

2013

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

ANIMAL WELFARE (FACTORY FARMING) AMENDMENT BILL 2013

EXPLANATORY STATEMENT

**Presented by
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INTRODUCTION

This explanatory statement relates to the Animal Welfare (Factory Farming) Amendment Bill 2013 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

This statement must be read in conjunction with the bill. It is not, and is not intended 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 purpose of the Animal Welfare (Factory Farming) Amendment Bill 2013 is to improve and protect animal welfare in the ACT by outlawing three types of 'factory farming' practices, namely battery cages for egg production, sow stalls and farrowing crates for pork production and the debeaking of hens intended for laying eggs.

The bill does this by creating two new animal welfare offences:

1. keeping a laying fowl for commercial egg production in a battery cage;
2. keeping a pig in accommodation that is not appropriate; and
3. removing or trimming the beak of a fowl.

All three offences are strict liability and have maximum penalties of 50 penalty units.

Battery cages

This bill seeks to outlaw the use of battery cages for commercial egg production in the ACT by inserting a new section 9A into the *Animal Welfare Act 1992*. New section 9A (1) creates an offence of keeping a laying fowl for commercial egg production in a battery cage. A *battery cage* is defined in new section 9A (3) as a cage for housing a laying fowl that does not allow the fowl to do all of the following:

- fully stretch;
- perch;
- access litter; or
- lay eggs in a nest.

New section 20 (aa) provides that it is not an exception to the offence in new section 9A (1) where a person is acting in accordance with either an approved or mandatory code of practice under the *Animal Welfare Act 1992*.

Sow stalls and farrowing crates

A sow stall, also known as a gestation crate, is a metal enclosure used in intensive pig farming, in which a female breeding pig may be kept during pregnancy. A few days before giving birth (farrowing), female pigs are moved

from sow stalls to farrowing crates, where they are able to lie down to nurse while being held apart from their piglets.

This bill seeks to outlaw the use of both sow stalls and farrowing crates in the ACT by inserting a new section 9B into the *Animal Welfare Act 1992*. New section 9B (1) creates an offence of keeping a pig in accommodation that is not appropriate.

Appropriate accommodation is defined in new section 9B (3) as accommodation that allows a pig to turn around, stand up and lie down without difficulty; to have a clean, comfortable and adequately drained place in which it can lie down; to maintain a comfortable temperature; and to have outdoor access. If the accommodation is for more than one pig, the accommodation must allow each pig to lie down at the same time, and allow the pig to see other pigs (with the exception of a pig isolated on the advice of a veterinary surgeon or a pig a week before or during farrowing).

New section 20 (ab) provides that it is not an exception to the offence in new section 9B (1) where a person is acting in accordance with either an approved or mandatory code of practice under the *Animal Welfare Act 1992*.

Debeaking of hens

This bill seeks to outlaw the debeaking of hens intended for laying eggs for commercial production in the ACT by inserting a new section 9C into the *Animal Welfare Act 1992*. New section 9C (1) creates an offence of removing or trimming the beak of a fowl. An exception to this offence is provided in new section 9C (2) where a veterinary surgeon removes or trims the beak of a fowl for a therapeutic purpose.

New section 20 (ac) provides that it is not an exception to the offence in new section 9C (1) where a person is acting in accordance with either an approved or mandatory code of practice under the *Animal Welfare Act 1992*.

Human rights implications

The strict liability offences created by new sections 9A, 9B and 9C of the bill have the possibility of engaging the right to be presumed innocent under section 22 of the *Human Rights Act 2004* as strict liability offences may reverse the onus of proof onto a defendant. While strict liability offences engage the presumption of innocence, they are not inherently incompatible with human rights.

The strict liability offence of keeping laying fowls in battery cages in new section 9A targets the commercial farming industry, not domestic producers. Section 6 of the Human Rights Act provides that only individuals have human rights. As this offence targets commercial egg producers rather than individuals, it is unlikely that new section 9A will breach the right in section 22 of the Human Rights Act.

The offences of keeping a pig in accommodation that is not appropriate in new section 9B and removing or trimming the beak of a fowl in new section 9C can

apply to both a corporation and an individual, and thus section 22 of the Human Rights Act is engaged.

Section 28 of the Human Rights Act provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

The bill's aim of greater protection of animal welfare can be justified in a free and democratic society. The community expects that animals will be treated well and not be exposed to cruelty, pain or suffering. Applying strict liability to the offences in new sections 9A, 9B and 9C can be considered a reasonable limit set by law that will assist in achieving the object of the Animal Welfare Act, which is the promotion of animal welfare.

While the inclusion of strict liability limits the range of defences that may be available for a person accused of an offence to which it applies, a number of defences remain open to the accused, depending on the particular facts of each case. Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Section 23 (3) of the Criminal Code provides that other defences may also be available for use for strict liability offences.

Transitional provision

The bill inserts a transitional provision into the Animal Welfare Act, to ensure that any agreements into which the ACT Government has entered to destock existing battery cage operations are honoured. New part 12 provides that if a person (an existing commercial egg producer) and the Territory are parties to an agreement about the conversion of the person's egg production facility from battery cages to a barn system, then the offence in new section 9A will not apply to the person until 16 May 2016.

