

Animal Welfare Legislation Amendment Bill 2010 (Exposure Draft)

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Greens**

**Consultation period: 8 December 2010 – 22
February**

EXPLANATORY STATEMENT

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The ACT Greens are calling for public submissions on the exposure draft of the Animal Welfare Legislation Amendment Bill 2010.

**The exposure draft of the bill is available at
http://www.legislation.act.gov.au/ed/db_40359/default.asp**

How to Make a Submission

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Please include your name and organisation (if any) with all submissions.

The closing date for submissions is close of business 22 February 2011

Overview of the draft bill

The intent of the Animal Welfare Legislation Amendment Bill 2010 is to improve the welfare of animals. It proposes **eight key changes**:

1. Introducing mandatory licences for cat and dog breeders to ensure they meet proper standards of animal welfare, and to stamp out unethical breeding operations.
2. Banning the sale of cats and dogs from stores and markets (with limited exceptions for animals being sold on behalf of animal welfare organisations and shelters).
3. Introducing additional requirements on the selling of animals, including the provision of care information to all buyers, the banning of the display of mammals in store windows, and restricting the selling of animals to children.
4. Restricting the advertising of animals for sale, except by approved sellers.
5. Introducing a new system of traceability via the existing microchips, so that all cats and dogs can be traced back to their original breeders.
6. Mandating the desexing of cats and dogs at the point of sale.
7. Amending the ACT's animal cruelty offences, including by increasing the available maximum fines, and introducing a new requirement for vets to report suspected cases of animal cruelty.
8. Outlawing sow stalls and farrowing crates so that only free range pig farming may occur in the ACT.

The changes proposed in this bill are focused on:

- improving the welfare of companion animals, in particular by addressing problems with overbreeding and animal abandonment
- preventing animal cruelty and ensuring that animal cruelty laws recognise the significance of animals as sentient creatures
- protecting farm animals from the most inhumane intensive farming practices, and contributing to a national push to end the factory farming of animals.

Background to the key issues addressed by the draft bill

1. Overbreeding and abandonment of companion animals

The ACT has an ongoing problem with the overbreeding and abandonment of companion animals, which results in the suffering and euthanising of animals, as well as burdening the resources of animal welfare organisations and the Government.

Thousands of companion animals are abandoned every year in the ACT. During the 2009/10 financial year, the ACT RSPCA alone was presented with **1670 dogs/puppies and 2748 cats/kittens**.¹ This means on average the RSPCA is presented with over 12 cats or dogs every day of the year. In addition, during the same year, the ACT Domestic Animals Services (DAS) processed **2050** stray or abandoned dogs.² The above figures do not include animals that are rescued and rehomed by other volunteers and volunteer groups in the ACT.

Euthanised animals

It is not always possible to re-home every animal accepted by animal shelters (although the rate of rehoming in the ACT is currently very good compared to other Australian jurisdictions). Every year, hundreds of animals have to be **euthanised**.

In 2009-10, for example, the RSPCA had to euthanise **1183 cats, and 98 dogs**.³ DAS was able to rehome 95% of 'saleable' dogs it received (making the number of euthanised dogs approximately **103 dogs**); however it also received an unknown amount of 'unsaleable dogs', which are not included in these figures.⁴ In addition, it is unknown if there are additional euthanised animals from pet stores, as pet stores are not required to disclose data about this.

Reasons for abandonment/overbreeding

Many animals are abandoned because they were **bought on impulse** – often as cute puppies or kittens displayed in pet store windows - without the purchaser fully thinking through or understanding the animal's needs and costs.⁵ In cases where puppies or kittens are not sold quickly enough, pet stores tend to use discounting or other marketing measures in order to ensure sales⁶ - a practice that is likely to encourage impulse buying.

¹ RSPCA ACT Annual Report 2009-10 (<http://www.rspca-act.org.au/about-us/links-and-resources/>)

² ACT Budget 2010-11, Paper No.4, p 74

³ RSPCA ACT Annual Report 2009-10 (<http://www.rspca-act.org.au/about-us/links-and-resources/>)

⁴ ACT Budget 2010-11, Paper No.4, p 74

⁵ Monash University research on Victorian animal shelters found that the main reason for the abandonment or surrender of dogs and cats were 'owner-related factors' (32% of total relinquishments). In 2007 in the Queensland and Victorian large shelters where statistics are kept, on average 72% of surrendered companion animals was for 'owner reasons', 12% for 'economic reasons'. See: Hugh Wirth, *Abandoned animals in Australia - Not just dumped doggies and cast away kittens* (2008) (published on DAFF's website: http://www.daff.gov.au/__data/assets/pdf_file/0008/1046393/20-hugh-wirth.pdf).

