

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Animal Welfare Legislation Amendment Bill 2010

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
Part 2	Animal Welfare Act 1992
4	New division 2.1 heading 3
5	Cruelty Section 7, penalty 3
6	Aggravated cruelty Section 7A (1) and (2), penalty 3

Contents

	Page
7 New section 9B	3
8 Exception—conduct in accordance with approved code of practice or mandatory code of practice	
New section 20 (aa)	4
9 New division 2.2	5
10 New part 2A	6
11 Dictionary, new definitions	10
12 Dictionary, definition of <i>licensed premises</i>	10
13 Dictionary, new definition of <i>market</i>	10
14 Dictionary, definition of <i>premises</i> , paragraph (b)	10
15 Dictionary, new definitions	10
Part 3 Domestic Animals Act 2000	
16 New division 3.1, heading	11
17 Section 73	11
18 New division 3.2	14
19 Dogs and cats to be de-sexed if over a certain age	
Section 74 (5)	27
20 Section 74A	27
21 Approval or refusal of applications	
Section 76 (2)	29
22 Section 77	29
23 New division 3.4	30
24 New division 3.5 heading	35
25 New division 3.6 heading	35
26 Identification of dogs and cats—requirement	
New section 84 (2A)	35
27 New part 4A	36
28 New section 127	38
29 Inspection of premises	
Section 131	38
30 Dictionary, new definitions	39
31 Dictionary, definition of <i>premises</i>	39
32 Dictionary, new definitions	40

		Page
Part 4	Domestic Animals Regulation 2001	
33	How dogs must be identified—Act, s 83 New section 7 (3) (d)	41
34	New section 7 (5) (ba) and (bb)	41
35	Section 7 (6)	42
36	Cats to which compulsory identification applies—Act, s 83 New section 8 (1) (c)	42
37	Section 8 (2)	42
38	How cats must be identified—Act, s 83 New section 9 (1) (ba) and (bb)	42
39	Schedule 1, new items 13A to 13H	43
Part 5	Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005	
40	Schedule 1, part 1.1, new items 37A to 37D	45

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Animal Welfare Legislation Amendment Bill 2010

A Bill for

An Act to amend legislation about animal welfare

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Animal Welfare Legislation Amendment Act 2010*.

2 Commencement

- (1) This Act (other than parts 3 to 5) commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Parts 3 to 5 commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the following legislation:

- *Animal Welfare Act 1992*
- *Domestic Animals Act 2000*
- *Domestic Animals Regulation 2001*
- *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*.

Part 2 Animal Welfare Act 1992

4 New division 2.1 heading

before section 7, insert

Division 2.1 Animal welfare offences

5 Cruelty Section 7, penalty

substitute

Maximum penalty: 200 penalty units, imprisonment for 1 year or both.

6 Aggravated cruelty Section 7A (1) and (2), penalty

substitute

Maximum penalty: 400 penalty units, imprisonment for 2 years or both.

7 New section 9B

insert

9B Keeping pigs—appropriate accommodation

- (1) A person commits an offence if the person—
- (a) keeps a pig; and
 - (b) does not keep the pig in appropriate accommodation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) In this section:

appropriate accommodation, for a pig kept by a person, means accommodation—

- (a) that allows the pig to—
 - (i) turn around, stand up and lie down without difficulty; and
 - (ii) have a clean, comfortable and adequately drained place in which it can lie down; and
 - (iii) maintain a comfortable temperature; and
 - (iv) have outdoor access; and
- (b) if the accommodation is for more than 1 pig—that allows each pig in the accommodation to lie down at the same time; and
- (c) if the person keeps more than 1 pig—that allows the pig to see another pig unless—
 - (i) the pig is isolated on the advice of a veterinary surgeon; or
 - (ii) the pig is a sow or gilt and it is a week before, or during, farrowing for the sow or gilt; and
- (d) if the pig is kept on its own in a stall or pen—the size of which must comply with the size prescribed by regulation.

gilt means a female pig after puberty but before farrowing.

sow means a female pig that has had 1 or more litters.

8 Exception—conduct in accordance with approved code of practice or mandatory code of practice
New section 20 (aa)

before section 20 (a), insert

- (aa) section 9B (Keeping pigs—appropriate accommodation);

9 New division 2.2*after section 20, insert***Division 2.2 Reporting animal welfare offences****20A Veterinary surgeons to report suspected animal welfare offences**

- (1) This section applies if a veterinary surgeon believes on reasonable grounds that an offence under division 2.1 (Animal welfare offences) has been committed in relation to an animal in the veterinary surgeon's care.
- (2) The veterinary surgeon must, as soon as practicable after forming the belief, report to the authority—
 - (a) details about the animal and the offence the veterinary surgeon believes has been committed; and
 - (b) the name and address of the animal's owner (if known); and
 - (c) the reasons for the veterinary surgeon's belief.
- (3) A veterinary surgeon who makes a report under subsection (2) honestly and without recklessness does not incur civil or criminal liability only because of the making of the report.

Note Giving false or misleading information to the authority is an offence (see Criminal Code, s 338).

- (4) This section does not apply to a veterinary surgeon if the veterinary surgeon believes on reasonable grounds that someone else has made a report to the authority about the animal in relation to the offence based on the same reasons.

