

# Animal Care and Protection Regulation 2023

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mark Furner, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities provide this human rights certificate with respect to the *Animal Care and Protection Regulation 2023* made under the *Animal Care and Protection Act 2001*.

In my opinion, the *Animal Care and Protection Regulation 2023*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The authorising Act for the *Animal Care and Protection Regulation 2023* (the Regulation) is the *Animal Care and Protection Act 2001* (the Act), which is the primary animal welfare legislation for Queensland. The Act sets the minimum standards for the welfare of animals, the maximum penalties for offences, and provides powers to inspectors to act when people's actions fall below the minimum standards. The Act applies to all vertebrate animals including amphibians, fish, mammals, reptiles, and invertebrate animals, including cephalopods. It does not apply to humans or some developmental stages of certain animals.

The Regulation is the only subordinate legislation made under the Act. It contains five parts and ten schedules. Part 1 of the Regulation contains the short title of the Regulation and Part 2 provide details about the codes of practice made under the Regulation. Part 3 contains the requirements for closed-circuit television (CCTV) equipment for livestock slaughter facilities (horses only). Part 4 contains miscellaneous provisions, and Part 5 contains repealed provisions. The schedules to the Regulation contain compulsory and voluntary codes of practice. The final schedule relates to fees applicable under the Regulation.

A key objective of the Regulation is to achieve a purpose of the Act by providing for regulations about codes of practice for animal welfare (s.4(a) of the Act) and allowing regulations to require compliance with codes of practice (s.4(b) of the Act).

Further, the Regulation prescribes the detail in relation to achieving other purposes of the Act (s4) such as prescribing certain electrical devices as prohibited for use on an animal, setting out the schedule of fees payable by registrants for scientific use of animals, and declaring classes of persons who can be inspectors or authorised persons and prescribed entities. Another key objective of the Regulation is to accommodate the matters prescribed under various regulation-making powers in the Act.

The Regulation contributes to meeting the Act's objectives (s3, Purposes of Act). The Regulation provides for:

- promoting the responsible use and care of animals through prescribing minimum standards for living conditions, handling, transport, and husbandry practices
- protecting animals from unreasonable, unjustifiable, and unnecessary pain by regulating husbandry practices and ensuring accommodation is constructed to minimise injury and protect animals from extremes of weather
- achieving a reasonable balance between the welfare of animals and the interests of those whose livelihoods depend on them since the codes of practice, (and underlying Australian Animal Welfare Standards and Guidelines), generally undergo significant consultation with industry, animal welfare organisations and stakeholders, and
- incorporating advancements in scientific knowledge and community expectations informed by reviews of the latest scientific literature and consultation with veterinary experts, as well as community consultation.

The Regulation replaces the *Animal Care and Protection Act 2012* (the 2012 Regulation) which expires on 31 August 2023 in accordance with section 54 of the *Statutory Instruments Act 1992*.

A sunset review of the 2012 Regulation recommended the Regulation be remade with minor amendments, as it is achieving its original purpose effectively and efficiently in supporting the objectives and operation of the Act.

The minor amendments being made to the Regulation in the remake are:

- clarification of the definition of ‘designated rodeo association’ in Schedule 8 of the Regulation to address practical issues that have arisen since making of the code of practice about rodeos
- prescribing existing animal welfare inspector training under a new head of power in the Act (section 121A)
- reducing the regulatory burden of tethering requirements while preserving animal welfare outcomes for cattle and sheep, and
- any editorial changes advised by the Office of Queensland Parliamentary Council to ensure alignment with contemporary drafting practices.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Regulation engages two human rights under the *Human Rights Act 2019* (HR Act), property rights (section 24) and the right to privacy and reputation (section 25).

The clauses in the Regulation which limit human rights are:

- A. Part 3, Closed-circuit television equipment for livestock slaughter facilities, sections 5 to 8 – property rights and the right to privacy and reputation
- B. Part 4, Miscellaneous provisions, section 10(2) Information for annual report - Act, s87 – right to privacy and reputation
- C. Schedules 1 to 8 – Compulsory codes of practice – property rights.