⁶ Legislative Assembly Hansard, March 2010, P1618, <http://www.hansard.act.gov.au/hansard/2010/pdfs/20100325.pdf>

Sometimes animals are abandoned because they have **behavioural problems**.⁷ Behavioural problems can be caused by animals being bred in poor conditions or being bred from poorly socialised or unhealthy animals. Behavioural problems are also caused by animals living in cramped and confined conditions, or being purchased by people without a good understanding of the animal's needs.

Abandonment also occurs due to unwanted litters – a result of **animals that have not been desexed**.⁸ In the ACT, it is currently an offence to keep non-desexed cats that are over 3 months old or non-desexed dogs that are over 6 months old. However, sellers of animals are exempt from this rule.⁹ Unlike shelters and rescuers, pet stores tend *not* to desex animals before they are sold, which contributes to the problem of unwanted litters.

Non-desexed animals remain a big contributor to overbreeding/abandonment problems. A National Summit to End Pet Overpopulation that was held in 2006 and attended by 125 delegates from every Australian State and Territory and New Zealand concluded that one of the key actions to address the overpopulation and euthanising of cats and dogs was mandatory desexing and microchipping prior to their sale. A USA study has estimated that in 7 years, a female cat and her young can produce 420,000 cats.¹⁰

Animals Australia sums up these problems as follows: “Many pet shops encourage impulse buying of animals and are the primary supporters of commercial breeding enterprises... Not only does the selling of undesexed animals eventually contribute to the number of unwanted animals in shelters, for every animal sold, equally healthy and deserving animals needing homes in animal shelters are on death row waiting for someone to adopt them”.¹¹

2. Breeding and selling of companion animals

The commodification of companion animals - selling through stores, newspapers, over the internet, etc - contributes to an industry of commercial breeding. A number of commercial breeding operations have been exposed in recent years for keeping animals in very poor conditions. In particular, numerous ‘intensive dog breeding facilities’, or ‘**puppy farms**’ have been discovered in Australia.

The RSPCA describes puppy farming as: “the indiscriminate breeding of dogs on a large scale for the purposes of sale. Puppy farms are essentially commercial operations with an emphasis on production and profit with little or no consideration given to the welfare of the animals. Puppy farms are intensive systems with breeding animals and their puppies kept in facilities

⁷ The Monash Uni research cited above found that ‘behavioural problems’ were another main reason for abandoning animals (11% of all cases). This figure is 15% in large Queensland and Victorian shelters.

⁸ In the Monash Uni research cited above, one of the main reasons given for the abandonment of cats was that there were “too many cats”.

⁹ s74 *Domestic Animals Act*

¹⁰ Carole Webb, *Australia Asks “Who’s For Cats?”* (2008) (published on DAFF’s website: http://www.daff.gov.au/__data/assets/pdf_file/0016/1046500/42-carole-webb.pdf)

¹¹ http://www.animalsaustralia.org/issues/companion_animals.php

that fail to meet the animals' psychological, behavioural, social or physiological needs. As a result many of these animals have a very poor quality of life".¹²

Problems in puppy farms include over-breeding, lack of basic care or veterinary care, poor hygiene, poor housing conditions, and poor socialisation or regard for the animals' behavioural needs.

Large scale puppy farms have been discovered in other Australian States.¹³ As yet, there has not been a prosecution of a puppy farm in the ACT. However, last year the RSPCA prosecuted and closed down a puppy farm in Braidwood, NSW. The Braidwood farm had been supplying puppies for sale to pet stores in the ACT. The RSPCA has estimated that 95% of puppies sold through pet stores actually come from puppy farms.¹⁴

The ACT Government believes that while puppy breeding takes place in the ACT, "it is limited to small scale residential breeders who primarily sell puppies and kittens over the internet or through local classifieds".¹⁵

The number of these 'small scale breeders' is unknown, but the evidence suggests there is a considerable number. An analysis of newspaper and internet sales in the ACT revealed that in the Canberra Times alone there are over 5000 puppies and kittens offered for sale annually.¹⁶

Even small scale breeders – while their operations may not be technically classified as 'puppy farms' – can still breed dogs in inadequate conditions. In the ACT it is currently very difficult to find and monitor backyard breeders or 'puppy farms'. There is no licence required for someone to become a breeder, meaning breeders escape monitoring and are not subject to detailed mandatory breeding standards.