10 New part 2A

insert

Part 2A Other offences

20B Definitions—pt 2A

In this part:

approved animal welfare organisation—see the *Domestic Animals Act 2000*, section 73.

licensed breeder—see the *Domestic Animals Act 2000*, dictionary.

licensed premises, of a licensed breeder—see the *Domestic Animals Act 2000*, section 73D (1) (a).

market includes—

- (a) a fair; and
- (b) an event similar to a market or fair; and
- (c) a booth or stall at a market or fair or event similar to a market or fair.

premises includes boat.

Note ***Premises*** is also defined in the dictionary. The definition in this section extends the dictionary definition.

sell by retail includes—

- (a) barter or exchange; and
- (b) supply for profit; and
- (c) offer for sale, receive for sale or expose for sale; and
- (d) consign or deliver for sale; and
- (e) have in possession for sale.

shop means any premises used wholly or mainly for sale by retail of goods or animals, or at which goods or animals are sold by retail on more than 1 occasion, but does not include the following:

- (a) premises occupied by an approved animal welfare organisation;
- (b) premises at which a veterinary surgeon—
 - (i) provides health services within the meaning of the *Health Professionals Act 2004*; and
 - (ii) sells surrendered or abandoned animals;
- (c) the licensed premises of a licensed breeder.

20C Displaying mammals at market or in shop window etc

- (1) A person commits an offence if the person displays a mammal in—
 - (a) a shop window; or
 - (b) any other part of a shop that can easily be seen by anyone outside the shop.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person displays a mammal for sale at a market.

Maximum penalty: 50 penalty units.

- (3) Subsection (2) does not apply to a person if the person displays a dog or cat at a market for an approved animal welfare organisation.

- (4) In this section:

livestock means live cattle, horses, sheep, goats, swine, deer, buffalo or alpacas.

mammal means a live mammal (other than a human being or livestock).

20D Failing to display notice about or give basic care information about animals

- (1) A person commits an offence if the person—
- (a) offers or exposes an animal for sale at a shop or market; and
 - (b) does not display a visible notice at a point of sale at the shop or market that includes a statement to the effect that basic care information for the animal is available on request.

Maximum penalty: 20 penalty units.

Note It is an offence to sell a dog or cat from a shop or market unless the dog or cat is sold on behalf of an approved animal welfare organisation (see *Domestic Animals Act 2000*, s 80B).

- (2) A person commits an offence if —
- (a) the person offers or exposes an animal for sale at a shop or market; and
 - (b) someone else asks the person for basic care information for the animal; and
 - (c) the person does not give the other person the basic care information.

Maximum penalty: 20 penalty units.

- (3) A person commits an offence if the person—
- (a) sells an animal; and
 - (b) does not give the person to whom the animal is sold basic care information for the animal.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

(5) In this section:

animal means—

- (a) a live member of a vertebrate species, including—
 - (i) an amphibian; and
 - (ii) a bird; and
 - (iii) a fish; and
 - (iv) a mammal (other than a human being); and
 - (v) a reptile; or
- (b) a live cephalopod; or
- (c) a live crustacean.

basic care information, for an animal, means the information prescribed by regulation about basic care for the animal.

point of sale, at a shop or market, means a place where animals are sold within the shop or market.

sell means transfer ownership by any means, whether with or without consideration, and includes agree to sell.

Examples—transfer of ownership

- 1 by gift
- 2 by exchange

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

visible notice, at a point of sale, means a notice that is displayed prominently so that it can be seen and read easily by a person at or near the point of sale.

11 Dictionary, new definitions

insert

approved animal welfare organisation, for part 2A (Other offences)—see section 20B.

licensed breeder, for part 2A (Other offences)—see section 20B.

12 Dictionary, definition of *licensed premises*

substitute

licensed premises—

- (a) for this Act generally—see section 27 (Decision about licence application); and
- (b) of a licensed breeder, for part 2A (Other offences)—see section 20B.

13 Dictionary, new definition of *market*

insert

market, for part 2A (Other offences)—see section 20B.

14 Dictionary, definition of *premises*, paragraph (b)

substitute

- (b) for part 2A (Other offences)—see section 20B; and
- (c) in relation to the exercise of an inspector's powers, for division 7.3 (Powers of inspectors)—see section 80.

15 Dictionary, new definitions

insert

sell by retail, for part 2A (Other offences)—see section 20B.

shop, for part 2A (Other offences)—see section 20B.

Part 3 Domestic Animals Act 2000

16 New division 3.1, heading

before section 73, insert

Division 3.1 Preliminary

17 Section 73

substitute

73 Definitions—pt 3

In this part:

advertising approval—see section 80E.

approved animal welfare organisation means any of the following:

- (a) the Royal Society for the Prevention of Cruelty to Animals (ACT) Inc;
- (b) an administrative unit that operates a facility for the holding of lost, stray, abandoned or surrendered animals;
- (c) a not-for-profit organisation that has among its objects the promotion of the welfare of, or the prevention of cruelty to, animals;
- (d) an entity approved under section 73A.

authorised seller means any of the following:

- (a) an approved animal welfare organisation;
- (b) a veterinary surgeon who sells surrendered or abandoned animals;
- (c) a person who sells surrendered or abandoned animals on a not-for-profit basis;

- (d) the registrar;
- (e) a licensed breeder;
- (f) a person prescribed by regulation.

defined offence means—

- (a) an offence against this Act or the *Animal Welfare Act 1992*; or
- (b) an offence in relation to animal welfare under another territory law or a Commonwealth or State law.

de-sex, in relation to a dog or cat, includes perform a vasectomy or tubal ligation on the dog or cat.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

licensed premises, of a licensed breeder—see section 73D (1) (a).

market includes—

- (a) a fair; and
- (b) an event similar to a market or fair; and
- (c) a booth or stall at a market or fair or event similar to a market or fair.

permit means a permit issued under this part.

premises includes boat.

