7 days after the arrival of the stock, and (ii) if the stock has arrived from a holding that does not have a property identifier code, no later than 7 days after the arrival, make a record of the identification particulars for the stock and the address of the holding from which the stock was sent and keep the record for at least 7 years from the date when it was made and if asked to do so by an authorised person, produce the record for inspection.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Division 2.3 Marks

Clause 24- Application of division 2.3

This clause provides that this division applies to pigs and any other stock prescribed by regulation.

Clause 25-Approved marks-tags

This clause provides that a mark is taken to be an approved tag for stock to which this division applies if it contains a property identifier code approved by the chief executive.

Clause 26-Sale of untagged stock etc

This clause provides that a person commits an offence if the person sells stock that is not tagged with an approved tag or is tagged with an approved tag, but in a way that is not approved under section 8.

The maximum penalty is 10 penalty units. An offence against this section is a strict liability offence.

Clause 27 – Stock sent for sale or slaughter

This clause provides that a person commits an offence if the person is the owner of stock and the person sends the stock to an abattoir for slaughter or to a saleyard for sale, and the stock is not tagged with an approved tag, or is tagged with an approved tag, but in a way that is not approved under section 8 of the regulation.

The maximum penalty is 10 penalty units.

This clause also provides that a person commits an offence if the person is an owner of stock and the stock is at a saleyard for sale, and the stock (i) is not tagged with an approved tag, or (ii) is tagged with an approved tag, but in a way that is not approved under section 8 of the regulation.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 28 – Exceptions to s26 and s27

This clause provides that sections 26 and 27 do not apply to the sale of stud at, or the sending of stud stock to an agricultural show or exhibition, sale of stock incidental to the sale of land or the sale of a business under which the stock will remain on the land or retained as part of the property of the business, sale or the sending to an abattoir or saleyard of stock that has been (i) brought into the ACT during the preceding 28 days and (ii) tagged under a corresponding law. Sections 26 and 27 also do not apply to the sending to an abattoir or saleyard of stock if (i) the sending has been approved by the director (ii) the stock is tagged with an approved tag before sale. Finally, sections 26 and 27 do not apply to anything done with the written approval of the director.

Division 2.4-Special purpose tags.

Clause 29-Approval of special purpose tag

This clause provides that on application by the owner or person in charge of tagable stock, an authorised person may approve a special purpose tag for the stock if (i) the holding where the stock is located does not have a property identifier code or the authorised person is satisfied that no other approved tag is readily available for the stock or another approved tag for the stock is not, or would not be, effective for identifying the stock for this Act.

The applicant for a special purpose tag must tag the stock for which it was approved with the tag as soon as possible after the tag has been approved.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Division 2.5-Offences

Clause 30-Alteration of approved tags

This clause provides that a person must not alter an approved tag if the alteration changes or modifies the identification particulars recorded or shown on the tag.

Clause 31-Selling altered approved tag etc

This clause provides that a person commits an offence if the person sells or supplies an approved tag and the tag has been altered in a way that changes or modifies the identification particulars recorded or shown on the tag.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 32-Transfer of approved tags

This clause provides that a person commits an offence if the person uses an approved tag to tag stock and the stock is not the stock for which the tag was approved.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 33-Transfer of stock with approved tags

This clause provides that a person commits an offence if the person is the owner of stock tagged with an approved tag, and, the tag is approved in relation to a holding,

and the stock is at a holding other than the holding for which the tag is approved, and the stock is not normally kept at the holding for which the tag is approved.

The maximum penalty is 10 penalty units.

Clause 34-Removal of approved tag

This clause provides that a person commits an offence if the person removes an approved tag from tagable stock.

The maximum penalty is 10 penalty units.

Division 2.6 – Miscellaneous

Clause 35-Inspection of slaughtered stock-Act, s48

This clause provides that the director may inspect the carcass of an animal that has been slaughtered at an abattoir.

The director may take samples from or seize the carcass for testing or other investigation of the health of the animal, or direct the person in charge of the abattoir to do anything to the carcass to enable investigation of the health of the animal; or dispose of the carcass; or direct the person in charge of the abattoir to dispose of the carcass as directed.