Pet stores have also been exposed for keeping and selling animals in poor conditions, and for obtaining animals from unscrupulous breeders. An undercover RSPCA investigation into a pet store in Sydney this year documented frequent breaches of animal welfare codes of practice in a range of areas including welfare, selling, sourcing (ie where the animals were bred), hygiene, neglect and nutrition. Some of the footage from this investigation was aired on the *Today Tonight* program on November 12, 2010.

As noted above, Canberra pet stores have also been revealed to be selling puppies sourced from 'puppy farms', which have later been shut down when discovered. However, one of the main concerns of animal welfare organisations is that much of this sourcing and selling continues unchecked.

In the ACT there is also no restriction on the **advertising of companion animals for sale**. It is not uncommon for sellers of animals in the ACT to include only include a PO Box with

¹² RSPCA Puppy Farm Discussion Paper, January 2010.

<http://www.rspca.org.au/assets/files/Campaigns/RSPCAPuppyFarmDiscussionPaperJan2010.pdf>

¹³ For example see the RSPCA Puppy Farm Discussion Paper for case studies from Victoria, NSW and QLD

¹⁴ <http://www.closepuppyfactories.org/>

¹⁵ Legislative Assembly Hansard, March 2010, P1618,

<http://www.hansard.act.gov.au/hansard/2010/pdfs/20100325.pdf>

¹⁶ RSPCA submission on Code of Practice for the Sale of Animals in the ACT.

their ads, with puppies then being delivered to the buyer via courier/mail¹⁷. Unregulated breeders are able to breed unlicensed and find a market for their animals though unrestricted advertising.

The animals being sold through classifieds and the internet are usually sold un-desexed. Of the puppies and kittens offered for sale through the Canberra Times in 2009, only 3% of kittens were offered de-sexed and less than 1% of puppies were offered de-sexed.¹⁸ The unregulated selling of these animals is a major contributor to cat/dog overpopulation in the ACT.

Breeders in the ACT remain hidden away from monitoring; but they also are subject to **limited standards** to ensure the health and welfare of the animals they keep. There are some standards referred to in the new Animal Welfare (Welfare of Dogs in the ACT) Code of Practice 2010, but these are minimal, and not expressed as compulsory obligations. Other jurisdictions in Australia are moving ahead on this issue. The Gold Coast, for example, now requires anyone intending to breed a cat or dog to apply for a breeder permit and to comply with a code of practice. To receive a permit, a potential breeder must have their premises inspected.

A further factor keeping breeders invisible in the ACT is that animals cannot be **traced back to their breeder**. The source of animals being sold in pet stores is unknown, and potentially they could be coming from unethical breeders. In addition, when shelters receive animals that have genetic defects, are poorly socialised, or have other problems, it would be very useful to know where they were bred. If all animals were traceable to their breeder, the breeding and selling industry would become much more transparent, and would help to put an end to invisible, unethical breeding.

3. Sentencing for animal cruelty offences

The penalties available for animal cruelty offences in the ACT currently lag behind those of other states and territories. The maximum jail terms in the ACT are average – a possible 1 year imprisonment for animal cruelty and 2 years imprisonment for aggravated animal cruelty (three other states have higher penalties available). However, the available maximum fines for animal cruelty offences remain almost the lowest in the country (\$11,000 for individuals and \$55, 000 for corporations maximum fine for animal cruelty, and \$22,000 for individuals and \$110, 000 for corporations for aggravated cruelty). Every other State and Territory has higher fines than this apart from NSW - though NSW has a higher available fine for aggravated cruelty.

The available fine is very important, especially since jail terms are uncommon in animal cruelty cases. The maximum fine reflects the significance of the crime to the community. It is also an important deterrent, particularly for breeders that break the law and who weigh up their ability to make profits with the risk of being caught and paying a fine.

¹⁷ This has been reported by the ACT RSPCA.

¹⁸ RSPCA submission on Code of Practice for the Sale of Animals in the ACT (this figure excludes animals offered by registered breeders and recognised reputable rescue groups).

