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

ANIMAL WELFARE (FACTORY FARMING) AMENDMENT BILL 2013

SUPPLEMENTARY EXPLANATORY STATEMENT

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INTRODUCTION

This supplementary explanatory statement complements the existing explanatory statement that was tabled with the Animal Welfare (Factory Farming) Amendment Bill 2013 (the bill) on 19 September 2013. It explains additional government amendments to the bill.

This supplementary explanatory statement has been prepared in order to assist the reader of the government amendments to the bill and help inform debate on it. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the government amendments to the bill. It is not, and is not intended to be, a comprehensive description of either the bill or the government amendments. 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 government amendments to the bill is to extend the prohibition in proposed section 9A of keeping a laying fowl for commercial egg production in a battery cage. The government amendments extend this prohibition to keeping a laying fowl for commercial egg production in *any* cage (which would include a battery cage or an enriched or furnished cage).

Experience in those international jurisdictions that have prohibited battery cage farming, including several American states, has shown that some commercial egg producers have introduced 'enriched' or 'furnished' cages in an attempt to bypass the prohibition. Enriched cages are larger than traditional battery cages and are 'enriched' by the introduction of a perch, some litter and a nesting box. Enriched cages arguably have benefits over traditional battery cages; nevertheless their use for egg production has significant welfare concerns.

The government amendments to the bill ban the use of all forms of cages for laying fowls by creating an offence of keeping a laying fowl for commercial production in accommodation that is not appropriate.

This offence is strict liability and has a maximum penalty of 50 penalty units.

Appropriate accommodation

Appropriate accommodation for laying fowls for commercial egg production is defined in new section 9A (3), using definitions from the *Eggs (Labelling and Sale) Act 2001*. A laying fowl can only be kept in one of the following three types of accommodation:

- a single-level barn (defined in schedule 1, item 2, column 3 of the *Eggs (Labelling and Sale) Act 2001*); or

- an aviary (defined in schedule 1, item 3, column 3 of the *Eggs (Labelling and Sale) Act 2001*); or
- a free-range system (defined in schedule 1, item 3, column 3 of the *Eggs (Labelling and Sale) Act 2001*).

Rights to property, trade and livelihood

In its scrutiny comments on the Animal Welfare (Factory Farming) Amendment Bill 2013, the Standing Committee on Justice and Community Safety indicated that it is possible that a ban on the keeping of hens in a caged system will have an adverse effect on the profitability of a business that produces eggs. This possibility also applies to the proposed new 9A in the government amendments to the bill.

There is no evidence to suggest that this will be the case; nonetheless, there is no effect on existing commercial egg producers. Proposed new section 120 specifically exempts an existing commercial egg producer from the operation of section 9A until 16 May 2016.

Proposed new section 120 (1) provides a condition for the above exemption: the existing commercial egg producer must have entered into an agreement with the Territory to convert its facility from a battery cage to a barn system. As all commercial egg producers currently operating in the ACT have entered into such agreements with the Territory, all commercial egg producers will be exempt from the requirements of section 9A until 16 May 2016.

Future commercial egg producers will, however, be prohibited from operating a cage system for egg production due to the operation of section 9A. As these producers do not exist yet, however, it cannot be said that any right currently held is affected.

From 16 May 2016, the prohibition in section 9A will apply to all commercial egg producers operating in the ACT with the object of ensuring greater animal welfare outcomes.

Human rights implications—presumption of innocence

Proposed section 9A of the bill contains an offence of strict liability. Strict liability engages the right to be presumed innocent under section 22 of the *Human Rights Act 2004* as strict liability may reverse the onus of proof from the prosecution 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 proposed new section 9A targets the commercial farming industry, not domestic producers. As the Standing Committee on Justice and Community Safety pointed out in its scrutiny comments on the Animal Welfare (Factory Farming) Amendment Bill 2013 as presented, while the offence is targeted at corporations, which do not have human rights, the offence may conceivably result in the prosecution of an individual, if that individual is engaging in commercial egg farming using cages to keep laying fowls.