Note ***Premises*** is also defined in the dictionary. The definition in this section extends the dictionary definition.

sell means transfer ownership by any means, whether with or without consideration, and includes agree to sell.

Examples—transfer of ownership

- 1 by gift
- 2 by exchange

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

sell by retail includes—

- (a) barter or exchange; and
- (b) supply for profit; and
- (c) offer for sale, receive for sale or expose for sale; and
- (d) consign or deliver for sale; and
- (e) have in possession for sale.

selling approval—see section 80E.

shop means any premises used wholly or mainly for sale by retail of goods or animals, or at which goods or animals are sold by retail on more than 1 occasion, but does not include the following:

- (a) premises occupied by an approved animal welfare organisation;
- (b) premises at which a veterinary surgeon—
 - (i) provides health services within the meaning of the *Health Professionals Act 2004*; and
 - (ii) sells surrendered or abandoned animals;
- (c) the licensed premises of a licensed breeder.

73A Approval of animal welfare organisations

- (1) An entity may apply to the registrar for approval as an animal welfare organisation.
- (2) The registrar may approve an application under subsection (1) if satisfied that the applicant has relevant experience and competency in caring for and handling dogs or cats that have been mistreated or abandoned.
- (3) An approval is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

18 New division 3.2

before section 74, insert

Division 3.2 Breeders licences**Subdivision 3.2.1 Breeders licences—general****73B Offence—breeding dog or cat for sale without licence**

- (1) A person commits an offence if the person—
 - (a) breeds a dog or cat for sale; and
 - (b) does not have a breeders licence to breed the dog or cat.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) This section does not apply to a person if—
 - (a) the person rescues a pregnant dog or pregnant cat from mistreatment or abandonment; and
 - (b) the dog or cat bred for sale was born as a result of that pregnancy.

73C Breeders licences—application

- (1) A person may apply to the registrar for a licence to breed, at stated premises, a dog or cat for sale.

Note 1 If a form is approved under s 147 for an application, the form must be used.

Note 2 A fee may be determined under s 144 for this provision.

- (2) Unless the application is for renewal of a licence, the application must contain the person's written consent for an authorised person to inspect the stated premises.
- (3) The registrar may, in writing, require the applicant to give the registrar additional information in writing or documents that the registrar reasonably needs to decide the application.
- (4) If the applicant does not comply with a requirement under subsection (3), the registrar may refuse to consider the application further.

73D Breeders licences—decision on application

- (1) On an application by a person for a breeders licence, the registrar must—
- (a) issue the licence for the premises stated in the application (the *licensed premises*); or
 - (b) refuse to issue the licence.
- (2) The registrar must not issue the licence unless satisfied of each of the following in relation to dogs or cats to be bred under the licence:
- (a) that the applicant will only breed an appropriate number of dogs or cats;
 - (b) that the applicant will only breed from dogs or cats that are healthy and genetically sound;

- (c) that the applicant does not intend to breed malformed or aggressive dogs or cats;
 - (d) that the dogs or cats will be cared for appropriately, including being provided with a nutritious diet, adequate opportunities for exercise and socialisation for physical and mental wellbeing, and vaccinations and worming medication;
 - (e) that the dogs or cats will be kept in appropriate accommodation;
 - (f) that the applicant will not permanently separate puppies or kittens from their mothers before they are 8 weeks old;
 - (g) that the arrangements for the provision of veterinary treatment to the dogs or cats will be adequate.
- (3) In deciding whether to issue the licence, the registrar must also consider each of the following:
- (a) the applicant's experience and competency in breeding, caring for and handling dogs or cats;
 - (b) the adequacy of the premises stated in the application, equipment and other facilities for breeding, caring for and handling dogs or cats;
 - (c) the applicant's response (or lack of response) to any request for further information under section 73C (3);
 - (d) whether the applicant has been disqualified from keeping animals under section 138A;
 - (e) whether an order has been made in relation to the applicant under the *Animal Welfare Act 1992*, section 101 (3) (Animal offences—court orders (general)) or section 104A (Court orders—offences involving violence);
 - (f) whether, within the 3 years immediately before the date of the application, the applicant has been convicted or found guilty of a defined offence;

- (g) whether the applicant will comply with the ethical breeding standards prescribed by regulation.
- (4) Subsections (2) and (3) do not limit the matters that the registrar may consider.
- (5) The registrar must refuse to issue the licence if the registrar believes on reasonable grounds that refusal is reasonable or necessary in the interests of animal welfare.
- (6) In this section:

applicant includes, if the applicant is a corporation, each executive officer of the corporation.