One problem with animal cruelty offences is that it is difficult to uncover cases of animal cruelty in the first place. Veterinarians tend to be in a good position to detect cases of animal cruelty, but there is no requirement on them to report a suspicion, and they may worry about reprisals or losing business etc.¹⁹

4. Factory farming - Pigs

Australia has about 320,000 breeding sows and the majority of these are kept in sow stalls for some of their lives. Sow stalls are metal-barred stalls that only need to be a minimum of 0.6m wide by 2.0m long.²⁰ The stalls are so small that sows cannot turn around, they cause behavioural problems, physical and mental suffering, and are widely condemned for severely compromising the pigs' welfare. Sow Stalls are widely recognised as being a cruel method of keeping animals, and they have already been banned in the UK for a decade. Farrowing crates are similar devices that confine pigs during weaning, and they are similarly cruel to the animals.

In June 2010, Tasmania became the first jurisdiction in Australia to announce a ban on sow stalls. The Tasmanian Government has agreed to implement a phase out of sow stalls with a total ban in 2017.

The ACT does not currently have any intensive pig farming, but by enacting a ban on sow stalls and farrowing crates, it could ensure that these farming methods are never used in the ACT. The ban would also make a significant contribution towards a national ban on these methods of farming.

The ACT does have a large battery cage facility, where approximately 250,000 chickens are farmed for eggs. Battery cages are widely regarded as an outmoded, inhumane farming system that severely compromises animal welfare. The Greens have tried on a number of occasions to outlaw battery cage farming in the ACT, but have not had the support of the Labor or Liberal parties.²¹ Battery cage farming is not an issue that we are addressing in this draft bill, but it remains Greens' policy to outlaw battery cages, and this will be the subject of future Greens' legislation.

¹⁹ See M Lawrie, 'There Should be a Law' (2001) *Animals* 42(4), 14

²⁰ This minimum is set in the *Australian Model Code of Practice for the Welfare of Animals: Pigs*. (<http://www.publish.csiro.au/nid/22/pid/5698.htm>)

²¹ Most recently, the Greens introduced the Eggs (Cage Systems) Legislation Amendment Bill 2009 Bill.

Key proposals in the draft bill

Proposal 1: All breeders of cats and dogs in the ACT must be licensed

* [See clauses 16-18 and clause 28 of the draft bill (New Division 3.2)]

The draft bill proposes the introduction of a new licensing regime for anyone who wants to breed cats or dogs in the ACT. This will apply to commercial breeding establishments as well as to people who wish to breed a couple of dogs or cats at home. It will be an offence to breed cats or dogs for sale without a licence.

There is an exemption from this offence for people who rescue stray/abandoned animals that may be pregnant at the time. It is appropriate that these people can recover their costs by selling the animal and its litter after caring for them.

The proposed system of licensing requires a person wanting to breed to apply to the Domestic Animals Registrar for a three year breeding licence. To obtain a licence, the applicant will need to meet a number of requirements, designed to ensure that the animals are bred in appropriate conditions, and for appropriate reasons. The draft bill requires an authorised officer to inspect the premises and be satisfied that these conditions are being, and will be, met. The mandatory requirements include:

- that the applicant is likely to be able to find homes for all the animals being bred
- that the animals being bred from are healthy and genetically sound
- that the animals are 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;
- that the accommodation is appropriate (including for the type of dog/cat, in terms of space, cleanliness, hygiene, temperature, lighting, ventilation, space etc)
- that the animals are not separated from their mothers earlier than 8 weeks of age.

In addition, the registrar will maintain a general obligation to consider the overall state of the premises and living conditions of the animals and ensure that welfare needs are met. Breeders will also need to agree to comply with an “ethical breeding code”, which will be prescribed by regulation and is appropriate for specifying further details.

The draft bill establishes a flexible licensing regime that permits the registrar to place conditions on licences, amend licences, and revoke or suspend licences in the interests of animal welfare.

The licensing regime interacts with the other changes proposed in the draft bill (discussed below), so that licensed breeders would be permitted to sell cats and dogs, but would also need to:

- desex and microchip the animals before sale;
- provide their licence details any time they advertise animals for sale;
- register their licence details in the microchip of a sold animal; and

In addition to the mandatory licensing of ACT breeders, we are exploring options for ‘opt-in licensing’ for out-of-state breeders, which would allow them to undertake advertising or selling in the ACT that was sanctioned by the Government.