#### A. Closed-circuit television equipment for livestock slaughter facilities

### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

The human rights engaged or limited by this aspect of the Regulation are property rights (HR Act, section 24) and the right to privacy and reputation (HR Act, section 25).

#### **Property rights**

Under the Regulation, Part 3, section 5 (Minimum requirements for closed-circuit television equipment—Act, section 93U) prescribes the minimum requirements for closed-circuit television equipment, as provided for in section 93U(a)(i) of the Act. The equipment must produce images that allow for the identification of individuals or animals at the facility. Furthermore, the equipment must display the time and date on each recording, and record the whole area of a monitoring point in the livestock slaughter facility prescribed under section 93T(2) of the Act. Furthermore, the equipment, and any related device used for storing recordings made by the equipment, must be able to store each recording made by the equipment for at least 1 year and 30 days, and be able to produce a digital copy of each recording stored on the equipment or device.

Section 6 (Requirements for maintaining closed-circuit television equipment—Act, section 93U) in the Regulation prescribes the maintenance requirements for closed-circuit television equipment under section 93U(a)(ii) of the Act. The equipment must be inspected each day when there is livestock at a livestock slaughter facility to ensure it is operating effectively. The owner must give the chief executive notice in the approved form if the equipment is not operating effectively or is otherwise malfunctioning and make arrangements to repair the equipment no later than 48 hours after the malfunction is identified. The equipment must be inspected and certified by an appropriately qualified person, as provided for in sections 7 (Inspecting closed-circuit television equipment) and 8 (Certifying closed-circuit television equipment) at least once a year. Section 7 (Inspecting closed-circuit television equipment) prescribes this section applies if closed-circuit television equipment is inspected at a livestock slaughter facility under section 6(3).

Subsection (2) of section 7 provides that the details about the inspection that must be recorded are – (a) the date and time of the equipment was inspected; (b) the name of the person who inspected the equipment; and (c) whether the equipment was operating effectively.

Subsection (3) of section 7 provides the records must – (a) be stored in a secure place at the livestock slaughter facility; and (b) be accessible only by the owner or a person authorised by the owner.

Section 8 (Certifying closed-circuit television equipment) applies if closed circuit television at a livestock slaughter facility is certified under section 6(3).

Subsection (2) of section 8 provides that the certificate must state whether the equipment and any related device are in good working order and specifically whether - (a) the equipment is able to record images clearly; and (b) the equipment or a related device is able to store each recording made by the equipment for at least 1 year and 30 days; and (c) the equipment and any device is able to produce a digital copy of each recording stored on the equipment or device.

Under subsection (3) of section 8, the certificate – (a) must be stored in a secure place at the livestock slaughter facility; and (b) only be accessible by the owner of the facility or a person authorised by the owner of the facility.

(a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable, or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

This right is engaged by the various requirements in the Regulation for a livestock slaughter facility owner to install, maintain and operate CCTV equipment in specified ways. Part 3 of the Regulation prescribes the minimum requirements for the installation, maintenance, and operation of closed-circuit television equipment in livestock slaughter facilities provided for under Part 2 of Chapter 4B (Obligations relating to livestock slaughter facilities) of the Act – section 93U – Requirements for closed-circuit television equipment. These requirements apply to livestock processing facilities which process horses (currently only two in Queensland).

These requirements limit a livestock slaughter facility owner's property rights as their use and control of the CCTV equipment, and livestock processing facility more broadly, is restricted by the requirements under the Regulation.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to support the detection of animal welfare risks and compliance of livestock slaughter facilities with Queensland's animal welfare laws through requiring the installation, maintenance, and operation of CCTV equipment in horse slaughter facilities in Queensland. Supporting the enforcement of requirements legislated by Parliament is consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting the property rights of a person who owns a livestock (horse) slaughter facility by requiring them to install, maintain and operate CCTV equipment at that facility as per the requirements in the Regulation, directly supports the purpose of ensuring that animal welfare risks can be detected and that livestock (horse) slaughter facilities are compliant with Queensland's animal welfare laws.

