

**2012**

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

**ANIMAL WELFARE LEGISLATION (FACTORY FARMING) AMENDMENT BILL 2012**

**EXPLANATORY STATEMENT**

**Circulated by  
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## **INTRODUCTION**

This explanatory statement relates to the Animal Welfare Legislation (Factory Farming) Amendment Bill 2012 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## **OVERVIEW**

The Animal Welfare Legislation (Factory Farming) Amendment Bill 2012 (the Bill) has three main elements:

- It makes it illegal to keep hens in a cage system in the ACT from 1 January 2014.
- It requires the responsible ACT Government Minister to advocate at the national level for better welfare conditions for poultry.
- It outlaws sow stalls and farrowing crates so that only free range pig farming may occur in the ACT.

### Hens in cage systems

The Bill outlaws the practice of keeping chickens for egg production in a cage system, often called 'battery cage farming'. This method of egg production has already been banned by many countries, including The Netherlands, Sweden, Finland, Switzerland, Germany, Austria, and Norway, as well as in some states in Canada and the US.

It is widely recognized that hens kept in caged systems suffer chronically and are one of the most compromised of all farmed animals. The bill is intended to improve the quality of life for hens, by requiring egg production only be undertaken using more humane alternatives.

The ban on cage egg production would take effect from 1 January 2014 to provide time for cage egg producers in the ACT to modify their production systems at minimal cost. Currently there is one producer of cage eggs in the ACT: Parkwood Farm in West Macgregor, which is owned by Pace Farm. According to details provided by Pace Farm to the National Pollutant Inventory in 2007 Parkwood Farm employs 14 people.

Although the Bill would prevent battery cage farming in the ACT, it cannot prevent cage eggs being imported from other jurisdictions and sold, because of the Commonwealth *Mutual Recognition Act 1992*.

### National advocacy on improved poultry conditions

The Bill also requires the responsible ACT Government Minister to take steps to promote a national ban on cage eggs. The intention is that other Australian jurisdictions will enact an equivalent ban on battery cage systems, eventually leading to the elimination of battery cage egg production in Australia. Other Australian jurisdictions have previously expressed a willingness to move away from cage systems, but no jurisdiction has yet acted. Enacting this bill will make the ACT the leading jurisdiction and, in combination with diplomatic action by the Government and cooperation from businesses, will stimulate positive action in other States and Territories.

The Bill also recognizes that other poultry housing systems also have adverse animal welfare impacts. It requires the Minister to promote improvements to the living conditions for poultry set under the national code (the *Model Code of Practice for the Welfare of Animals: Domestic Poultry*).

#### Sow stalls

The Bill also addresses intensive pig farming by banning the use of sow stalls and farrowing crates so that only free range pig farming may occur in the ACT. In intensive pig farming, pregnant pigs are confined to sow stalls, also known as gestation crates, to make feed management easier and prevent the pigs from biting each other. The stalls are around the same size as the pig, making movement all but impossible.

Although intensive pig farming does not currently occur in the ACT, the amendment ensures it will never occur, as well as making a statement that it is an unacceptable practice. This issue has been recognised in Tasmania which will phase out sow stalls for pigs, with the first restrictions taking effect in 2014. □

#### Retail signage for eggs

In addition, the Bill makes minor improvements to requirements introduced in the *Eggs (Cage Systems) Legislation Amendment ACT 2009* which requires retail cage eggs to be displayed separately from other eggs, and with descriptive signage, by retailers in the ACT. There has now been considerable experience with how this legislation works so it is proposed to make two changes:

- The first change is to no longer require a red border to separate the different types of eggs. We understand that some customers see that red border as sign that there is a 'sale' on and it is therefore misleading; and
- The requirement for labelling is also being made a strict liability offence to enhance enforcement of the provisions.

## **NOTES ON CLAUSES**

### **Clauses 1-3 – Name of Act, Commencement and Legislation amended**

These are preliminary clauses setting out the name of the amending act, the acts and regulations amended and the commencement date.

Clause 2 sets the starting dates for the different parts of the legislation. The sections of the bill which:

- require the Minister to begin working with other States and Territories to improve welfare conditions for poultry;
- amend the retail display requirements; and
- ban intensive pig farming

begin the day after the Bill's notification day.

As the Bill relaxes requirements for retailers, and there are no existing intensive pig farming operations in the ACT no phase in time is required.

The sections of the Bill which ban the production of eggs in a cage system begin from 1 January 2014. This gives the ACT's caged egg producer time to transition to a different production method. This should be sufficient time, as cage layer hens are killed and restocked approximately once per year.

### **Clause 4 – Repeal of Animal Welfare (Amendment) Act 1997**

This clause is a formal provision to identify that the Bill repeals the *Animal Welfare (Amendment) Act 1997* (A1997-45).

