

Animal Care and Protection Regulation 2023

Explanatory Notes for SL 2023 No. 117

made under the

Animal Care and Protection Act 2001

General Outline

Short title

Animal Care and Protection Regulation 2023

Authorising law

Sections 3, 4, 13, 15 and 217 of the *Animal Care and Protection Act 2001* (the Act).

Policy objectives and the reasons for them

The purpose of the *Animal Care and Protection Regulation 2023* (the Amendment Regulation) is to:

1. remake the *Animal Care and Protection Regulation 2012* (the 2012 Regulation) prior to its staged automatic expiry, to give effect to various compulsory and voluntary codes of practice that provide for the welfare of animals, and
2. provide minor administrative amendment by –
 - a. clarifying obligation on providing access to food and water when tethering cattle and sheep at other agricultural shows, field days or similar events,
 - b. clarifying the definition of ‘designated rodeo association’,
 - c. prescribing existing animal welfare inspector training under a new head of power in the Act (section 121A).
 - d. amendments consistent with modern drafting practices, including reorganising content of the codes of practice for consistency, and moving record keeping requirements for sows and breeding dogs into their appropriate codes of practice within the Regulation.

The 2012 Regulation primarily exists to prescribe the compulsory codes of practice established under section 13 of the Act, which set out minimum standards for animal welfare across different sectors and industries (i.e. Code of practice for the transport of livestock; Code of practice for breeding of dogs). The 2012 Regulation also prescribes voluntary Model Codes of Practice in Schedule 4 for which a person may comply. Although not all animal welfare codes are mandatory, they are all important because they:

- provide an agreed animal welfare standard;
- help people meet a legal duty of care to the animals in their charge;
- are a tool for inspectors to provide guidance (and if necessary, formal directions) to a person to provide suitable living conditions, handling, and husbandry of

animals to ease animal suffering, or address situations that might otherwise lead to suffering; and

- help industry show its commitment to agreed animal welfare standards.

Under the *Statutory Instruments Act 1992* regulations face a staged automatic expiration 10-years after they are made unless they are otherwise exempted from this expiration. The 2012 Regulation was due to expire on 1 September 2022 but was exempted from expiry on the basis its parent Act (the *Animal Care and Protection Act 2001*) was under review. The *Statutory Instruments Regulation 2022* prescribed that the new expiry for the Regulation would be 31 August 2023.

A sunset review of the 2012 Regulation identified that the preferred option is to remake the 2012 Regulation with minor changes. Accordingly, the *Animal Care and Protection Regulation 2023* will continue to ensure that animals in Queensland are afforded standards of animal welfare which meet community expectations, market requirements, incorporate scientific soundness and provide for animal welfare outcomes which are consistent with other Australian jurisdictions.

Tethering for Cattle and Sheep

Generally, cattle and sheep are housed and tethered at the show grounds for the duration of their stay when at agricultural shows, field days or similar events. This is usually a set range of dates as part of the scheduled competition events program. The animals are provided with food and water, however there is limited space for grazing. Some stakeholders were confused about the discharge of their obligation in relation to 'grazing' of tethered animals, and whether access to food and water sufficiently captured the intent of the regulation. It was necessary to ensure that on remake the Amendment Regulation provides sufficient clarity to allow the appropriate discharge of obligation for the care and protection of animals tethered at agricultural shows, field days or similar events.

Designated Rodeo Associations

The Code of Practice about Rodeos provided that 'designated rodeo associations' were defined in the Regulation and were limited to a prescriptive list of legal entities. This resulted in issues in administering the aspects of the Code relevant to 'designated rodeo associations' as a number of member organisations are not captured by the given definition – for example where a designated rodeo association had member rodeo associations, the members were not able to be identified in the legislation as 'designated rodeo associations' as they were separate legal entities to the parent association. This is addressed in the Amendment Regulation to provide a definition for rodeo associations which accurately reflects the intent of providing adequate regulatory guidance for legitimate business entities established for the purpose of coordinating and assisting in the running of rodeos and/or governing the sport.

Welfare inspector training

Section 121A of the Act (Inserted by the *Animal Care and Protection Amendment Act 2022*) provides that an inspector must satisfactorily complete the training prescribed by regulation within the period required by regulation. Under this new head of power, the Amendment Regulation gives legislative effect to the Act by prescribing training modules for animal welfare inspectors as well as a period in which training is to be completed.

Specific record keeping amendments

The requirements to keep particular records for both sows and dogs were located outside the schedules containing the mandatory codes of practice about pigs and dogs. The intent on implementation was to ensure that these provisions supported the record keeping and

reporting requirements within their respective codes of practice. The Amendment Regulation addresses this by ensuring these provisions are located within their respective codes of practice.

Achievement of policy objectives

Section 3 of the Act provides that the purposes of the Act are to promote the responsible care and use of animals, provide standards for their care and use, protect animals from unjustifiable pain and to ensure that the use of animals for scientific purposes is accountable, open and responsible.

Section 4 of the Act, in part, provides that the purposes are to be primarily achieved by providing for regulations about codes of practice for animal welfare. The regulations may require compliance with these codes of practice, impose a duty of care on persons in charge of animals and prohibit certain conduct in relation to animals.

Section 54 of the *Statutory Instruments Act 1992* provides that the 2012 Regulation is due to automatically expire on 1 September 2023 unless it is earlier repealed or exempted from expiry.

Accordingly, the Amendment Regulation is required to be made, in view of the 2012 Regulation's impending expiry under the provisions of the *Statutory Instruments Act 1992*, to preserve the framework which gives legislative effect to various compulsory and voluntary codes of practice to provide for animal welfare.