The 2020 *Inquiry into animal cruelty in the management of retired Thoroughbred and Standardbred horses in Queensland* (Martin Inquiry) advocated the use of CCTV as a useful tool for: detecting and addressing systemic animal welfare issues that may otherwise go undetected; setting an expectation that animal welfare is a priority; holding employees to

account; and providing useful information to make improvements in the way that animals are handled at the facilities. Furthermore, CCTV may act as a deterrent to poor practices and is an important tool in the investigation of offences.

The provisions in the Regulation support the implementation of Recommendation 10.2.2 of the Martin Inquiry:

- require the use of closed-circuit television equipment (CCTV) at livestock slaughter facilities at all critical animal handling and processing areas to record clear surveillance of the movement of animals from arrival to exsanguination.

CCTV surveillance at livestock processing establishments is an emerging standard that promotes better practice and increased public trust in the meat processing industry as it allows an open and transparent approach to animal welfare monitoring. CCTV recordings serve as useful evidence and supports the investigation and enforcement of animal welfare offences when they do occur. The success of livestock industries is dependent upon community confidence in the regulation of animal welfare.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive or reasonably available alternatives to the provisions in the Regulation that would equally achieve the purpose of supporting the detection of animal welfare risks and compliance of livestock (horse) slaughter facilities with Queensland's animal welfare laws. The requirements contained in the Regulation have been through thorough consideration and consultation with peak industry bodies.

The regulatory approach is consistent with other Australian and international jurisdictions which define and prohibit inappropriate practices and behaviour that impact on the welfare of animals.

Non-legislative options have not effectively reduced the significant animal welfare risks identified through the Martin Inquiry and are not considered an appropriate or effective way to meet community expectations. Education campaigns and best practice publications are not likely to be effective in achieving the purpose of the limitation - to support the detection of animal welfare risks and compliance of livestock (horse) slaughter facilities with Queensland's animal welfare laws.

Providing no government intervention and leaving industry to self-regulate may lead to an inconsistent approach and an increase in animal welfare incidents occurring at livestock (horse) slaughter facilities in Queensland.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Animal welfare legislation imposes obligations on people to provide for the care of animals and to reduce the incidents of cruelty. While the burden is placed on the owner or person in charge of the animal, the benefit is for the welfare of the animal. The limitations on property rights are directly related to providing appropriate care for animals and reducing the number of animal welfare cruelty incidents across Queensland.

The provisions in the Regulation limit a person's property rights to the extent of requiring a person who owns a livestock (horse) slaughter facility to install, maintain and operate CCTV equipment at that livestock slaughter facility as per the requirements in the Regulation. The limitation on property rights is necessary to ensure that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

The provisions in the Regulation strike a fair balance between the person's property rights, the employer's interest in complying with the Regulation, and the public interest that significant animal welfare risks are being addressed. The intervention in a person's right to conduct business in the way they want is considered appropriate because a livestock slaughter facility is a high-risk environment for the welfare of animals. The success of livestock industries is dependent upon community confidence in the regulation of animal welfare. Domestic and international retailers have increasingly focused on animal welfare as an important consideration of product quality. The use of CCTV will provide reassurance that animal welfare risks are being appropriately regulated and managed.

The limitation of the right is balanced against the benefits from the requirements implemented through the Regulation. The limitation on property rights is therefore reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

CCTV is already used in some Australian livestock processing facilities including the two main horse slaughtering establishments in Queensland. In Australia, the Woolworths Group implemented a policy for all its livestock processing facilities to install CCTV at all key animal handling and processing areas. In 2018, the United Kingdom made it compulsory for all slaughterhouses in England to have CCTV installed in all areas where there are live animals.

Further, the application of CCTV surveillance across all livestock processing facilities is being considered as part of the development of new national 'Australian Animal Welfare Standards and Guidelines for Livestock Welfare at Processing Facilities (the standards and guidelines).

## **Privacy and reputation**

(a) the nature of the right

Section 25 of the HR Act protects a person from unlawful or arbitrary interference and attacks on their privacy, family, home, correspondence, and reputation. An example could involve surveillance of people for any purpose (such as CCTV).

The scope of the right to privacy and reputation is very broad and includes the protection of personal information which extends to a person's workplace. This right is based on Article 17 of the Universal Declaration of Human Rights.