appropriate accommodation, for a dog or cat, means accommodation that—

- (a) is suitable for the dog or cat, based on its age, anatomy and behaviour; and
- (b) allows the dog or cat to eat, turn around, stand up, stretch and lie down with limbs extended without difficulty; and
- (c) is clean and hygienic; and
- (d) includes adequate bedding; and
- (e) for accommodation that is indoors—
 - (i) allows the dog or cat to maintain a comfortable temperature; and
 - (ii) has appropriate lighting and ventilation; and
- (f) for outdoor accommodation for a dog—has adequate protection from rain, wind, direct sunlight and extremes of temperature; and
- (g) for outdoor accommodation for a cat—is at least 9m² and 1.8m high for 1 to 3 cats, with an additional 2m² for each additional cat.

issue includes issue by way of renewal.

renewal, of a licence, means the issue of the licence that is to begin on the day after the day the licence being renewed ends.

73E Breeders licences—conditions

- (1) A breeders licence is subject to any condition—
- (a) prescribed by regulation; or
 - (b) put on the licence by the registrar that the registrar believes on reasonable grounds is reasonable or necessary in the interests of animal welfare.

Examples—conditions that may be put on a breeders licence

- 1 a condition about the welfare of the cats to be bred by the licensed breeder
- 2 that an approved code of practice must be complied with

Note 1 The registrar may amend a breeders licence (including by putting a condition on the licence, or amending or removing a condition of the licence) at any time (see s 73K).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A breeders licence issued to a person for the first time is also subject to the condition that the person must allow an authorised person to enter the licensed premises to inspect the premises within 6 months after the day the licence is issued.

73F Breeders licences—form

A breeders licence must—

- (a) be in writing; and
- (b) state the full name and address of the person to whom the licence is issued; and
- (c) state the licensed premises; and

- (d) state the period for which the licence is issued; and
- (e) provide a unique identifying number for the licence; and
- (f) state any condition put on the licence by the registrar.

73G Breeders licences—term

A breeders licence is issued for the period of not longer than 3 years stated in the licence, and remains in force subject to this Act.

73H Licensed breeders—request for information and documents

The registrar may, in writing, require a licensed breeder to give the registrar information in writing or documents that the registrar reasonably needs to exercise the registrar's functions under this Act in relation to the breeder's licence.

Example—information or documents

information about when a dog was examined by a veterinary surgeon

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

73I Breeders licences—renewal

- (1) This section applies if—
 - (a) a licensed breeder makes an application under section 73C (Breeders licences—application); and
 - (b) the application is for renewal of the breeder's licence; and

- (c) the application is made not later than 14 days before the day the licence term ends.
- (2) The licence remains in force, subject to this Act, until the application is decided under section 73D (Breeders licences—decision on application).
- (3) If the registrar issues the licence applied for, the renewal of the licence begins on the day after the day the licence being renewed ends.
- (4) A suspended licence may be renewed, but the renewed licence is suspended until the suspension ends.
- (5) In this section:
renewal, of a breeders licence, means the issue of the licence that is to begin on the day after the licence being renewed ends.

73J Breeders licences—licensed breeder to notify change of name or address

- (1) If a licensed breeder changes the breeder's name or address, the breeder must, as soon as practicable but not later than 14 days after the day the change happens, tell the registrar, in writing, about the change.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

73K Breeders licences—amendment

- (1) The registrar may amend a breeders licence at any time in accordance with this section if the registrar believes on reasonable grounds that the amendment is reasonable or necessary in the interests of animal welfare.

- (2) The registrar may amend a licence on the registrar's own initiative or on application by the licensed breeder.

Note 1 If a form is approved under s 147 for an application, the form must be used.

Note 2 A fee may be determined under s 144 for this provision.

- (3) The registrar may amend a breeder's licence on the registrar's own initiative if the registrar has—

- (a) given the licensed breeder written notice of the proposed amendment; and
- (b) considered any comments made by the licensed breeder in accordance with the notice.

- (4) The notice mentioned in subsection (3) (a) must—

- (a) include the registrar's grounds for making the proposed amendment; and
- (b) invite the licensed breeder to give the registrar any comments about the amendment before the end of a stated period of at least 14 days after the notice is given to the breeder.

- (5) Subsection (3) does not apply to action under section 73O (Breeder's licences—taking regulatory action).

Note Section 119 provides that the registrar must give written notice of the decision to each person affected by the decision.

- (6) The amendment of a licence takes effect on—

- (a) the day the notice of the decision to amend is given to the licensed breeder; or
- (b) if the notice states a later date of effect—that date.

- (7) A licence amended under this section must be returned to the registrar as soon as practicable, but not later than 7 days after the day the notice of the decision to amend is given to the licensed breeder.

- (8) In this section:

amend, a licence, includes putting a condition on the licence, or amending or removing a condition of the licence.

condition does not include a condition prescribed by regulation.

73L Breeders licences—surrender

- (1) A licensed breeder may surrender the licence by giving the registrar written notice of the surrender and the licence.
- (2) The surrender takes effect on—
 - (a) the day the notice is given to the registrar under subsection (1); or
 - (b) if the notice states a later date of effect—that date.