Inspection of a carcass under this clause is a final inspection of the carcass. A person commits an offence if the person fails to take all reasonable steps to comply with a direction made to the person.

The maximum penalty is 10 penalty units.

Clause 36-Property identifier code

This clause provides that the chief executive may on application by a relevant person, approve an identifier code for a property that identifies the holding where the stock is located, or for stock that is sold or sent for sale or slaughter (i) the holding where the stock was most recently kept for a period of more than 28 days, or (ii) another property determined by the chief executive for the stock.

A property identifier code may be approved for a holding, a saleyard or abattoir, or public land. The chief executive must record details of each property identifier code approved on the register.

Clause 37-Evidentiary certificates

This clause provides that in a proceeding for an offence against this regulation a certificate signed by the chief executive stating any of the following, is evidence of the matters stated (i) that a tag had or had not been approved in relation to particular stock or a particular place, (ii) that a property identifier code had or had not been approved for a holding, saleyard or abattoir, or public land.

A certificate may state a matter by reference to a date or period.

Clause 38-Reviewable decisions

This clause provides that sections 7, 8, 9, 29 and 36 are reviewable decisions under the regulation.

Clause 39-Notice of reviewable decisions

This clause provides that if a decision maker makes a reviewable decision under section 38, the decision maker must give written notice of the decision to each person entitled to apply for review of the decision.

The notice must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B(1). This clause also outlines what information the notice must contain.

Part 3- Poultry-Newcastle Disease**Clause 40-Definitions for pt 2**

This clause provides the definitions for chicken, commercial poultry flock and vaccination.

Clause 41-Codes of practice

This clause provides that the Minister may approve a code of practice for the prevention and control of Newcastle disease. An approval is a disallowable instrument.

Clause 42-Vaccination of commercial poultry flock

This clause provides that a person commits an offence if the person is in charge of a commercial poultry flock and the person fails to vaccinate each chicken in the flock. This clause does not apply to a chicken that is less than the age prescribed by an approved code of practice relating to vaccination practices.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 43-Offence to introduce unvaccinated commercial poultry flock

A person commits an offence if (a) the person brings commercial poultry flock, or part of a commercial poultry flock into the ACT and the flock, or part of the flock, has not been vaccinated. This clause does not apply to chicken that is less than the age prescribed by an approved code of practice in relation to the vaccine.

The maximum penalty is 10 penalty units.

Clause 44-Seller declaration

This clause provides that a person who owns a commercial poultry flock and sells the flock or part of the flock to someone else (the buyer), must give the buyer, a written statement (declaration) that includes details of vaccination of the flock.

A person who gives a seller declaration must give the director a copy of the declaration no later than 14 days after giving it to the buyer. A person commits an offence if the person fails to comply.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 45-Testing of vaccinated commercial poultry flock

This clause provides that the person in charge of a commercial poultry flock must, using a diagnostic test of a representative sample of the flock, test for signs of a Newcastle Disease in accordance with any approved code of practice.

A person commits an offence if the person fails to comply. This is a strict liability offence.

Clause 46-Records must be kept

This clause provides that the owner of a commercial poultry flock must keep records in accordance with any approved code of practice. This clause also outlines a list of records that the owner must keep.

A person commits an offence if the person fails to comply. The maximum penalty is 10 penalty units. This is a strict liability offence.

Part 4- Honey Bees

Clause 47 – Definitions for part 3

This clause provides the definitions for brood, broodbox, frame hive and honey superbox.

Clause 48-Honey bees to be kept in frame hives

This clause provides that a person must not keep honey bees other than in a frame hive.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Clause 49-Honey and honeycomb not to be exposed

This clause provides that a person commits an offence if the person is either a beekeeper or a person who harvests honey from a frame hive and permits bees to access honey or honeycomb in a way other than by allowing bees to enter a frame hive through a broodbox.

The maximum penalty is 10 penalty units. This is a strict liability offence.

Dictionary

The Dictionary sets out the definitions for the regulation.