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. Section 28 (2) of the Human Rights Act provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. The limits on the right in section 22 is considered reasonable and justifiable in a free and democratic society, taking into account the factors enumerated in section 28 (2) of the Human Rights Act, namely:

(a) *The nature of the right being limited*

The right to presumption of innocence before the law is a very important right that has been recognised by the common law for centuries, and is now codified in section 22 of the Human Rights Act. The courts have held, however, that the right to presumption of innocence may be subject to limits, particularly where the offences are regulatory of a kind where those who might be affected by the offence would be expected to be aware of it.

(b) *The importance of the purpose of the limitation*

The purpose of providing a reverse onus is to ensure the effective enforcement of and compliance with proposed new section 9A by enabling the offences to be effectively prosecuted. The limitation of section 22 is aimed at providing an effective deterrent to protect animal welfare.

As the offence in proposed new section 9A is aimed at commercial egg producers, they should be well aware of regulatory requirements for the running of their business, including that they must keep their laying fowls in appropriate accommodation.

(c) *The nature and extent of the limitation*

The strict liability offence in proposed new section 9A may engage the right to be presumed innocent by reversing the onus of proof from the prosecution onto a defendant.

It is to be noted that the maximum penalty for a prosecution of the offences is 50 penalty units, without imprisonment. This is considered proportionate and not unduly harsh for a regulatory offence which has been enacted to protect the welfare of animals.

(d) *The nature between the limitation and its purpose*

The imposition of a burden of proof on the defendant through creating the strict liability offence in proposed new section 9A enables the offence to operate as an effective deterrent. It is noted that section 9A is a regulatory offence and that those who are affected by the offence (commercial egg producers) would be expected to be aware that they must keep their laying fowl in appropriate accommodation, which precludes cages.

(e) *Less restrictive means reasonably available to achieve the purpose*

Although an evidential onus would be less restrictive on the right to be presumed innocent found in section 22, for regulatory offences it would not be as effective. This is because strict liability offences provide that the defendant's act alone should dictate the offence, rather than the reasons that the defendant acted in that way. This should be seen in the context that it is much more likely for this offence to be committed by a corporation and that corporations do not hold human rights.

Further justification for proposed new section 9A lies in its aim of greater protection of animal welfare. A free and democratic society expects its lawmakers to enact legislation to ensure that animals will be treated well and not exposed to cruelty, pain or suffering.

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, which includes the defence of intervening conduct or event, as provided by section 39 of the *Criminal Code*.

OUTLINE OF PROVISIONS

Clause 1 Amendment of clause 5 Proposed new section 9A

This clause replaces proposed new section 9A of the Animal Welfare (Factory Farming) Amendment Bill 2013.

Proposed new section 9A creates a strict liability offence of not keeping a laying fowl for commercial egg production in appropriate accommodation. The maximum penalty for this offence is 50 penalty units. The clause also provides definitions of **appropriate accommodation**, **commercial egg production** and **laying fowl** for the purposes of the section.

Clause 2 Amendment of clause 8 Proposed new section 20 (aa)

This is a consequential amendment to proposed new section 20 (aa) as a result of the renaming of proposed new section 9A.

Clause 3 Amendment of clause 11 Proposed new section 120 (2)

This is a consequential amendment to proposed new section 120 (2) as a result of the renaming of proposed new section 9A.

Clause 4 Amendment of clause 11 Proposed new section 120 (3)

This is a consequential amendment to proposed new section 120 (3) as a result of the amendment to the *Animal Welfare Regulation 2001* (see below in clause 5).

Clause 5 Amendment of clause 13

This clause amends clause 13 to repeal the entire division 6.2 of the *Animal Welfare Regulation 2001*. Division 6.2 currently regulates laying fowl kept in cages. As the government amendments prohibit keeping a laying fowl for commercial egg production in anything but appropriate accommodation, and the definition of **appropriate accommodation** for laying fowls excludes keeping a laying fowl in a cage, division 6.2 has become redundant.

Clause 6 Proposed new clauses 13A to 13F

This clause inserts new clauses 13A to 13F as consequential amendments to the *Animal Welfare Regulation 2001* as a result of the repeal of division 6.2.

Clause 7 Amendment of clause 15

Dictionary, definition of *animal welfare offence*, proposed paragraph (da)

This is a consequential amendment to the definition of animal welfare offence in the dictionary of the *Domestic Animals Act 2000* as a result of the renaming of proposed new section 9A.