

2009

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

DOMESTIC ANIMALS AMENDMENT BILL 2009

EXPLANATORY STATEMENT

**Circulated by authority of
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Minister for Territory and Municipal Services**

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Overview

The *Domestic Animals Act 2000* (the principal Act) regulates the keeping of domestic animals in the ACT. It establishes the office of the Domestic Animals Registrar (the Registrar), who (among other things) is given the power to investigate attacks and incidents of harassment involving domestic animals. The Registrar is assisted by authorised officers appointed under the Act.

The amendments proposed by this Bill address two areas of concern identified by the Registrar in the operation of the principal Act. The opportunity has also been taken to update terminology used in the principal Act.

The first area of concern relates to assisting people who have suffered injury or other loss as a result of a dog attack, or an incident of harassment. Currently section 55 of the principal Act provides that a keeper of a dog must compensate a person injured by, or who suffers damage caused by their dog. Generally, the majority of owners of offending dogs that have been involved in attacks willingly provide their names and addresses to other parties without the involvement of the Registrar or authorised officers. However, a small minority of dog owners refuse to provide their names to victims, thwarting their ability to obtain compensation for their injury or loss.

Where an incident involving a domestic animal has been reported to the Registrar and an investigation is carried out by authorised officers, the identity of the owner of the offending dog may become known to the officers, either through their enquiries or by recourse to details kept on the ACT Domestic Animals Register.

This Bill provides a simple mechanism to enable victims to have access to that information to help them identify the owner of the dog that was responsible for the attack or harassment.

Given that such information is personal information, the Bill includes safeguards to ensure information is only released in appropriate circumstances.

The second area of concern relates to threats of violence against authorised officers (and their families) while they are carrying out their duties under the principal Act. The Bill proposes to amend the principal Act to relax the requirement for officers' names to be included on their identity cards. The Bill does not change the requirement for officers to provide their names in court proceedings.

The opportunity is also being taken to replace the phrase "authorised officers" with "authorised people" throughout the Act and other subordinate legislation, in line with current drafting standards.

Financial Implications

There are no financial implications arising from this Bill.

Notes on Clauses

Clause 1 Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

This clause provides for the proposed Act to commence on the day after it is notified on the ACT Legislation Register.

Clause 3 Legislation amended

This clause is a formal provision to identify that the legislation to be amended by the proposed Act is the *Domestic Animals Act 2000* (the principal Act).

Clause 4 New Section 55A

This clause inserts a new section 55A into the principal Act, which will facilitate the release of information held by the Registrar that might help a victim of a dog attack or incident of harassment to identify the owner of the dog that was responsible for the attack or harassment.

When a “relevant person” makes an application to the Registrar for information that might help them identify the owner of the dog in question, any information held by the Registrar must be released to that person.

Before the Registrar can release information, the Registrar must be satisfied that the victim suffered injury or other loss. An injury to a pet that requires veterinary treatment would be regarded as suffering “other loss” for the purposes of the section.

The Registrar must also be satisfied that the dog in question was involved in an attack or harassment that resulted in injury to the victim, or to an animal belonging to the victim.

“Relevant person” is defined to mean the victim, the victim’s legal representative, or the victim’s parent or guardian (if the victim does not have legal capacity to look after their own affairs – such as a child or person with impaired mental capacity). The Registrar can also release the information to a person that the Registrar reasonably believes to be one of the above types of person.

The section only requires the Registrar to release relevant information that the Registrar holds; it does not require the Registrar to seek the relevant information from third parties.

The new section includes a note under section 55A (2) advising that if a form is approved for use for this section, that form must be used. To further safeguard against inappropriate release of information, it is intended to develop an approved form which will require applicants to verify, by means of a statutory declaration, that the attack or harassment occurred and that injury or damage resulted from the attack or harassment. The incorporation of a statutory declaration into the form is permitted by section 54 of the *Legislation Act 2001*.

**Clause 5 Seizure—attacking and harassing dogs
Section 59**

This clause amends section 59 of the principal Act by replacing the term “the officer” with “the authorised person”.