The new licence requirements will ensure that breeders in the ACT meet appropriate standards of animal welfare, do not exploit or overbreed animals, and that the public, authorities and animal rescue organizations have a reliable guide to determine which animals are being bred in good conditions.

Key questions:

- **What (if any) further conditions should the bill prescribe that breeders must meet in order to obtain a breeding licence?**
- **What should be specified in the ethical breeding code?**
- **What is an appropriate time period to allow for existing breeders in the ACT to be inspected and licensed?**
- **Please provide any comment on the appropriateness of the penalties proposed in these new provisions.**

Proposal 2: Cats and dogs may only be sold from limited ‘approved sellers’

* [See clause 17 (Definitions – pt3) and clause 23 (new division 3.2) of the draft bill]

The draft bill proposes a ban on the sale of cats and dogs from stores or markets.

However, pet stores/markets would still be able to sell cats/dogs on behalf of animal welfare organisations or animal shelters (provided the animals are not kept for more than a day at the site of the store). Some pet stores have already voluntarily stopped selling dogs or cats that they source from breeders, and instead they only sell cats/dogs on behalf of animal shelters.

We expect this proposal will make a significant impact on the problems detailed above, including oversupply and impulse buying. It also responds to concerns about conditions in pet stores - which are not subject to a detailed and mandatory code of practice for the care of animals, and where animals live and are displayed in cramped conditions. The proposal also minimises the instances in which animals are considered to be ‘goods’, used to make money, rather than being treated in a way that is of most benefit to the animal.

Preventing the selling of cats and dogs in pet stores and markets in the ACT is also a necessary corollary to the new breeder licensing regime outlined above. If selling was allowed to continue unrestricted, pet stores or markets could continue to sell animals that had been bred in other states, where breeding remains unregulated. In this instance, while the new licensing regime would ensure that ACT breeders met appropriate standards, it would not be

as effective at addressing problem breeding, oversupply etc, because stores/markets could still import and sell animals from anywhere.

The proposal is not unique; a number of jurisdictions around the world have already banned the sale of companion animals from pet stores, including various European Countries and cities across the USA and Canada. As an example, Albuquerque (New Mexico, USA) banned the commercial sale of companion animals in 2006. City vets say that this has markedly improved the situation for companion animals, with a 35% decrease in the euthanasia of animals in shelters and a 23% rise in animal adoption.²² Pet stores are also uncommon across Europe and cat and dog euthanasia rates in Europe remain significantly lower than Australia's.

Under the proposal, cats/dogs could still be sold by authorised sellers. These are:

- approved animal welfare organisations;
- vets who sell surrendered or abandoned animals;
- people who sell surrendered or abandoned animals on a not-for-profit basis
- the Domestic Animals Registrar;
- breeders licensed under the new licensing regime; and
- other sellers that are prescribed by regulation.

Approved animal welfare organisations are:

- The Royal Society for the Prevention of Cruelty to Animals (ACT) Inc (the RSPCA);
- an administrative unit that operates a facility for the holding of lost, stray, abandoned or surrendered animals (this refers to the Government's Domestic Animals Service);
- a not-for-profit organisation that has among its objects the promotion of the welfare of, or the prevention of cruelty to, animals;
- other entities that the domestic animals registrar is satisfied have relevant experience and competency in caring for and handling dogs or cats that have been mistreated or abandoned.

Dogs/cats could also be sold by anyone else provided they are not selling more than 2 dogs/cats in a six month period. This is to ensure that people who are not breeders are still able to sell their pets, for example when they are moving house.

Any person who is not an authorised seller and wants to sell more than 2 dogs/cats in a six month period will need to apply for selling approval from the domestic animals registrar. The registrar must issue approval to sell if satisfied that the individual doesn't breed the animals, or sell them on behalf of another unlicensed breeder, and that the animals are the person's pets. The registrar also must give approval if satisfied that the person is selling the litter of an animal that was pregnant when the person rescued it from abandonment.

²² Humane Society International,
http://www.hsi.org/world/canada/news/news/2010/10/canada_puppy_ban_101410.html

The proposed new sales regime – in combination with the proposed new licensing regime - is intended to minimise unscrupulous commercial breeding and selling, and the welfare and overpopulation problems that stem from it.