The provisions in the Regulation which requires that CCTV equipment must produce images that allow for the identification of individuals or animals at the facility, have the potential to limit the right to privacy and reputation of all persons employed or present at the livestock (horse) slaughter facility and during the presence of the inspectors if evidence obtained in the course of an investigation relates to the activities of an employee.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The objective of this limitation is to enhance the identification of potential animal welfare issues and ensure the adherence of livestock slaughter facilities in Queensland to the state's animal welfare regulations. This is achieved by requiring the installation, regular upkeep, and proper functioning of CCTV systems in horse slaughter facilities. Supporting the enforcement of requirements legislated by Parliament is consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person who attends a livestock (horse) slaughter facility of their right to privacy and reputation by requiring the operation of CCTV equipment throughout the facility, and therefore recording that person's activities, directly supports the purpose of ensuring that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive or reasonably available alternatives to the provisions in the Regulation that would equally achieve the purpose of supporting the detection of animal welfare risks and compliance of livestock (horse) slaughter facilities with Queensland's animal welfare laws.

The regulatory approach is consistent with other Australian and international jurisdictions which define and prohibit inappropriate practices and behaviour that impact on the welfare of animals.

Non-legislative options such as education campaigns and best practice publications were not found to have effectively reduced the animal welfare risks identified through the Martin Inquiry and are not considered an appropriate or effective way to meet community expectations.

Providing no government intervention and leaving industry to self-regulate may lead to an inconsistent approach and an increase in animal welfare incidents occurring at livestock (horse) slaughter facilities in Queensland.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Animal welfare legislation imposes obligations on people to provide for the care of animals and to reduce the incidence of cruelty. While the burden is placed on the owner or person in charge of the animal, the benefit is for the welfare of the animal. The limitations on the right to privacy and reputation are directly related to providing appropriate care for animals and reducing the number of animal welfare cruelty incidents across Queensland.

The provisions in the Regulation limit a person's right to privacy and reputation to the extent of requiring operation of CCTV equipment throughout a livestock (horse) processing facility, and therefore recording each person who attend's activities. The limitation is necessary to

ensure that animal welfare risks can be detected and that livestock (horse) slaughter facilities are compliant with Queensland's animal welfare laws.

The provisions strike a fair balance between the person's right to privacy and reputation, the employer's interest in complying with the Regulation, and the public interest that significant animal welfare risks are being addressed. The success of livestock industries is dependent upon community confidence in the regulation of animal welfare. Domestic and international retailers have increasingly focused on animal welfare as an important consideration of product quality.

There are appropriate safeguards in Chapter 4B, Part 2 of the Act to protect the privacy of individuals. Under the Act, the owner must not allow the CCTV equipment to be operated by any person other than themselves or a person they have approved to do so (section 93X). A maximum penalty of 300 penalty units applies. The owner must also display signage at the facility in a way that is likely to make any person at the facility aware that CCTV is installed at the facility (section 93V). A maximum penalty of 30 penalty units applies.

In addition, there is also an existing safeguard in section 214B (Confidentiality of information) of the Act which prohibits the use and disclosure of confidential information that may be gained by a person in administering or performing a function under the Act, unless expressly authorised. Section 93Y of the Act also provides that a recording may only be used by an inspector for the purposes of investigating or prosecuting an animal welfare offence. This restricts the use of the recordings as evidence being used for a derivative use such as for investigating offences under other legislation. Further, information must be retained in accordance with the Department of Agriculture and Fisheries' (the department) record-keeping security obligations.

The limitation of the right is balanced against the benefits from the requirements implemented through the Regulation. The limitation on the right to privacy and reputation is therefore reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

CCTV is already used in some Australian livestock processing facilities including the two main horse slaughtering establishment in Queensland.

## **B. Information for annual report**

### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

The human rights engaged or limited by this aspect of the Regulation are the right to privacy and reputation (HR Act, section 25).

#### **Privacy and reputation**

Animals are used for scientific purposes in a variety of settings such a laboratory animal facility, a cattle station, national park, or the various expanses of water surrounding Queensland. The use of animals for scientific purposes is an area of major public concern. In particular, there is a need to prevent or minimise unnecessary pain and stress to animals used for scientific purposes whenever possible.

