

2010

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**ANIMAL WELFARE AMENDMENT REGULATION 2010 (No 1)
SL2010-9**

EXPLANATORY STATEMENT

**Circulated by authority of
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Minister for Territory and Municipal Services**

Animal Welfare Amendment Regulation 2010 (No 1)

Overview

The purpose of the *Animal Welfare Act 1992* (the Act) is the promotion of animal welfare. It does this by establishing animal cruelty offences and by regulating the use of animals for research, teaching and breeding through a system of licences, authorisations and oversight by animal ethics committees. Further, it regulates the use of animals used in circuses and travelling zoos and animal trapping. It also provides for the making of animal welfare codes of practice and the establishment of the Animal Welfare Advisory Committee.

Section 112 of the Act permits the making of regulations for the purposes of the Act, in particular (for the purposes of this regulation) in relation to the confining or housing of animals – see section 112(2)(a); and animal husbandry – see section 112(2)(d).

The Animal Welfare Amendment Regulation 2010 (No 1) proposes to amend the regulation to insert additional provisions dealing with the welfare of poultry used in commercial egg production.

A regulatory impact statement (RIS) has not been prepared for this regulation. Section 36 of the *Legislation Act 2001* provides that a RIS need not be prepared if it involves the adoption of an Australian or international protocol, standard, code or intergovernmental agreement or instrument. The regulation is based on aspects of the *Code of Practice for the Welfare of Animals: Domestic Poultry, 4th Edition* (the poultry code), which was prepared for the Animal Welfare Committee (AWC) of the Primary Industries Ministerial Council (PIMC). Membership of the AWC comprised of representatives from each of the State and Territory Departments with responsibility for agriculture, CSIRO, the Department of Agriculture, Fisheries and Forestry Australia and other committees within the PIMC. Extensive consultation took place with industry and welfare groups on the development of the poultry code.

The poultry code was approved under section 22 of the Act as a code of practice in 2003 (see disallowable instrument 2003-2). As an approved code of practice, the poultry code provides for best practice management of commercial poultry. The regulation makes aspects of the poultry code compulsory.

Notes on sections

Section 1 Name of regulation

This section is a formal provision setting out the name of the proposed Regulation.

Section 2 Commencement

This section provides for the Regulation to commence by notice on a day to be fixed by the Minister. If no notice is made by the Minister within 6 months, the Regulation will commence automatically, in accordance with section 79 of the *Legislation Act 2000*. Delaying commencement is intended to provide commercial egg producers with time to make any adjustments that may be required before the Regulation is commenced by the Minister.

Section 3 Legislation amended

This section is a formal provision to identify that the legislation to be amended by the proposed Regulation is the *Animal Welfare Regulation 2001* (the principal Regulation).

Section 4 New Part 1 heading

Section 4 inserts a new heading, namely – “Part 1 Preliminary” – before section 1 of the principal Regulation. New headings are proposed for other provisions of the Regulation.

Section 5 Section 5

This section inserts a new heading, namely – “Part 2 Animal welfare offences” – before section 5 of the principal Regulation and also corrects a cross-reference in that section, which incorrectly referred to section 13(1) of the Act. The correct cross reference is to section 13 of the Act.

Section 6 New part 3 heading

This section inserts a new heading, namely – “Part 3 Research, teaching and breeding” – before section 6 of the principal Regulation and covers sections 6, 6A, 6B and 7.

Section 7 Section 6 heading

This section replaces the heading for section 6 of the principal Regulation, in line with current drafting practice.

Section 8 New part 4 heading

This section provides a new heading, namely – “Part 4 Circuses and travelling zoos” – before section 7A of the principal Regulation and covers sections 7A and 7B.

Section 9 New part 5 heading

This section inserts a new heading, namely – “Part 5 Animal trapping” – before section 7C of the principal Regulation and covers sections 7C and 7D.

Section 10 Section 8

This section substitutes the existing section 8 of the principal Regulation and inserts a new part (part 6) which covers the keeping of domestic fowls (*Gallus gallus*) that are used for commercial egg production.

Overview of new part 6

The new part creates obligations on commercial egg producers, with the failure to carry out the obligations giving rise to a series of offences. The offences are strict liability with penalties that do not exceed 10 penalty units (the maximum that may be imposed under the regulation-making power – see section 112(3) of the Act).

Strict liability offences are appropriate in this context as the offences only apply to commercial egg producers. Commercial egg producers are or ought to be aware of the content of the *Code of Practice for the Welfare of Animals: Domestic Poultry, 4th Edition* (the poultry code) as the poultry code has been an approved code of practice. The poultry code has formed the basis for the drafting of the offences in the Regulation. Consequently, the strict liability offences meet one of the tests that strict liability offences be proposed where a defendant can reasonably be expected, usually because of his or her business involvement, to be aware of the requirements of the law.

Divisional structure of part 6

Part 6 is divided into 5 divisions. The first division deals with preliminary matters (definitions); division 6.2 deals with laying fowl kept in cages and divisions 6.3 to 6.5 deal with broader poultry welfare matters, which can apply not only to commercial

operations that keep hens in cages, but also to commercial operations that keep hens in barns or that have free-range hens.

New section 8

New section 8 sets out definitions for new part 6.

New section 9

As offences in part 6 are directed at the person who “keeps a laying fowl”, new section 9 provides a definition for this phrase, which clarifies that a person who owns a commercial egg production facility at which there are laying fowls is taken to be the person who keeps the laying fowls.

Section 99 of the principal Act provides that the acts and omissions of representatives, the employees and agents, may be attributed to the person who owns the facility. In the case of a corporation, part 2.5 of the *Criminal Code 2002* applies.