Jurisdiction issues

We are exploring issues involving the Commonwealth's *Mutual Recognition Act 1992*, which prevents one state or territory from restricting the sale of a good that is allowed to be sold in a second state or territory (and under the Act, animals are considered to be 'goods').²³ In order to restrict sales of cats and dogs that are imported into the ACT from other states, it may be necessary for the ACT to gain permission from other states and territories to make the law an exemption to the *Mutual Recognition Act*.

Key questions:

- Is it sufficient to permit people to sell up to 2 dogs/cats in a six month period without seeking approval?**
- Is the list of approved sellers appropriate?**
- Are there other types of sales that may need additional exemptions - for example, for ACT events that host out-of-state breeders?**
- Please provide any comment on the appropriateness of the penalties proposed in these new provisions.**

Proposal 3: Additional restrictions/requirements for selling companion animals

* [See clause 10 (new part 2A) and clause 27 (new part 4A) of the draft bill]

Other animals can still be sold, but not displayed

Under the proposed new laws, pet stores/markets would still be permitted to sell animals other than cats and dogs. They could still sell pet supplies, accessories, food, etc.

However, sellers will not be permitted to display any mammals in a shop window or in any other part of a shop that can easily be seen by anyone outside the shop, or at markets. The section includes an exemption for livestock, as the proposal is focused on companion animals and is not intended to interfere with normal livestock sales. A mammal would also still be allowed to be displayed for sale at markets, provided they were being sold for an approved animal welfare organisation. The wording used in the relevant sections – “sold on behalf of an approved animal welfare organisation” – is intended to ensure that volunteers from these organisations who do the actual selling and management of the animals are still permitted to do so.

²³ See section 9 of the Mutual Recognition Act and the definition of 'goods'.

This is effectively a restriction on the advertising of companion animals, designed to reduce impulse buying.

Provision of material about caring for an animal

The draft bill proposes that anyone selling an animal through a store or market must display a sign at point of sale stating that basic care information about the animal is available on request. The seller must provide this information when asked, or to anyone who purchases an animal. The detail of this information is to be prescribed by regulation, and will cover each of the different types of animals commonly sold.

Age limit on buying animals

The draft bill proposes that a person may only sell an animal to a person who is over 18 years old (or who has parental consent). This reflects the fact that owning and caring for an animal is a serious responsibility and commitment.

We would like to hear feedback on whether eighteen is an appropriate age, or whether there are alternative ways to help ensure sales are only made to responsible buyers. We accept that by picking an age, the legislation draws a line and that it is likely that there are people who are responsible and irresponsible on either side of that line. However, eighteen is the general age that the law chooses to deem people mature enough to make decisions and be accountable for them.

This proposal raises human rights issues, because it restricts the rights of young people. If we proceed with this proposal, we will provide a justification of why the restriction is a reasonable limit on human rights, as described under s28 of the Human Rights Act 2004, based on the need to address animal welfare concerns.

Key questions

- Please recommend any information that should be required as ‘basic care information’ for any particular types of animals.**
- Is 18 the appropriate age at which someone should be permitted to buy a companion animal; should this age be lower, or are there alternative suggestions for helping ensure animals are only sold to appropriate and responsible buyers?**
- Please provide any comment on the appropriateness of the penalties proposed in these new provisions.**

Proposal 4: Restrictions on advertising of cats/dogs for sale

* [See clause 23 (new division 3.4) of the draft bill]

This proposal would restrict advertisements for the sale of cats and dogs. It would permit anyone to advertise the sale of up to 2 cats or dogs in a six month period. However, it would ban advertisements for the sale of more than 2 cats or dogs in a 6 month period, unless the seller is:

- an authorised seller (see above); or
- a person who is given approval by the Domestic Animals Registrar.

People will be able to apply to the Registrar for approval to advertise more than 2 cats or dogs in a 6 month period. As with selling, above, the Registrar must give approval to advertise if satisfied that the person isn't breeding cats/dogs for sale, selling them on behalf of another unlicensed breeder and that they are selling their own pets, or a rescued dog or cat, or a litter from a dog or cat that was rescued while it was pregnant.

In order to ensure transparency and traceability in the sale of animals, advertisers will need to include information with any advertisement:

- the seller's name and ABN (if any);
- the identifying number for the breeder's licence (if they are a breeder);
- the unique identification number for the microchip of the advertised animals (if they are an authorised seller); and
- the unique identifying number for the approval to advertise (if they are an approved person)

Due to the requirement to gain approval from the registrar to advertise multiple sales of cats/dogs, this new regime is expected to prevent unregulated 'backyard breeders' from advertising animals for sale. The registrar will be able to monitor people advertising who are not registered breeders or sellers, and it can identify and investigate suspicious sellers.