The Commonwealth Senate Select Committee into Animal Welfare (1989) ('the Committee') recommended the national collection and publication of statistical information about animals used for scientific purposes. The Committee considered that this was a way of addressing public concern about animals used for scientific purposes.

Registering persons to use animals for scientific purposes is a key component of the system of managing the use of animals in science. The eligibility requirements for registration help to ensure the use of animals for scientific purposes is conducted in an accountable, open, and transparent manner because of the potential for suffering or negative effects on animal welfare.

The registration process itself is detailed in the Act, and therefore not of direct relevance to the analysis of human rights impacts of the Regulation. However, the Regulation does prescribe the detail of reporting obligations of persons registered for use of animals for scientific purposes. Under section 87(1) of the Act, each registered person must, on or before 31 May in each year (the reporting day), give the chief executive a written report (an annual report) for the period from 1 January to 31 December immediately before the reporting day that complies with subsection (2).

Under subsection (2) of section 87, annual reports must state:

- (a) information *prescribed under a regulation* about—
  - (i) animals the person has used, or allowed to be used, for scientific purposes; and
  - (ii) complaints, enquiries and grievances about the use of animals for scientific purposes; and
- (b) another matter *prescribed under a regulation* about the scientific use of animals by the person.

Part 4 (Miscellaneous provisions) of the Regulation, section 10(1) (Information for annual report – Act, s87) states that the following information be prescribed in the annual report for section 87(2)(a)(i) of the Act:

- (a) a description of the animals, including the species and class of the animals
- (b) the number of animals used or allowed to be used
- (c) details of where the animal was obtained
  - Examples of where animals can be sourced—*
  - saleyards, specialised animal suppliers, breeding programs, pounds, shelters
- (d) the place of use, and duration of use, of the animals
- (e) the method of disposal of the animals
- (f) the scientific purpose for which the animals were used
- (g) the justification for the use of the animals
- (h) the impact of the use on the animals.

Section 10(2) of the Regulation states the following information be prescribed in the annual report for section 87(2)(a)(ii) of the Act:

- (a) details of all complaints, enquiries and grievances received by the registered person about the use of animals for scientific purposes by the person, including—

- (i) the name of the person who made the complaint, enquiry or grievance, and
  - (ii) the day on which the person made the complaint, enquiry or grievance
- (b) the steps taken to investigate a complaint, enquiry or grievance mentioned in paragraph (a)
- (c) the outcome of an investigation of a complaint, enquiry or grievance mentioned in paragraph (a), including details of any steps taken to remedy a matter arising out of the investigation.

Section 10(3) of the Regulation states the following information be prescribed in the annual report for section 87(2)(b) of the Act:

- (a) the name of the animal ethics committee that approved the use of the animals for scientific purposes;
- (b) details of the use approved by the animal ethics committee, including any requirements the committee made under the scientific use code in relation to the use;
- (c) details of how the approved use is identified in the animal ethics committee's records.

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation. Section 25(a) of the HR Act states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example.

This right is based on Article 17 of the International Covenant on Civil and Political Rights.

The provisions in the Regulation (section 10) which require information for the annual report (Act, section 87 Reporting obligations of registered persons) by scientific users can limit the right to privacy and reputation of scientific users to the extent that a person could be identified by the annual report requirements/in the annual report. Annual reports represent a collection of data, impacting the right to privacy and reputation. Annual reports submitted by users of animals for scientific purposes are not routinely published but may be released under the *Right to Information Act 2009* (RTI).

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to support collection of statistical information about animals used for scientific purposes as a way of addressing public concern about animals used for scientific purposes.

Requiring a person that applies for registration to use animals for scientific purposes to provide the specified information to the chief executive for the purposes of the annual report will support the monitoring of registration holders for compliance with the Act. Compliance with,

and enforcement of, the laws made by the democratically elected Parliament is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting the right to privacy and reputation of a person to report annually on their scientific use of an animal directly supports the purpose of collection of statistical information about animals used for scientific purposes, to support the department's monitoring of registration holders for compliance with the Act, as a way of addressing public concern about animals used for scientific purposes.

