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

ANIMAL WELFARE AMENDMENT BILL 2010

EXPLANATORY STATEMENT

**Circulated by authority of
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Animal Welfare Amendment Bill 2010

Overview

This explanatory statement relates to the Animal Welfare Amendment Bill 2010 as introduced to the Legislative Assembly.

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.

The Animal Welfare Amendment Bill 2010 proposes to amend the Act by providing that the Minister may declare codes of practice to be mandatory. Although the Act currently gives the Minister the power to make codes of practice, there is no requirement to comply with a code. As the Act is currently structured, a code of practice describes best practice in owning or caring for an animal. Compliance with a code may also be relied upon by a person as a defence (with some exceptions) to a prosecution for an animal cruelty offence.

New national model codes of practice are being developed on behalf of the Primary Industries Ministerial Council (PIMC). PIMC has also considered and made recommendations for reforms to states' and territories' legislation to create consistent animal welfare regulation across Australia. Mandatory codes of practice, which are proposed to be accompanied by offences for failing to comply with a requirement of a mandatory code, will also give the Territory an additional tool to manage animal welfare issues.

Before a code of practice can be made mandatory, the Bill imposes an obligation on the Minister to be satisfied that adequate consultation has occurred. At present, the Animal Welfare Advisory Committee (AWAC) has a role in the development of codes of practice. The AWAC will also play a role in the consultation undertaken with developing mandatory codes of practice.

Financial Implications

The Bill facilitates the making of mandatory codes. To that extent the Bill has no immediate financial implications. The development of, and consultation on, new mandatory codes of practice will not require additional resources. As new codes are declared, additional enforcement activities will need to be undertaken which will may require additional resources. The extent of resourcing will depend on the scope of future codes.

Notes on clauses

Clause 1 Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

This clause provides for the proposed Act to commence by notice on a day to be fixed by the Minister. If no notice is made by the Minister within six months, the Act will commence automatically, by virtue of section 79 of the *Legislation Act 2000*.

Clause 3 Legislation amended

This clause is a formal provision to identify that the legislation to be amended by the proposed Act is the *Animal Welfare Act 1992* (the principal Act).

Clause 4 Section 20

Section 20 of the principal Act currently provides that compliance with a code of practice can be used as a defence to a charge of animal cruelty, or other offence contained in part 2 of the Act. This clause amends section 20 of the principal Act to make this defence also applicable to mandatory codes of the practice.

Clause 5 Section 22, heading

This clause amends the heading to section 22. Section 22 provides for the making of codes of practice. The amendment to the heading is required to make a distinction between codes of practice that are merely approved (but not mandatory) and mandatory codes of practice. Codes of practices that are not mandatory will be referred to as approved codes of practice.

Clause 6 New section 23

This clause inserts a new section 23. This section gives the Minister the power to declare a code of practice to be a mandatory code of practice. Before the Minister may declare a mandatory code of practice, the Minister must be satisfied that adequate consultation has occurred. It should be noted that the AWAC will participate in the development of mandatory codes of practice (see clause 10 of the Bill).

Mandatory codes of practice may be disallowed by the Legislative Assembly.

Clause 7 Publication Section 24

This clause inserts a reference to new section 23 in section 24. Section 24 requires the Animal Welfare Authority to publish in a paper circulating in the ACT a notice about the approval of a code of practice. The notice must be published on or before the code of practice is to take effect. It will be a requirement for both approved codes of practice and mandatory codes of practice that publication occurs.

Clause 8 New sections 24A to 24C

This clause provides that it is an offence to fail to comply with a requirement of a mandatory code of practice. There are two offences being proposed – a fault element offence and a strict liability offence. It is acknowledged that these offences rely upon a code of practice that is given legal effect by a disallowable instrument. However, in order to ensure compliance with a mandatory code of practice, this approach is unavoidable, as the alternative would be to replicate, word for word, nationally agreed codes of practice in regulations (or in amendments to the Act).

New section 24A provides that it is an offence to recklessly fail to comply with a requirement of a mandatory code of practice. The maximum penalty for the offence is 100 penalty units.

New section 24B provides that it is a strict liability offence to fail to comply with a requirement of a mandatory code of practice, with a maximum penalty for the offence of 50 penalty units.

An offence of strict liability will provide the Territory with the ability to deal with lower order breaches of mandatory codes of practice. It is considered, however, that strict liability offences engage the presumption of innocence in subsection 22(1) of the *Human Rights Act 2004*.

Strict liability is usually employed where it is necessary to ensure the integrity of a regulatory scheme. Such offences are primarily aimed at the less serious side of the criminal spectrum with penalties generally at the lower end of the scale.

It is usually desirable 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. In the case of mandatory codes of practice it is reasonable to expect businesses and industries to be make themselves acquainted with the codes relevant to their operation, as part of their normal business practices.

New national model codes of practice are being developed on behalf of the PIMC. It is anticipated that in general, future national mandatory codes of practice will focus on businesses or industries with animal welfare issues. It should also be noted that relevant industry representative will be consulted as part of the national development of mandatory codes of practice.

However, animal welfare legislation applies to the community as a whole and the Bill does not limit the making of mandatory codes relevant only to businesses or industry. The community expects that animals will be treated well and not exposed to cruelty, or pain and suffering. In this regulatory environment, applying strict liability will assist in achieving the object of the Act - the promotion of animal welfare. The requirement to consult before adopting codes in the Territory (see clause 6 of the Bill), together with the requirement to publish a code (see clause 7 of the Bill) means that there should be wide community awareness of their obligations under a code.

In addition to the requirement to consult and to publish new mandatory codes of practice, the operation of section 24B is restricted where the offender might not reasonably be expected to know of his or her obligations under a code. Typically, this might be individuals not involved in a business or industry to which a mandatory code ordinarily applies.

In such cases, the requirements of section 24C apply. Where the person is reasonably suspected by an animal welfare inspector (or an authorised officer) of breaching a code, the person must first be served with a written direction to rectify the breach. They must be given a reasonable time to comply. The person only commits an offence if they fail to comply with the direction within the stipulated time. This will ensure that the person is made aware of the existence of the mandatory code.

However, if the person subsequently breaches the same code, the strict liability offence can be applied without the need to first issue a direction to rectify the breach. If an inspector or authorised officer has issued a direction to rectify a breach of a mandatory code and subsequently determines that the person has already been convicted of an offence of breaching that code the inspector or authorised officer can withdraw the direction and seek to have the person prosecuted instead.

Clause 9 Interstate researchers' authorisation in the ACT Section 49B (3)(b)

This clause inserts a reference to mandatory code of practice into section 49B(3)(b). Section 49B is concerned with interstate researcher's authorisation in the ACT. The authorisation to operate can be cancelled if the authority is satisfied on reasonable

grounds that there has been a contravention of an approved code of practice. The provision will also apply to a mandatory code of practice.

Clause 10 Establishment and functions
Section 109(3)(b)

This clause updates the Animal Welfare Advisory Committee authority to participate in the development approved codes of practice to include mandatory codes of practice.

Clause 11 Regulation-making power
Section 112(4)

This clause updates the regulation-making power to remove the power to incorporate into regulations codes of practice. This power is not necessary as the power to make codes under either section 22 or new section 23 will be sufficient.

Clause 12 Dictionary, new definition of *mandatory code of practice*

This clause inserts a reference and definition in the dictionary of “mandatory code of practice”.