The commercial egg production provisions of the *Animal Welfare Regulation 2001*, which regulate minimum cage requirements for laying fowl, will still apply to existing operators until 16 May 2016, notwithstanding the fact that they are being repealed by part 3 of this bill.

OUTLINE OF PROVISIONS

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Animal Welfare (Factory Farming) Amendment Act 2013*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act will commence on the day after its notification day.

Clause 3 Legislation amended

This clause provides that the Act amends the *Animal Welfare Act 1992*, the *Animal Welfare Regulation 2001* and the *Domestic Animals Act 2000*.

Clause 4 Legislation repealed

This clause repeals the *Animal Welfare (Amendment) Act 1997*.

Part 2 Animal Welfare Act 1992

Clause 5 New section 9A

This clause inserts a new section 9A into the *Animal Welfare Act 1992*.

New section 9A creates a strict liability offence of keeping a laying fowl for commercial egg production in a battery cage. The maximum penalty for this offence is 50 penalty units. The clause also provides definitions of **battery cage**, **commercial egg production** and **laying fowl** for the purposes of the section.

Clause 6 New section 9B

This clause inserts a new section 9B into the *Animal Welfare Act 1992*.

New section 9B creates a strict liability offence of not keeping a pig in appropriate accommodation. The maximum penalty for this offence is 50 penalty units. The clause also provides a definition of **appropriate accommodation** for the purposes of the section.

Clause 7 New section 9C

This clause inserts a new section 9C into the *Animal Welfare Act 1992*.

New section 9C creates a strict liability offence of removing or trimming the beak of a fowl. The maximum penalty for this offence is 50 penalty units. An exception is provided where the beak of a fowl is removed by a veterinary surgeon for a therapeutic purpose. The clause also provides a definition of **fowl** for the purposes of the section.

Clause 8 Exception—conduct in accordance with approved code of practice or mandatory code of practice
New section 20 (aa)

This clause inserts a new section 20 (aa) into the *Animal Welfare Act 1992*.

New section 20 (aa) provides that it is not an exception to the offence in new section 9A where a person has engaged in conduct in accordance with an approved code of practice or a mandatory code of practice made under the *Animal Welfare Act 1992*.

Clause 9 New section 20 (ab)

This clause inserts a new section 20 (ab) into the *Animal Welfare Act 1992*.

New section 20 (ab) provides that it is not an exception to the offence in new section 9B where a person has engaged in conduct in accordance with an approved code of practice or a mandatory code of practice made under the *Animal Welfare Act 1992*.

Clause 10 New section 20 (ac)

This clause inserts a new section 20 (ac) into the *Animal Welfare Act 1992*.

New section 20 (ac) provides that it is not an exception to the offence in new section 9C where a person has engaged in conduct in accordance with an approved code of practice or a mandatory code of practice made under the *Animal Welfare Act 1992*.

Clause 11 New part 12

This clause inserts a new part 12 into the *Animal Welfare Act 1992*.

New part 12 is a transitional provision. It provides that if a person (an existing commercial egg producer) and the Territory are parties to an agreement about the conversion of the person's egg production facility from battery cages to a barn system, then the offence in new section 9A does not apply to the person until 16 May 2016.

The commercial egg production provisions of the *Animal Welfare Regulation 2001* that are being repealed by part 3 of this bill will still apply to the person as if they had not been repealed.

New part 12 expires on 16 May 2016.

Part 3 Animal Welfare Regulation 2001

Clause 12 Definitions—pt 6
Section 8, definition of *floor area*

This clause omits the definition of ***floor area*** from section 8 of the *Animal Welfare Regulation 2001*.

Clause 13 Sections 11, 13, 15, 16 and 17

This clause omits sections 11, 13, 15, 16 and 17 from the *Animal Welfare Regulation 2001*. These sections of the Regulation will become obsolete with the passage of this bill.

Clause 14 Dictionary, definition of floor area

This clause omits the signpost definition of **floor area** from the dictionary of the *Animal Welfare Regulation 2001*.

Part 4 Domestic Animals Act 2000

Clause 15 Dictionary, definition of *animal welfare offence*, new paragraph (da)

This clause inserts a new paragraph (da) into the dictionary definition of ***animal welfare offence*** in the *Domestic Animals Act 2000*. New paragraph (da) defines the offence in new section 9A as an animal welfare offence for the purposes of the Domestic Animals Act.

Clause 16 Dictionary, definition of *animal welfare offence*, new paragraph (db)

This clause inserts a new paragraph (db) into the dictionary definition of ***animal welfare offence*** in the *Domestic Animals Act 2000*. New paragraph (db) defines the offence in new section 9B as an animal welfare offence for the purposes of the Domestic Animals Act.

Clause 17 Dictionary, definition of *animal welfare offence*, new paragraph (dc)

This clause inserts a new paragraph (dc) into the dictionary definition of ***animal welfare offence*** in the *Domestic Animals Act 2000*. New paragraph (dc) defines the offence in new section 9C as an animal welfare offence for the purposes of the Domestic Animals Act.