Animal welfare legislation imposes obligations on people to provide for the care of animals and to reduce the incidents of cruelty. While the burden is placed on the owner or person in charge of the animal, the benefit is for the welfare of the animal. The limitations on the right to privacy and reputation are directly related to providing appropriate care for animals and reducing the number of animal welfare cruelty incidents across Queensland.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive or reasonably available alternatives to the provisions in the Regulation that would equally achieve the purpose of supporting national collection and publication of statistical information about animals used for scientific purposes as a way of addressing public concern about animals used for scientific purposes. The requirements contained in the Regulation have been through thorough consideration and consultation with peak industry bodies.

Providing no government intervention and leaving industry to self-regulate reporting on the scientific use of animals may lead to an inconsistent approach and may lead to an increase in animal welfare incidents for animals used for scientific purposes.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The proposed limitation of a person's right to privacy and reputation occurs only to the narrow extent of requiring registered users of animals for scientific purposes to provide the prescribed information to the chief executive for the purposes of the annual report. The restriction only relates to the aspects of the information that are private or affect the person's reputation to the extent the person could be identified.

The limitation on the right to privacy and reputation is necessary to ensure collection of statistical information about animals used for scientific purposes as a way of addressing public concern about animals used for scientific purposes.

The limitation is necessary to support the department's monitoring of registration holders for compliance with the Act. The community expects that scientific use of animals in Queensland is monitored to a high standard. The limitation aligns with this expectation.

Any release under RTI is also subject to the *Information Privacy Act 2009*, as such it is expected that personal information would remain protected in most cases. Therefore, the impact of

completing and submitting the annual report on the right to privacy and reputation is considered minimal by the department.

In practice, the persons registered to use animals for scientific purposes include companies or public authorities, such as research institutions, federal, state or local governments, theme parks, zoos, pharmaceutical companies and individuals, as well as learning institutions, such as schools, colleges or universities. Section 11 of the HR Act provides that “All individuals in Queensland have human rights” and “Only individuals have human rights”. The note following section 11(2) expressly provides that a corporation does not have human rights. Accordingly, the human rights impact identified above is relevant only to individuals registered to use animals for a scientific purpose.

The provisions strike a fair balance between the person’s right to privacy and reputation and their interest in complying with the Regulation, and the public interest that the scientific use of animals is appropriate and reported on adequately.

The limitation of the right is balanced against the benefits from the requirements implemented through the Regulation. The limitation on the right to privacy and reputation is therefore reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

The purpose of the *Australian code for the care and use of animals for scientific purposes 8th edition 2013 (updated 2021)* (the Code) is to promote the ethical, humane and responsible care and use of animals used for scientific purposes. The ethical framework and governing principles set out in the Code provide guidance for investigators, teachers, institutions, animal ethics committees and all people involved in the care and use of animals for scientific purposes. It details people’s responsibilities and describes processes for accountability.

The Code is endorsed by the National Health and Medical Research Council (NHMRC), the Australian Research Council, the Commonwealth Scientific Industrial Research Organisation and Universities Australia. Compliance with the Code is a prerequisite for receipt of NHMRC funding.

### **C. Compulsory Codes of Practice**

#### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

The human rights engaged or limited by this aspect of the Regulation are property rights (HR Act, section 24).

#### **Property Rights**

Under section 24(2) of the HR Act, a person must not be arbitrarily deprived of their property. The government can’t take away your property unless the law allows it. For example, some laws restrict the use of private property and can ban owning certain weapons or types of animals. In this case the compulsory codes of practice limits property rights as it restricts or regulates how someone is to deal with/use their private property (animals being the property).

Animal welfare legislation imposes obligations on people to provide for the care of animals and to reduce the incidents of cruelty. While the burden is placed on the owner or person in charge of the animal, the benefit is for the welfare of the animal. The limitations property rights are directly related to providing appropriate care for animals and reducing the number of animal welfare cruelty incidents across Queensland.

A key objective of the Regulation is to achieve a purpose of Act by providing for regulations about codes of practice for animal welfare (s.4(a)) and allowing regulations to require compliance with codes of practice (s.4(b)).