This is the first of the clauses in this Bill with the purpose of removing all references to “authorised officer” from the principal Act and replacing them with “authorised person”. Amendments with the same purpose are dealt with in clauses 6 – 11 and 13 – 17 of this Bill, together with clauses 1.1 – 1.3 of Schedule 1 to this Bill.

**Clause 6 Seizure of cats
Section 86 (2)**

This clause amends section 86 (2) of the principal Act by replacing the term “the officer” with “the authorised person”.

Clause 7 Sections 89 to 90

This clause amends sections 89 to 90 of the principal Act by replacing the term “the officer or provider” with “the authorised person or approved provider”, wherever those terms appear in the sections.

**Clause 8 Returning seized cat to its keeper
Section 92 (5)**

This clause amends section 92 (5) of the principal Act by replacing the term “the officer” with “the authorised person”.

**Clause 9 Guidelines about returned seized cats
Section 93 (1)**

This clause amends section 93 (1) of the principal Act by replacing the term “authorised officer’s” with “the authorised person’s”.

**Clause 10 Entry to premises for nuisance animal
Section 114A (5)**

This clause amends section 114A (5) of the principal Act by replacing the term “authorised officer’s” with “the authorised person’s”.

**Clause 11 Powers on entry
Section 114B, note**

This clause amends the note at the end of section 114B of the principal Act by replacing the term “the officer’s” with “the authorised person’s”.

**Clause 12 Identity cards
Section 124 (1) (b)**

Section 124 of the principal Act sets out the requirements for identity cards for authorised officers. At present this includes a requirement that an officer’s card includes their name.

This clause amends section 124 (1) (b) to require officers’ identity cards to include either their name or a unique number issued to them by the Chief Executive with administrative responsibility for the principal Act.

The use of unique numbers for officers on their identity cards does not mean that officers can be identified by their number should a matter proceed to court. In such cases, officers will continue to be required to give their names when swearing statements or giving evidence.

Clause 13 **Search warrants**
Section 133 (5)

This clause amends section 133 (5) of the principal Act by replacing the term “the officer” with “the authorised person”.

Clause 14 **New Section 158**

This clause inserts a new transitional provision to allow a person appointed as an authorised officer before the commencement of this Bill to be taken thereafter to be an authorised person.

This clause expires 3 months after the day it commences, however section 88 of the *Legislation Act 2001* operates to ensure that a person appointed as an authorised officer will continue to be treated as an authorised person after the clause’s repeal.

Clause 15 **Further amendments, mentions of *authorised officer***

This clause amends the principal Act by replacing the term “authorised officer” with “authorised person” from the provisions of the principal Act that are listed in the clause.

Clause 16 **Further amendments, mentions of *the officer***

This clause amends the principal Act by replacing the term “the officer” with “the authorised person or police officer” from the provisions of the principal Act that are listed in the clause.

Clause 17 **Further amendments, mentions of *authorised officers***

This clause amends the principal Act by replacing the term “authorised officers” with “authorised people” from other provisions of the principal Act that are listed in the clause.

Schedule 1 **Consequential amendments**

Schedule 1 of the Bill sets out consequential amendments to subordinate legislation that refer to “authorised officer”.

Part 1.1 **Domestic Animals Regulation 2001**

Clause 1.1 **Section 15 heading**

This clause amends the heading of section 15 of the *Domestic Animals Regulation 2001* to remove the reference to an authorised person. This amendment is necessary to avoid confusion. With the passage of this Bill the phrase “authorised person” will be confined to describe people authorised under section 123 of the principal Act, not people authorised for some other purpose under the Act or subordinate law, such as a person authorised to implant microchips.

Part 1.2 **Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005**

Clause 1.2 **Section 14**

This clause amends section 14 of the *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005* by replacing the term “An authorised officer” with “A person appointed as an authorised person under the *Domestic Animals Act 2000*, section 123 (Authorised people)”.

Clause 1.3 **Dictionary, definition of *authorised officer***

This clause omits the term “authorised officer” from the dictionary to the *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005* consequent to the amendment to section 14 of the Regulation (see clause 1.2 above).