The Amendment Regulation satisfies the Act's objectives as it will continue to ensure that animals in Queensland are afforded standards of animal welfare through these existing codes of practice which meet community expectations, market requirements, incorporate scientific soundness and provide for animal welfare outcomes which are consistent with other Australian jurisdictions.

In addition, the Amendment Regulation makes a number of administrative changes to provide further clarity, or as a result of the process of legislative renewal.

Tethering for Cattle and Sheep

To clarify that the obligation to provide access to food and water when tethering cattle and sheep at agricultural shows, field days or similar events, the Amendment Regulation provides that for sheep or cattle that are being tethered at agricultural shows, field days or similar events, the tether should be long enough to provide access to food and water.

This provides greater clarity on the intent of the phrase "move around for grazing" and achieves the provision of clear minimum standards on persons responsible for the care, handling and use of cattle and sheep at shows and events under section 13 of the Act.

Designated Rodeo Associations

'Rodeo organisation' is redefined in the remade regulation as an organisation whose objects include governing and administering the sport, coordinating and assisting in the running of rodeos; and training and administering rodeo officials and stock. This minor amendment provides a less restrictive definition of rodeo organisation, and allows greater flexibility for the running of businesses surrounding the sport as a number of member organisations were not previously captured by the definition in the regulation.

The amendment is administrative in nature, as while it does not change the regulatory obligations surrounding the running of a rodeo organisation, it clarifies the definition in order to better capture the full range of rodeo organisations.

Welfare Inspector training

The remade regulation provides standardisation of training modules for the training and development of animal welfare inspectors.

It provides that inspectors must complete, within 3 months, the following training:

- Modules 1 to 10 of the Animal Welfare Program Inspector Learning and Development Program. The program can be accessed on the Department of Agriculture and Fisheries website.

This establishes standards for development and education of animal welfare inspectors under the Animal Welfare Program Inspector Learning and Development Program, and promotes the role of the Act in ensuring that animals are protected in their care and use, as well as providing an integral part of the accountability structure that supports section 3 of the Act.

Specific record keeping amendments

The requirements to keep particular records for both sows and dogs were given meaning by their respective codes of practice in the Regulation and provide guidance on the discharge of obligation when keeping particular records under those codes of practice.

The Amendment Regulation places each of these provisions within the schedules with the relevant code of practice. This conforms to modern drafting practice by ensuring a clear head of power within the Act for the provisions, as well as clarifying the legislative context behind the keeping of records regulated by the provisions.

The penalty rate for non-compliance with these record keeping provisions has changed, as the Act specifies a penalty rate for non-compliance with the mandatory codes of practice that overrides the maximum penalty rate allowable for other parts of the Regulation. For this reason, the penalty rate for these provisions has increased to align with the standard penalty rate intended for the provisions in codes of practice.

Consistency with policy objectives of authorising law

This Amendment Regulation is consistent with the purposes in section 3 of the Act to promote the responsible care and use of animals, provide standards for the care and use of animals that achieve a balance between animal welfare outcomes and the interests of users of animals and protect animals from unjustifiable, unnecessary or unreasonable pain.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of any other legislation.

Benefits and costs of implementation

The Amendment Regulation is beneficial to the welfare of animals as it prescribes standards and guidelines for acceptable animal welfare outcomes which also meet community expectations and achieves a reasonable balance between animal welfare and the interests of persons whose livelihood is dependent upon animals.

The Amendment Regulation prescribes the same level of fees as currently prescribed, in the 2012 Regulation, and will impose the same implementation costs, which will be met from within existing budget allocations.

Consistency with fundamental legislative principles

The subordinate legislation is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

The remade Regulation could potentially infringe upon the fundamental legislative principle (FLP) that legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct a business without interference. The provisions that are relevant to this FLP include:

- The requirement to maintain closed-circuit television equipment in livestock facilities; and
- The compulsory codes of practice which set out minimum animal welfare requirements across different industries and sectors.

These provisions impose a number of positive obligations on the industries associated with the particular animals and may be considered an interference on normal business activities. However, any potential infringement is justified to address the significant animal welfare concerns associated with the industries regulated. Without these provisions, only the general animal offences (Chapter 3 of the Act) would apply to the treatment of animals within these industries. However, these offences and obligations are generic in nature and lack the specificity to ensure appropriate animal welfare outcomes are achieved.

Consultation

On 14 March 2022, DAF consulted with the Animal Care and Protection Act Review Reference Group (the Reference Group) on the approaches to the sunset review and other policy issues associated with the Amendment Regulation.

The Reference Group includes members from the Australian Veterinary Association, the Queensland Farmers' Federation, AgForce, Horse Biosecurity Market Access Liaison Group, RSPCA (Qld), Queensland Racing Integrity Commission, Animals Australia, and the Animal Welfare Advisory Board.

A majority of the Reference Group supported a sunset review of the 2012 Regulation, recommending a remake of the 2012 Regulation with minimal amendment.

Regulatory Impact Analysis:

The Department of Agriculture and Fisheries consulted the Office of Best Practice Regulation (OBPR) on whether the remake is excluded from further analysis under the Queensland Government Guide to Better Regulation. The OBPR assessed that the amendment is excluded from further analysis as it is unlikely to result in significant adverse impacts. The OBPR separately assessed the amendment related to tethering of cattle and sheep to be excluded from further analysis, as it is designed to reduce the burden of regulation and it is reasonably clear there are no significant adverse impacts.

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