#### *Compulsory Codes of practice*

Part 2, section 2 (Codes made as codes of practice) of the Regulation identifies the codes of practice that are made as compulsory codes of practice (schedules 1-8) of the Regulation. Under section 2(2) of the Regulation, a person must comply with a code of practice. Under section 15(3) of the Act, it is an offence for a person not to comply with an applicable compulsory code requirement. The maximum penalty for subsection (3)—300 penalty units. Animal welfare directions may also be issued in relation to a compulsory code requirement under section 159 of the Act.

In Queensland, the standards from the nationally agreed Animal Welfare National Standards and Guidelines are adopted as compulsory codes of practice under the Regulation as follows:

- Schedule 1 - Code of practice about domestic fowl
- Schedule 2 - Code of practice about pigs
- Schedule 3 - Code of practice about sheep
- Schedule 4 - Code of practice about cattle
- Schedule 5 - Code of practice for transport of livestock
- Schedule 6 - Code of practice for livestock at depots and saleyards
- Schedule 7 - Code of practice for breeding of dogs
- Schedule 8 - Code of practice about rodeos.

An example of an older compulsory code of practice covered by the Regulation is Schedule 2 *Code of practice about pigs*. This schedule was inserted into the Regulation in 2014. The code of practice applies to all pigs except feral pigs. It sets out competency requirements for people carrying out husbandry procedures. The code of practice also sets minimum standards for accommodation requirements (housing), food, water, farrowing and sow crates, floor area and stall measurements, exercise requirements for boars kept in stalls, requirements for particular equipment and systems, health inspections and management, and farrowing and weaning. This code of practice also regulates invasive husbandry procedures, the sterilisation of male pigs, restraining pigs, moving pigs, killing pigs, and administering vaccines and other medication by injection. It mandates certain parts of the Model Code of Practice for the welfare of animals—Pigs’, 3<sup>rd</sup> edition, the remainder of which is voluntary under Schedule 9 (Documents made as codes of practice).

An example of a more recent compulsory code of practice covered by the Regulation is Schedule 3 *Code of practice about sheep*. This schedule was inserted into the Regulation in 2021. The code of practice sets minimum standards for general requirements for care and handling of sheep including the treatment of sick, injured or diseased sheep at first reasonable

opportunity, and the construction, maintenance and operation of facilities to ensure the welfare of sheep. The code of practice also covers shearing sheep, the use of prodders, the use of dogs, breeding management, the requirements for intensive sheep production systems, and the humane killing of sheep. Restrictions on grinding or trimming of teeth, pizzle dropping, tethering, tail docking, castration, sterilisation mulesing of sheep are also included in the code of practice, as well as the provision of pain relief for some procedures. The schedule does not apply to transporting sheep, as Schedule 5 Code of practice for transport of livestock applies to transporting sheep. This code of practice mandates the standards in the Australian Animal Welfare Standards and Guidelines – Sheep.

#### *Why have codes of practice?*

Generally, the aim of the codes of practice are to define animal welfare standards for individual species and types of animal use – mainly livestock but also in specific industries such as rodeos and dog breeding, where there are particular risks to animal welfare.

The codes of practice outline the minimum acceptable animal welfare outcomes and are 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.

In addition, the codes of practice provide some certainty for animal industries that they can carry out specific husbandry practices under conditions that achieve the ‘reasonable balance’ objective of the Act. The Act (section 40) provides an offence exemption for an act (or omission) done in accordance with a compulsory code of practice requirement. As an example, this means tail docking, castration and sterilisation of sheep can be performed under the conditions set out in sections 7-8 of Schedule 3 (Code of practice about sheep), and if performed in accordance with the Regulation will not constitute an offence (e.g., cruelty) under the Act. If the Regulation were to expire, this would remove the certainty for animal industries to undertake necessary animal husbandry practices, which may result in poor animal welfare outcomes. Further, if the Regulation were to expire, it is expected that there would be an increasing adverse impact on the welfare of animals in the absence of an ability for the government to enforce animal welfare standards in the codes of practice.