Subdivision 3.2.2 Breeders licences—regulatory action

73M Breeders licences—grounds for regulatory action

Each of the following is a *ground for regulatory action* against a licensed breeder:

- (a) the breeder gave information to the registrar in relation to the application for the issue or renewal of the breeder's licence that was false or misleading in a material particular;
- (b) the breeder contravened a condition of the breeder's licence;
- (c) the breeder did not return the breeder's licence as required under section 73K (7) (Breeders licences—amendment);
- (d) the breeder has been convicted or found guilty of a defined offence—
 - (i) within the 3 years immediately before the date of the application for the breeder's licence; or
 - (ii) while a licensed breeder; or

- (iii) during any suspension of the breeder's licence;
- (e) if the registrar believes on reasonable grounds that it would refuse an application by the breeder for a breeders licence on the grounds mentioned in section 73D (2), (3) (a), (b), (d), (e) or (f) or (4) (Breeders licences—decision on application).

73N Breeders licences—regulatory action

Each of the following is *regulatory action* when taken against a licensed breeder:

- (a) putting a condition on, or amending a condition put on, the breeder's licence;
- (b) suspending the breeder's licence for a stated period or until a stated thing happens;
- (c) cancelling the breeder's licence;
- (d) cancelling the breeder's licence and disqualifying the breeder from applying for a breeders licence for a stated period or until a stated thing happens.

73O Breeders licences—taking regulatory action

- (1) If the registrar proposes to take regulatory action in relation to a licensed breeder, the registrar must give the breeder a written notice (a *regulatory notice*) that—
 - (a) states the details of the proposed regulatory action; and
 - (b) states the grounds for the proposed regulatory action; and
 - (c) tells the breeder that the breeder may, not later than 14 days after the day the breeder is given the notice, give a written response to the registrar about the proposed regulatory action.
- (2) In deciding whether to take the proposed regulatory action, the registrar must consider any response given to the registrar in accordance with the regulatory notice.

- (3) If the registrar believes on reasonable grounds that a ground for taking the proposed regulatory action has been established in relation to the licensed breeder, the registrar may—
- (a) take the regulatory action stated in the regulatory notice; or
 - (b) if the proposed regulatory action is the cancellation of the breeder's licence and disqualification mentioned in section 73N (d)—
 - (i) cancel the licence; or
 - (ii) suspend the licence as mentioned in section 73N (b); or
 - (iii) put a condition on, or amend a condition put on, the licence; or
 - (c) if the proposed regulatory action is the cancellation of the breeder's licence—
 - (i) suspend the licence as mentioned in section 73N (b); or
 - (ii) put a condition on, or amend a condition put on, the licence; or
 - (d) if the proposed regulatory action is the suspension of the breeder's licence as mentioned in section 73N (b)—
 - (i) suspend the licence for a shorter period; or
 - (ii) put a condition on, or amend a condition put on, the licence.
- Note* Section 119 provides that the registrar must give written notice of the decision to each person affected by the decision.
- (4) Regulatory action under this section takes effect on—
- (a) the day the notice of the decision is given to the licensed breeder; or
 - (b) if the notice states a later date of effect—that date.

- (5) In this section:

ground for regulatory action against a licensed breeder—see section 73M (Breeders licences—grounds for regulatory action).

regulatory action—see section 73N (Breeders licences—regulatory action).

73P Breeders licences—immediate suspension

- (1) This section applies if—
- (a) the registrar gives, or has given, a regulatory notice under section 73O to a licensed breeder; and
 - (b) having regard to the grounds stated in the notice, the registrar believes on reasonable grounds that the breeder's licence should be suspended immediately in the interests of animal welfare.
- (2) The registrar must give the breeder a written notice (the *immediate suspension notice*) suspending the breeder's licence.
- (3) The suspension of a breeder's licence under this section takes effect when the immediate suspension notice is given to the breeder.
- (4) The suspension of a breeder's licence under this section ends—
- (a) if regulatory action is taken against the breeder under section 73O because of the regulatory notice—when the regulatory action takes effect, or 30 days after the day the immediate suspension notice is given to the breeder, whichever is the earlier; or
 - (b) if regulatory action is not taken against the breeder under section 73O because of the regulatory notice—when the breeder is given written notice of the registrar's decision not to take regulatory action, or 30 days after the day the immediate suspension notice is given to the breeder, whichever is the earlier.

73Q Breeders licences—effect of suspension

- (1) A suspended breeders licence does not authorise the carrying on of any activity under the licence during the suspension.
- (2) If the registrar suspends a breeder's licence, the breeder is, during the suspension—
 - (a) taken not to hold the licence; and
 - (b) disqualified from applying for a licence.

73R Offence—return of amended, suspended or cancelled breeders licence

- (1) A licensed breeder commits an offence if—
 - (a) the breeder's licence is amended, suspended or cancelled under this subdivision; and
 - (b) the breeder does not return the licence to the registrar as soon as practicable, but not later than 7 days after the day the breeder is given notice under section 119 (Reviewable decision notices).

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

73S Breeders licences—action by registrar in relation to amended or suspended licence

- (1) This section applies if—
 - (a) a breeder's licence is—
 - (i) amended under section 73K (Breeders licences—amendment); or
 - (ii) amended or suspended under this subdivision; and
 - (b) the licence is returned to the registrar.