New section 10

This section deals with access to food and water for caged hens.

Section 10(1) provides that each laying fowl must have access to a food source (such as a feed trough or conveyor belt) that is at least 10 centimetres long for each fowl kept in the cage. This means that if two birds are kept in one cage their combined food source must be at least 20 centimetres long. Similarly if three birds are kept in one cage their combined food source must be 30 centimetres long.

Section 10(2) provides that each cage must have at least two drinkers. Drinker is defined in section 8. A splash cup underneath a nipple drinker or underneath a cup drinker is not considered to be a drinker.

New section 11

Section 11 deals with structures where cages are on multiple levels. The section requires such structures to be arranged so that laying fowls kept in cages in lower levels of the structure are protected from manure produced by fowls kept in cages in higher levels of the structure. The structure must be constructed so that all fowls are visible from the outside of the structure and can be easily accessed.

New section 12

This section requires the floors of a cage to be such that it supports the forward pointing toes of laying fowls kept in the cage.

New section 13

New section 13 deals with cage heights. It is intended to ensure that hens can stand normally in the cages in which they are being kept. At least 65% of the cage must be at least 40 centimetres high and the remainder of the cage must be at least 35 centimetres high. Typically, commercial laying fowls are approximately 30 centimetres tall.

New section 14

This section deals with cage doors. Cages in which commercial laying fowls are kept must have doors that are as high as the side of the cage on which the door is located.

In addition, the cage doors must be as wide as the side of the cage on which the door is located (less the width of structural supports), unless the cage is at least 50 centimetres wide, in which case the doors must be at least 50 centimetres wide.

The section also deals with cages that have top-opening doors. In this instance, the top of the cage is treated as if it were a side of the cage.

New sections 15, 16 and 17

Sections 15, 16 and 17 provide minimum cage floor areas for laying fowls. Floor area is defined in the dictionary.

Section 15 provides that if one laying fowl is in a cage, the floor area of that cage must not be less than 1000cm². The floor area for two laying fowl in a cage under section 16 must not be less than 1350cm². This works out as an average of 675cm² for each fowl. Section 17 provides that for 3 or more laying fowl, the floor area for each fowl is 550cm², provided that the average weight of the fowl is 2.4kg or less. If the average weight of the fowl is more than 2.4kg, the floor area for each fowl must be 600cm².

New section 18

This section provides for general food and water requirements in keeping laying fowl. Section 18(1) provides that a keeper commits an offence if the keeper fails to provide adequate food for the fowl at least once every 24 hours. Section 18(2) provides that a keeper commits an offence if the keeper fails to provide adequate water at least once every 24 hours.

Adequate food and water are defined in the dictionary.

New section 19

New section 19 provides a definition of “trapped” for the purposes of division 6.4

New section 20

This section requires a person who keeps a laying fowl to inspect the fowl daily, or arrange to have it inspected daily. In addition, the fowl's water source (drinker or trough) and its feeder are to be inspected daily and, if it is kept in a cage, the cage is also to be inspected daily. If laying fowl are kept in a shed, then any electrical or mechanical system controlling the shed's light, humidity, temperature or ventilation is also to be inspected daily.

New section 21

While section 20 focuses on the frequency of inspections, new section 21 addresses the adequacy of each inspection. Under this section, the inspections that the keeper of a laying fowl must conduct, or arrange to be conducted, must cover:

- the health of the fowl;
- whether the fowl is injured;
- whether the fowl is trapped or whether fowl have escaped from a cage (in relation to laying fowl kept in cages);
- whether there is water in the laying fowls' water trough or whether the fowls' drinkers (or drinker system) is operational; and
- whether there is food in the fowls' feeder and whether that feed is uncontaminated; and
- where there is a mechanical or electronic feeding system, whether that feeding system is operational.

New sections 22 and 23

New sections 22 and 23 require a person who keeps a laying fowl to take certain steps after an inspection is undertaken.

New section 22 addresses what is to be done if, after inspection, a laying fowl is found to be injured or sick, while section 23 deals with the steps to be taken if a laying fowl is found to have inadequate access to water or food.

In relation to section 22, if a laying fowl is found to be injured or sick it must be immediately destroyed or arranged to be treated. If a fowl is found to be trapped, it must be immediately freed and if injured, immediately destroyed or arranged to be treated. If a fowl has escaped from a cage and has fallen into the manure area below the cage it must be retrieved as soon as practicable (it cannot be retrieved immediately as this process causes considerable stress to other birds), placed in a cage, destroyed or arranged to be treated. If the fowl is dead, it must be removed and disposed of.

In relation to new section 23, if a water trough is found to have inadequate water, then the laying fowls must be supplied with adequate water. If the drinker system is broken, then reasonable steps must be taken to repair it and also to provide the fowls with adequate water. If a fowl's feeder contains inadequate food then the fowl must be supplied with adequate food. If the paucity of food is due to a feeding system being broken, then reasonable steps need to be taken to repair the feeder. If the fowl's food is contaminated, it must be supplied with uncontaminated food and reasonable steps taken to prevent further contamination of the feed.

New section 24

This section places an obligation on the keeper of laying fowls to maintain records of the matters required to be inspected under section 21(1)(c), together with the actions taken under sections 22(1)(c) and 23(1)(c) for at least one year after the record was made.

New section 25

New section 25 outlaws the practice of putting blinkers or other vision impairing devices on laying fowls.

Section 11 Dictionary, new definitions

This section inserts new definitions into the dictionary at the end of the principal Regulation and does so by cross referencing the definitions found in new section 8 and new section 9.