This proposal that will require diligent enforcement from authorities, particularly in the area of internet sales. We suggest that initial enforcement focus on a number of local publications and internet sites that commonly carry advertisements and which target ACT residents.

Key questions

- Is it sufficient to permit people to advertise up to 2 dogs/cats in a six month period without seeking approval?**
- Are there further details that should be provided by advertisers?**
- Please recommend areas on which should be the focus when enforcing new advertising restrictions.**
- Please provide any comment on the appropriateness of the penalties proposed in these new provisions.**

Proposal 5: A new system to trace all cats/dogs to their breeder

* [See clause 26, and clauses 33 - 38 of the draft bill]

The draft bill proposes new laws that will require any breeders selling cats or dogs to microchip the animal, and record their own details in the chip. The existing microchip registration system used in the ACT should be suitable for recording this information. A breeder will need to record:

- their name and home or business address;
- their ABN (if any); and
- the unique identifying number for their breeding licence.

This new system would mean that cats and dogs would be permanently traceable to the breeder. It will allow, for example, assist investigators to target a breeder's premises if a large number of animals with problems (diseases, genetic defects, etc) come from the same breeder.

In the case of cats/dogs obtained from someone other than an authorised seller (eg from a breeder in another jurisdiction), the owner must record the details of that breeder in the microchip. They will be required to record the breeder's name and home or business address, the breeder's ABN (if any), and any details of the breeder's licence or permit that is registered with another jurisdiction.

This requirement is intended to allow record keeping of animals from out of state, and will also facilitate cross-jurisdictional reporting. It is likely to discourage bad breeders from other jurisdictions selling to the ACT.

Key questions

- **Should breeders be required to provide any additional information?**
- **Please provide any comment on the appropriateness of the penalties proposed in these new provisions.**

Proposal 6: Mandatory desexing of dogs and cats at the point of sale

* [See clauses 19 – 20 of the draft bill]

The draft bill changes the existing desexing laws so that all dogs and cats must first be desexed before they may be sold.

Under existing laws, cats must be desexed at 3 months old and dogs at 6 months old, provided the dogs or cats are not being kept for sale. The draft bill removes this exemption for sellers and instead makes it an offence to sell undesexed dogs or cats if they are of desexing age.

However, the draft bill proposes that someone can still sell an animal that is not old enough to be desexed provided they give the owner a redeemable desexing voucher. This is a prepaid voucher allowing the owner to have their cat or dog desexed for free at vet when it is old enough to be safely de-sexed. This option recognises that some sellers will sell animals before they are old enough to be desexed. Given the differing veterinary opinion on when is a safe age to desex, we are not proposing lowering the desexing age for cats and dogs, though this merits further investigation.

Undesexed animals are one of the key problems causing overbreeding and abandonment of cats and dogs. This proposal is expected to dramatically reduce the number of undesexed animals, and significantly alleviate overbreeding and abandonment problems in the ACT.

Key questions

- **Please provide any comment on the efficacy of redeemable desexing vouchers**
- **Please provide any comment on the appropriate desexing age for cats and dogs**
- **Please provide any comment on the appropriateness of the penalties proposed in these new provisions.**

Proposal 7: Revisions to animal cruelty laws

* [See clauses 5 and 6 and clause 9 (new Division 2.2) of the draft bill]

Increased animal cruelty penalties

The draft bill proposes to increase the available monetary penalties for animal cruelty offences under the *Animal Welfare Act 1992*.

The proposal doubles the existing available fines from \$11,000 for individuals and \$55, 000 for corporations to \$22,000 for individuals and \$110, 000 for corporations for animal cruelty, and from \$22,000 for individuals and \$110, 000 for corporations to \$44,000 for individuals and \$220, 000 for corporations for aggravated cruelty. \$10,000 to \$20,000 for animal cruelty, and from \$20,000 to \$40,000 for aggravated cruelty.

Under this proposal, the ACT will move from being the jurisdiction with the lowest available fines, to having average fines for an Australian jurisdiction. The draft bill proposes to retain the existing maximum imprisonment terms (1 year for cruelty and 2 years for aggravated cruelty).

