



Western Australia

Animal Welfare and Trespass Legislation Amendment Act 2023

As at 24 Mar 2023

No. 5 of 2023

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Animal Welfare and Trespass Legislation Amendment Act 2023

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Animal Welfare and Trespass Legislation Amendment Act 2023

No. 5 of 2023

An Act —

- **to amend the *Animal Welfare Act 2002* to make provision for designated inspectors; and**
- **to amend *The Criminal Code* and the *Restraining Orders Act 1997* to make provisions relating to trespass on a place where animal source food production is carried out.**

[Assented to 24 March 2023]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Animal Welfare and Trespass Legislation Amendment Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the 14th day after that day.

Part 2 — *Animal Welfare Act 2002* amended

3. Act amended

This Part amends the *Animal Welfare Act 2002*.

4. Section 5 amended

In section 5(1) insert in alphabetical order:

designated inspector means a general inspector designated under section 35A(1) as a designated inspector;

5. Section 35A inserted

After section 35 insert:

35A. Designated inspectors

- (1) The CEO may, by written notice, designate as a designated inspector a general inspector who is a member of the staff of the Department.
- (2) A designation under subsection (1) remains in force for the period specified in the notice of designation unless before the end of that period —
 - (a) the designation is cancelled by the CEO by written notice to the inspector; or
 - (b) the inspector ceases to be a general inspector.
- (3) The CEO may, by written notice, restrict the authority of a designated inspector to exercise a power under section 38(1A) by limiting all or any of the following —
 - (a) the places where the power may be exercised;

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- (b) the times when the power may be exercised;
 - (c) the circumstances in which the power may be exercised.
- (4) When the authority of a designated inspector is restricted under subsection (3), the power conferred on the inspector under section 38(1A) is limited to the extent set out in the notice.
- (5) A restriction under subsection (3) —
 - (a) may be imposed when the inspector is designated under subsection (1) or at a later time; and
 - (b) may be varied or cancelled by the CEO by written notice to the inspector.

6. Section 36A inserted

At the beginning of Part 4 Division 2 insert:

36A. Terms used

In this Division —

abattoir —

- (a) means any place used for or in connection with the slaughtering of animals for sale for human consumption; and
- (b) includes a holding yard or other place used for or in connection with the slaughtering of those animals;

animal source food production has the meaning given in *The Criminal Code* section 70A(1);

animal source food production facility has the meaning given in *The Criminal Code* section 70A(1);

intensive production means an activity that is carried out at an animal source food production facility during which, in the ordinary course of animal source food production, any animals involved in the production do not have an opportunity to graze or forage outside;

intensive production place means a non-residential place where intensive production is carried out;

knackery —

- (a) means any place used for or in connection with the slaughtering and processing of animals for sale for animal consumption; and
- (b) includes a holding yard or other place used for or in connection with the slaughtering and processing of those animals.

7. Section 37 amended

After section 37(1)(a) insert:

- (aa) if the inspector is a designated inspector — to monitor compliance with Part 3, directions given under section 40(1) or 47(1) and orders made under section 55(1), in relation to any of the following —
 - (i) intensive production;
 - (ii) an activity carried out at an abattoir;
 - (iii) an activity carried out at a knackery;and

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8. Section 38 amended

(1) After section 38(1) insert:

(1A) In addition, a designated inspector may, for the purpose of carrying out the function referred to in section 37(1)(aa), enter at any time any of the following places —

- (a) if the inspector believes, on reasonable grounds, that a place is an intensive production place — the place;
- (b) an abattoir;
- (c) a knackery.

(2) In section 38(2) after “or (e)” insert:

or (1A)

Part 3 — *The Criminal Code* amended

9. Act amended

This Part amends *The Criminal Code*.

10. Section 70A amended

- (1) In section 70A(1) insert in alphabetical order:

abattoir has the meaning given in the *Animal Welfare Act 2002* section 36A;

animal source food production means an activity carried out —

- (a) at an animal source food production place; and
- (b) for the purpose of, or in connection with, commercial food production;

animal source food production facility means any of the following places, operated for the purpose of commercial food production —

- (a) a farm or other place where an animal is reared or fattened;
- (b) a dairy farm;
- (c) an egg farm or other place where poultry are kept to produce eggs;

animal source food production place means any of the following places —

- (a) an animal source food production facility;
- (b) an abattoir;
- (c) a knackery;

circumstances of aggravation, in relation to a trespass on an animal source food production place, means

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circumstances in which a person, in the course of, or as a result of committing the trespass —