### **Clause 5 – Magistrates Court (Eggs Labelling and Sale Infringement Notices) Regulation 2012 – sch 1**

This clause will create a new regulation under the *Magistrates Court Act 1930* to allow penalties for the offences in this Act to be given as infringement notices. The infringement notice will be \$550 for an individual, and five times this amount for a corporation. It is important that infringement notices can be given to ensure that the law can be enforced in a practical manner.

### **Clause 6 – New section 9A - Offence to keep hens in a cage system**

This clause inserts a new section 9A into the *Animal Welfare Act 1992*, which makes it an offence to keep hens in a cage system. It sets a penalty of a fine or imprisonment. This penalty is equivalent to the penalty for an animal cruelty offense under the current Act.

### **Clause 7 New section 9B - ban on factory farming of pigs**

This section inserts a new section 9B into the *Animal Welfare Act 1992*, to ensure pigs are only kept in appropriate accommodation.

The section makes it an offence to keep pigs in any accommodation where they do not have adequate room, comfort and outdoor access. The definition of 'appropriate accommodation' ensures that pig farming will be free range, will accommodate the welfare needs of the pigs, and will not use farrowing crates and sow stalls.

This change recognises that intensive pig farming using sow stalls and farrowing crates severely compromise pigs' welfare. They cause behavioural problems, physical and mental suffering, and are widely condemned as being a cruel method of keeping animals.

### **Clause 8 – Exception - conduct in accordance with approved code of practice or mandatory code of practice, New section 20 (aa)**

This clause ensures that the offence of keeping hens in a cage system will operate, despite the fact that a code of practice currently deals with welfare of domestic poultry.

### **Clause 9 Exception—conduct in accordance with approved code of practice or mandatory code of practice New section 20 (ab)**

This clause ensures that the new section 9B offence of keeping pigs in inappropriate accommodation will operate, despite the existence of other codes of practice that deal with pig farming.

### **Clause 10 – New section 109A – Banning cage systems etc- national approach**

This clause inserts a new section 109A, which requires the Minister to take all reasonable steps to promote a permanent ban by States and Territories on the keeping of poultry in cage systems, and to take all reasonable steps to improve the living conditions for poultry under the Model Code. The Model Code is made by the Animal Welfare Committee of the Primary Industries Ministerial Council, which comprises representatives from all State and Territory Governments. The new section 109A(3) elaborates on the types of actions that constitute 'reasonable steps'. There are a number of animal welfare concerns associated with egg production and the Model Code, and national cooperation is required in order to review the Model Code, strengthen the Code's guidelines, and improve the standards for hens in other egg production systems.

The new section 109A(4) requires the Minister to present a report to the Legislative Assembly annually on the steps taken to fulfil these obligations.

### **Clause 11 – Dictionary, note 2**

This amendment is consequential on other amendments that insert provisions in which the term *State* is used. The term is defined in the Legislation Act dictionary to include the Northern Territory. Including this additional dot point directs the reader to this enlarged definition in the Legislation Act.

### **Clauses 12-13 New dictionary definitions for *Domestic Animals Act 2000***

These clauses add references to the dictionary that note where various definitions can be found in the Act.

### **Clause 14 –Cage eggs – retail display, Section 7(3)**

This clause changes the retail display requirements in the *Eggs (Labelling and Sale) Act 2001*, so that the labeling is still required but the red border is no longer required.

### **Clause 15 – 17 – new retail display offence provisions**

These clauses make it a strict liability offence to fail to adhere to the signage requirements in the Act. This strict liability offence is justified as the offence is regulatory in nature, would be difficult to enforce without strict liability, and applies to people operating in a specific, regulated environment, who should be aware of their obligations. It should be noted that it is not difficult for retailers to comply with this requirement. The offence has a maximum penalty of 50 penalty units, which is the same maximum penalty for failing to properly label egg packaging under the Act. The offences can be enforced with infringement notices, carrying a penalty of \$550 for an individual, and five times this amount for a corporation.

### **Schedule 1 – New Magistrates Court (Eggs Labelling and Sale Infringement Notices) Regulation 2012**

This schedule inserts the standard regulation which is used to establish infringement penalties under the *Magistrates Court Act 1930*. It includes details of the administering authority (Commissioner for Fair Trading – s5), the infringement notice penalties (section 7), the required contents of notices and reminder notices, and the authorised people to serve infringement notices (investigators under the Act – s11).

Schedule 1 of the regulation establishes an infringement penalty of \$550 for individuals and 5 times this amount for corporations. This applies to the offences under ss 7(1), 7A(1) and 7B(1) of the Act. It will allow for practical enforcement of the signage offences by allowing investigators to issue infringement notices for breaches as an alternative to prosecution.