The Greens believe that the community feels very strongly about animal cruelty offences, and that laws routinely undervalue animals. The proposed increases in fines are intended to bring the law more in line with community sentiment and to offer stronger deterrents and options for penalty options.

It should be noted that we believe that it is critical for legislation and courts to recognise the growing evidence of the links between animal cruelty offences and other violent offences. There needs to be the opportunity for a court to make appropriate orders - such as requiring a convicted person to undertake relevant rehabilitative mechanisms such as psychological counselling, psychological assessment, animal education programmes, anger management training, or non-violent conflict resolution training - rather than simply increasing the available terms for imprisonment. It should be noted that section 138A of the *Domestic Animals Act 2000* already provides courts with the flexibility to disqualify people convicted of animal cruelty from keeping animals, and Division 7.11 of the *Animal Welfare Act 1992* allows for a range of court orders. The draft bill does not propose amending these sections at this point.

Mandatory reporting of animal welfare offences by vets

The draft bill also proposes new laws that would require vets to report suspected animal welfare offences to authorities (including cruelty, confinement, pain, illegal surgery, tail docking, animal fighting etc). If a vet believes on reasonable grounds that one of these offences has been committed in relation to an animal in the vet's care, s/he must report it to the authority. This section is accompanied by a 'good Samaritan' clause that would protect vets from civil or criminal liability for making such a report. The onus to report arises where the vet 'believes on reasonable grounds' that an offence has been committed.

This proposal recognises that vets are in a unique position when it comes to discovering instances of abuse, neglect, animal fighting etc. The provisions in the draft bill are based on similar provisions that operate in a number of other jurisdictions, particularly in a number of states in the USA.

Key questions

- Please provide any comment on the appropriateness of the fines and terms of imprisonment for animal cruelty offences in the ACT.**
- Is additional sentencing flexibility needed in ACT legislation for animal cruelty/neglect offences, in addition to s138A of the Domestic Animals Act and Division 7.11 of the Animal Welfare Act?**
- Is it satisfactory that a vet has must report when s/he “believes on reasonable grounds” or should the trigger be a different standard? For example, should the vet need to have direct knowledge of the abuse/neglect before being required to report?**
- Please provide any comment on the appropriateness of the penalties proposed in these new provisions.**

Proposal 8: Banning factory farming of pigs

* [See clauses 7 (New section 9B) and 8 of the draft bill]

The draft bill bans the use of sow stalls, farrowing crates, or similar equipment for anyone who keeps a pig. The intention is to ensure that these devices are not used in the ACT and that the ACT only permits humane, free range pig farming. As there are currently no intensive pig farms in the ACT, the changes won't impact on existing farms, but will ensure that intensive pig farming does not take place in the ACT at any time in the future.

The relevant provisions of the draft bill are based on the UK legislation to ban sow stalls.²⁴ Unlike the UK legislation, however, there is no exemption provided for farrowing crates, ensuring that they cannot be used in the ACT. Unlike the UK legislation, the draft bill also requires that pigs have access to outdoors. The intention is that only free range pig farming will occur in the ACT, and the welfare of the animals is maximized.

The amendment in clause 8 ensures that there are no exemptions to the new free range pig standard by virtue of the *Australian Model Code of Practice for the Welfare of Animals: Pigs*. This *Model Code of Practice* code sets a lesser standard, and still permits intensive pig farming practices such as sow stalls and farrowing crates.

²⁴ <http://www.legislation.gov.uk/ukxi/2007/2078/schedule/8/made>.

Key questions

- Are additional words required in the bill to define free range pig farming?**

Commencement dates: When would the new proposals start?

* [See clause 2 of the draft bill]

Following the consultation period on this exposure draft, the Greens intend to assess the issues raised, revise the bill as necessary, and table the legislation formally in the Assembly. It is hoped that we can begin to progress a finalised bill through the ACT Assembly in the first half of 2011.

If a bill is passed into law, different parts of the new regime would commence at different times. The draft bill proposes that the new provisions relating to animal cruelty and factory farming would take effect immediately upon notification of the Act.

The draft bill proposes that all other elements of the bill (sale requirements, breeder licensing, advertising restrictions, desexing, traceability regime) would commence on a day fixed by the Minister by written notice or, at the latest, after six months from notification. This is intended to provide sufficient transition time for breeders and sellers of animals.