- (2) For an amended breeders licence, the registrar must—
 - (a) return the amended licence to the breeder; or
 - (b) give the breeder a replacement licence that includes the amendment.
- (3) If a breeder's licence is suspended under this subdivision and the suspension ends before the end of the term of the licence, the registrar must return the licence to the breeder.

Division 3.3 De-sexing dogs and cats

19 Dogs and cats to be de-sexed if over a certain age Section 74 (5)

substitute

- (5) It is a defence to a prosecution for an offence against this section in relation to a dog or a cat if the defendant proves that it is less than 28 days since the day the dog or cat first came into the defendant's possession.

Note The defendant has a legal burden in relation to the matters mentioned in s (5) (see Criminal Code, s 59).

20 Section 74A

substitute

74A Offence—selling dog 6 months old or older if not de-sexed

- (1) A person commits an offence if the person—
 - (a) sells a dog that has not been de-sexed; and
 - (b) believes, or ought reasonably to believe, that the dog is 6 months old or older.

Maximum penalty: 5 penalty units.

- (2) Strict liability applies to subsection (1) (a).

74B Offence—selling dog less than 6 months old without redeemable de-sexing voucher

- (1) A person commits an offence if the person—
- (a) sells a dog that has not been de-sexed; and
 - (b) believes, or ought reasonably to believe, that the dog is less than 6 months old; and
 - (c) does not sell the dog with a redeemable de-sexing voucher.

Maximum penalty: 5 penalty units.

- (2) Strict liability applies to subsection (1) (a) and (c).

- (3) In this section:

redeemable de-sexing voucher means a voucher provided by a veterinary surgeon that allows for the de-sexing of a dog free of charge when the dog is old enough to be safely de-sexed.

74C Offence—selling cat 3 months old or older if not de-sexed

- (1) A person commits an offence if the person—
- (a) sells a cat that has not been de-sexed; and
 - (b) believes, or ought reasonably to believe, that the cat is 3 months old or older.

Maximum penalty: 5 penalty units.

- (2) Strict liability applies to subsection (1) (a).

74D Offence—selling cat less than 3 months old without redeemable de-sexing voucher

- (1) A person commits an offence if the person—
- (a) sells a cat that has not been de-sexed; and

(b) believes, or ought reasonably to believe, that the cat is less than 3 months old; and

(c) does not sell the cat with a redeemable de-sexing voucher.

Maximum penalty: 5 penalty units.

(2) Strict liability applies to subsection (1) (a) and (c).

(3) In this section:

redeemable de-sexing voucher means a voucher provided by a veterinary surgeon that allows for the de-sexing of a cat free of charge when the cat is old enough to be safely de-sexed.

21 Approval or refusal of applications

Section 76 (2)

substitute

- (2) The registrar must issue a permit for a dog or cat if satisfied that—
- (a) the applicant has a breeders licence to breed from the dog or cat; or
 - (b) the applicant keeps or uses the dog or cat for show; or
 - (c) it would be detrimental to the health of the dog or cat if it were de-sexed; or
 - (d) for a dog—the dog is a racing greyhound.

22 Section 77

substitute

77 Revocation of permits

The registrar may revoke a permit if satisfied that section 76 (2) no longer applies.

23 New division 3.4

after section 80, insert

Division 3.4 Sale of dogs and cats**80A Offence—keeping dog or cat at shop or market for sale**

- (1) A person commits an offence if the person keeps a dog or cat at a shop or market for the purpose of selling the dog or cat.

Maximum penalty: 40 penalty units.

- (2) This section does not apply to a person—
- (a) if the person keeps a dog or cat at a shop or market for an approved animal welfare organisation; or
 - (b) if—
 - (i) the person keeps a working dog at a market for the purpose of selling it; and
 - (ii) the person's main business is primary production and the person is not in the business of selling dogs.

- (3) In this section:

livestock means live cattle, horses, sheep, goats, swine, deer, buffalo or alpacas.

working dog means a dog used, or intended to be used, mainly for droving, tending, working or protecting livestock.

80B Offence—selling dog or cat from shop or market

- (1) A person commits an offence if—
- (a) the person sells a dog or cat from a shop or market; and
 - (b) the dog or cat is not sold on behalf of an approved animal welfare organisation.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

80C Offence—selling more than 2 dogs or cats by person other than authorised seller or approved person

- (1) A person commits an offence if the person—
- (a) sells more than 2 dogs or cats in a 6-month period; and
 - (b) is not an authorised seller or approved person.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

- (3) In this section:

approved person, in relation to the sale of a dog or cat, means a person who holds a selling approval in relation to the sale.

80D Offence—advertising sale etc of more than 2 dogs or cats

- (1) A person commits an offence if the person—
- (a) advertises the sale of more than 2 dogs or cats in a 6-month period; and
 - (b) is not an authorised seller or approved person.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) the person is an authorised seller or approved person; and
 - (b) the person publishes an advertisement for the sale of a dog or cat; and
 - (c) for an authorised seller—the advertisement does not contain all of the following information (the ***required information***):
 - (i) the seller's name and ABN (if any);
 - (ii) if the authorised seller is a licensed breeder—the unique identifying number for the breeder's licence;
 - (iii) for each dog or cat advertised—the unique identification number for the identifying microchip implanted in the dog or cat (if any); and
 - (d) for an approved person—the advertisement does not contain all of the following information (also the ***required information***):
 - (i) the person's name and ABN (if any);
 - (ii) the unique identifying number for the approval.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

advertise includes to advertise by oral, visual or written means.