#### (a) the nature of the right

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person’s property. In this context, case authority suggests that ‘arbitrarily’ refers to conduct that is capricious, unpredictable or unjust, and refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership,

but would include any ‘de facto expropriation’ by means of a substantial restriction in fact of a person’s use or enjoyment of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

This right is engaged by the various requirements within the compulsory codes of practice covered by the Regulation. The requirements under the compulsory codes of practice limit that person’s property rights, as their “use” of the animal as their property is restricted by the requirements of the compulsory codes of practice under the Regulation.

In addition, the compulsory codes of practice include specifications for other property (not just in relation to the animal) such as equipment, and sheds etc. For example, under the Code of practice about domestic fowl, there are specifications in relation to the different floor area size requirements (per type of bird, e.g., layer fowl vs meat chicken) kept in cages, sheds and outdoor areas. Under the Code of practice about pigs, there are requirements for housing pigs in stalls vs farrowing crates, requirements for essential equipment for providing food and water, and requirements to ensure environmental needs are met such as adequate temperature, lighting, and ventilation. While under the Code of practice about sheep, there are requirements in relation to the construction, maintenance and operation of facilities and equipment to ensure the welfare of sheep.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to support the agreed national animal welfare standards through the compulsory codes of practice in the Regulation to appropriately and consistently manage animal welfare. In addition, the codes of practice support a robust animal welfare framework in Queensland.

While the Act contains overarching principles prohibiting cruelty and imposing a duty of care, the codes of practice contribute to consistent compliance and enforcement of the Act. They help livestock producers understand their duty of care and obligation to prevent animal cruelty at a practical level. They can be used as evidence in proceedings (section 16 of the Act), and provide an offence exemption if followed (section 40 of the Act), supporting consistent interpretation by regulators and courts.

Supporting compliance with and enforcement of requirements legislated by Parliament is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting the property rights of a person that owns an animal in Queensland that is covered by a compulsory code of practice under the Regulation, by requiring them to comply with the provisions of the relevant compulsory code of practice directly supports the purpose to support the agreed national animal welfare standards through the compulsory codes of practice in the Regulation to appropriately and consistently manage animal welfare and the need to have a robust animal welfare framework in Queensland.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive ways of achieving the purpose of the limitations. The requirements contained in the Regulation have been through thorough consideration and consultation with peak industry bodies.

The regulatory approach is consistent with other Australian jurisdictions which define and prohibit inappropriate practices and behaviour that impact on the welfare of animals.

Non-legislative options have not effectively reduced the animal welfare risks identified through the review of the Act and are not considered an appropriate or effective way to meet community expectations. Education campaigns and best practice publications are not likely to be effective in achieving the policy objectives.

Providing no government intervention and leaving individuals and industry to self-regulate may lead to an inconsistent approach to animal welfare and may increase the number of animal welfare incidents in Queensland.

The codes of practice are among the ways the purposes of the Act are primarily achieved (section 4 of the Act). Without codes of practice, there would be no alignment with the national Standards and Guidelines for the Welfare of Animals which are the basis of the compulsory codes of practice. This would lead to inconsistent approaches to managing animal welfare issues and also the implementation of standards and national policy objectives by jurisdictions across Australia. This could influence competition between producers and other animal users in different jurisdictions. Such effects may stem from the tendency for higher animal welfare standards to require higher costs for producers and other animal users, with potential offsets from higher value products and preferential access to some markets.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Animal welfare legislation imposes obligations on people to provide for the care of animals and to reduce the incidents of cruelty. While the burden is placed on the owner or person in charge of the animal, the benefit is for the welfare of the animal. The limitations on property rights are directly related to providing appropriate care for animals and reducing the number of animal welfare cruelty incidents across Queensland.

The provisions in the Regulation limits property rights of individuals through the requirements under the compulsory codes of practice, as they restrict or regulate how someone is to deal with/use their private property (animals being the property).

The provisions strike a fair balance between the person's property rights, their interest in complying with the Regulation, and the public interest that animal welfare risks are being addressed.

The limitation of the right is balanced against the benefits from the requirements implemented through the Regulation to appropriately and consistently manage animal welfare and the need to have a robust animal welfare framework in Queensland. Therefore, the limitation on property rights is reasonable and demonstrably justified in the circumstance.

## Conclusion

I consider that the *Animal Care and Protection Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**MARK FURNER**  
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES  
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