- (a) interferes with, or intends to interfere with, animal source food production; or
- (b) in the context of another person's engagement in animal source food production — assaults, intimidates or harasses, or intends to assault, intimidate or harass —
 - (i) the other person; or
 - (ii) a family member of the other person;

family member, in relation to a person, means —

- (a) the spouse or de facto partner of the person; or
- (b) a parent, child, brother, sister, uncle, aunt or cousin of the person or of the person's spouse or de facto partner; or
- (c) the spouse or de facto partner of a person referred to in paragraph (b); or
- (d) a grandchild or grandparent of the person or of the person's spouse or de facto partner; or
- (e) a guardian or ward of the person; or
- (f) if the person is an Aboriginal person or a Torres Strait Islander (***indigenous person***) — a person regarded under the customary law or tradition of the indigenous person's community as a member of the extended family or kinship group of the indigenous person;

interfere with, in relation to animal source food production, includes any of the following —

- (a) negatively impact biosecurity, as defined in the *Biosecurity and Agriculture Management Act 2007* section 6, in relation to the animal source food production;

- (b) create a risk to the welfare, safety or health of an animal involved in the animal source food production;
- (c) in the course of the animal source food production — create a risk to the integrity or safety of meat, eggs or dairy products;
- (d) release an animal involved in the animal source food production, or cause it to escape, from an animal source food production place or an enclosure at that place;
- (e) destroy, damage, steal or otherwise interfere with property used in the animal source food production;
- (f) give a person engaged in animal source food production reasonable grounds to believe that something referred to in paragraphs (a) to (e) has occurred or is likely to occur;

knackery has the meaning given in the *Animal Welfare Act 2002* section 36A;

(2) Delete section 70A(2) and insert:

(2) A person who, without lawful excuse, trespasses on a place commits an offence.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

(2A) A person who, without lawful excuse, trespasses on an animal source food production place, in circumstances of aggravation, commits an offence.

Penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.

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- (2B) If a court sentencing an adult offender for an offence under subsection (2A) does not impose a term of imprisonment then, except as provided in subsection (2C) and despite the *Sentencing Act 1995*, the court must impose —
- (a) a community order under the *Sentencing Act 1995* that includes —
 - (i) a supervision requirement with a direction that the offender must not enter or remain on an animal source food production place specified, or of a kind specified, in the order; and
 - (ii) a community service requirement;and
 - (b) a fine of at least \$2 400.
- (2C) Subsection (2B) does not apply in a particular case if the court is satisfied that exceptional circumstances exist in that case.
- (3) In section 70A(3) delete “subsection (2),” and insert:
- subsection (2) or (2A),

Part 4 — *Restraining Orders Act 1997* amended

11. Act amended

This Part amends the *Restraining Orders Act 1997*.

12. Section 5 amended

In section 5(1)(d)(i) delete “paragraph (a), (b) or (c)” and insert:

paragraph (a) or (c)

13. Section 34 amended

In section 34(a):

(a) in subparagraph (iii) delete “peace;” and insert:

peace; or

(b) after subparagraph (iii) insert:

(iv) commit an offence under *The Criminal Code* section 70A(2A);

14. Section 35 amended

(1) After section 35(2) insert:

(2A) When considering whether to make an MRO for reasons referred to in section 34(a)(iv) and the terms of the order, a court is to have regard to —

(a) the need to ensure that the following persons are protected from the effects of an offence under *The Criminal Code* section 70A(2A) —

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(i) a person engaged in animal source food production, as defined in *The Criminal Code* section 70A(1);

(ii) a family member, as defined in *The Criminal Code* section 70A(1), of a person referred to in subparagraph (i);

and

(b) the wellbeing of children who are likely to be affected by the respondent's behaviour or the operation of the proposed order; and

(c) the accommodation needs of the respondent; and

(d) hardship that may be caused to the respondent if the order is made; and

(e) any criminal convictions of the respondent; and

(f) other current legal proceedings involving the respondent; and

(g) other matters the court considers relevant.

(2) In section 35(3) delete “subsection (1)(a) and (b) or (2)(a) and (b)” and insert:

subsections (1)(a) and (b), (2)(a) and (b) and (2A)(a) and (b)

15. Section 36 amended

(1) In section 36(1):

(a) in paragraph (c) delete “peace.” and insert:

peace; or

(b) after paragraph (c) insert:

(d) committing an offence under *The Criminal Code* section 70A(2A).

(2) In section 36(3) delete “subsection (1)(c),” and insert:

subsection (1)(c) or (d),

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