Examples

cinema, video, radio, internet, television, brochures or flyers

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

approved person, in relation to the advertising of the sale of a dog or cat, means a person who holds an advertising approval in relation to the advertising.

identifying microchip—see the *Domestic Animals Regulation 2001*, section 10.

publish means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public.

unique identifying number, for an identifying microchip—see the *Domestic Animals Regulation 1991*, section 7 (4) (b).

80E Selling or advertising approval—application

An individual may apply to the registrar for either or both of the following:

- (a) an approval to advertise the sale of more than 2 dogs or cats in a 6-month period (an **advertising approval**);
- (b) an approval to sell more than 2 dogs or cats in a 6-month period (a **selling approval**).

Note 1 If a form is approved under s 147 for an application, the form must be used.

Note 2 A fee may be determined under s 144 for this provision.

80F Selling or advertising approval—decision on application

- (1) On an application by an individual for a selling or advertising approval in relation to a dog or cat, the registrar must—
 - (a) issue the approval; or
 - (b) refuse to issue the approval.
- (2) The registrar must issue a selling or advertising approval to an individual if satisfied that—
 - (a) the individual does not breed dogs or cats for sale; and
 - (b) the individual does not sell dogs or cats on behalf of someone else who is not a licensed breeder; and

(c) either—

- (i) the dog or cat is or was the individual's pet; or
- (ii) all of the following circumstances apply:
 - (A) the individual rescued the dog or cat (the *rescued dog or cat*) from mistreatment or abandonment;
 - (B) the rescued dog or cat was pregnant when rescued;
 - (C) the dog or cat for sale or to be advertised is the rescued dog or cat or a dog or cat born as a result of that pregnancy.

80G Selling or advertising approval—form

A selling or advertising approval must—

- (a) be in writing; and
- (b) state the full name and address of the individual to whom the approval is issued; and
- (c) provide a unique identifying number for the approval.

80H Selling or advertising approval—term

A selling or advertising approval continues in force until the earlier of—

- (a) the end of the 6-month period for which it is issued; and
- (b) the day it is revoked.

80I Selling or advertising approval—revocation

The registrar may revoke an individual's selling or advertising approval if no longer satisfied of the matters mentioned in section 80F (2).

24 New division 3.5 heading*before section 81, insert***Division 3.5 Cat curfew****25 New division 3.6 heading***before section 83, insert***Division 3.6 Identification of dogs and cats****26 Identification of dogs and cats—requirement
New section 84 (2A)***insert*

- (2A) A person commits an offence if—
- (a) the person breeds a dog or cat; and
 - (b) the person sells the dog or cat to someone else; and
 - (c) the dog or cat, after the sale, is required to be identified by a regulation made for section 83; and
 - (d) the dog or cat is not identified as required by the regulation.

Maximum penalty: 5 penalty units.

27 New part 4A*insert***Part 4A Sale of animals to people under 18 years old****94 Offence—selling animal to person under 18**

- (1) A person commits an offence if the person—
- (a) sells an animal to a person who is under 18 years old; and
 - (b) is reckless about whether the person to whom the animal is sold is under 18 years old.

Maximum penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
- (a) immediately before the animal was sold to the person, the defendant (or an employee or agent of the defendant) (the *seller*) asked the person to show the seller a document of identification or parental consent; and
 - (b) the person showed the seller a document of identification or parental consent; and
 - (c) the seller had no reasonable grounds for believing that the document was not a genuine document of identification of the person or a genuine parental consent.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see Criminal Code, s 59).

- (3) A person may refuse to sell an animal to someone else, or to permit someone else to obtain an animal, if the person—
- (a) is not satisfied that the other person is at least 18 years old; or

- (b) considers that any identification or parental consent shown by the other person is not genuine, or has been tampered with.
- (4) Subsection (3) does not limit the circumstances in which a person may refuse to sell an animal, or refuse to permit someone else to obtain an animal.
- (5) In this section:

carer means a person who is an out-of-home carer under the *Children and Young People Act 2008*, section 508 (Who is an out-of-home carer?).

document of identification, of a person, means a document that—

- (a) is—
 - (i) an Australian driver licence or a licence to drive a motor vehicle (however described) issued under the law of an external Territory or a foreign country; or
 - (ii) a proof of age card issued under the *Liquor Act 2010*, section 210 (Proof of age cards), or a corresponding document issued under the law of a State; or
 - (iii) a passport; and
- (b) contains a photograph that could reasonably be taken to be of the person; and
- (c) indicates that the person to whom the document was issued is at least 18 years old.

parent, of a person—

- (a) means a person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2; and
- (b) includes a carer of the person.

parental consent, for a person in relation to an animal, means a document signed by a parent of the person giving the parent's permission for the person to obtain the animal.

28 New section 127

insert

127 Entry of premises—decision about issue of breeders licence

- (1) This section applies if—
 - (a) a person applies for a breeders licence; and
 - (b) the application contains the person's written consent for an authorised person to inspect the premises stated in the application.
- (2) For section 73D (Breeders licences—decision on application), an authorised person may enter the premises.
- (3) However, subsection (2) does not authorise entry into a part of the premises that is not used for breeding or housing dogs or cats.
- (4) An authorised person may enter premises under subsection (2) with necessary and reasonable assistance.

**29 Inspection of premises
Section 131**

after

under

insert

section 127 (Entry of premises—decision about issue of breeders licence),

30 Dictionary, new definitions

insert

advertising approval, for part 3 (Dogs and cats)—see section 73.

approved animal welfare organisation, for part 3 (Dogs and cats)—see section 73.

authorised seller, for part 3 (Dogs and cats)—see section 73.

breeders licence means a licence issued under section 73D.

defined offence, for part 3 (Dogs and cats)—see section 73.

executive officer, of a corporation, for part 3 (Dogs and cats)—see section 73.

licensed breeder means a person licensed under division 3.2 to breed cats or dogs for sale.

licensed premises, of a licensed breeder, for part 3 (Dogs and cats)—see section 73.

market, for part 3 (Dogs and cats)—see section 73.

31 Dictionary, definition of *premises*

substitute

premises—

- (a) for this Act generally—includes land (whether vacant or occupied), an aircraft, a vessel and a vehicle; and
- (b) for part 3 (Dogs and cats)—see section 73.

32 Dictionary, new definitions

insert

sell, for part 3 (Dogs and cats)—see section 73.

sell by retail, for part 3 (Dogs and cats)—see section 73.

selling approval, for part 3 (Dogs and cats)—see section 73.

shop, for part 3 (Dogs and cats)—see section 73.

Part 4 Domestic Animals Regulation 2001

33 How dogs must be identified—Act, s 83 New section 7 (3) (d)

insert

- (d) is for sale by a licensed breeder.

Note **Sell** means transfer ownership by any means, whether with or without consideration, and includes agree to sell (see Act, s 73).

34 New section 7 (5) (ba) and (bb)

insert

- (ba) if the dog was bred by a licensed breeder—the following information about the breeder:
- (i) the breeder's name and home or business address;
 - (ii) the breeder's ABN (if any);
 - (iii) the unique identifying number for the breeder's licence; and
- (bb) if the dog's owner obtained the dog from a person other than an authorised seller—the following information about the person:
- (i) the person's name and home or business address;
 - (ii) the person's ABN (if any);
 - (iii) if the person is licensed (however described) to breed or sell the dog in another jurisdiction—details of the licence, including any unique identifying number for the licence; and

Note **Authorised seller** is defined in the Act, s 73.

35 Section 7 (6)*omit*

subsection (3)

substitute

subsection (3) (a), (b) and (c)

**36 Cats to which compulsory identification applies—Act, s 83
New section 8 (1) (c)***insert*

(c) is for sale by a licensed breeder.

Note **Sell** means transfer ownership by any means, whether with or without consideration, and includes agree to sell (see Act, s 73).

37 Section 8 (2)*omit everything before paragraph (a), substitute*

(2) However, subsection (1) (a) and (b) does not apply to a cat if—

**38 How cats must be identified—Act, s 83
New section 9 (1) (ba) and (bb)***insert*

(ba) if the cat was bred by a licensed breeder—the following information about the breeder:

- (i) the breeder's name and home or business address;
- (ii) the breeder's ABN (if any);
- (iii) the unique identifying number for the breeder's licence;
and

- (bb) if the cat's owner obtained the cat from a person other than an authorised seller—the following information about the person:
- (i) the person's name and home or business address;
 - (ii) the person's ABN (if any);
 - (iii) if the person is licensed (however described) to breed or sell the cat in another jurisdiction—details of the licence, including any unique identifying number for the licence; and

Note **Authorised seller** is defined in the Act, s 73.

39 Schedule 1, new items 13A to 13H

insert

13A	Act, 73D (1) (a) and 73G	issue or renew breeders licence for period less than 3 years	applicant for licence or renewal
13B	Act, 73D (1) (b)	refuse to issue or renew breeders licence	applicant for licence or renewal
13C	Act, s 73E (1) (b)	put condition on licence	licensed breeder
13D	Act, 73K (1)	amend licence	licensed breeder
13E	Act, 73K (1)	amend licence in way other than the way applied for	applicant for amendment
13F	Act, 73K (1)	refuse to amend licence	applicant for amendment

Part 4 Domestic Animals Regulation 2001

Section 39

13G	Act, 73O	take regulatory action	licensed breeder
13H	Act, 73P	suspend breeders licence immediately	licensed breeder

Part 5

Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005

40 Schedule 1, part 1.1, new items 37A to 37D

insert

37A	80B (1)	sell dog or cat from shop or market unless dog or cat sold on behalf of approved animal welfare organisation	50	1 000
37B	80C (1)	person other than authorised seller or approved person sells more than 2 dogs or cats in 6-month period	10	220
37C	80D (1)	person other than authorised seller or approved person advertises sale of more than 2 dogs or cats in 6-month period	10	220
37D	80D (2)	authorised seller or approved person publishes advertisement for sale of dog or cat and advertisement not contain required information	10	220

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2010.

2 Notification

Notified under the Legislation Act on 2010.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
