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

**DOMESTIC ANIMALS (BREEDING)
LEGISLATION AMENDMENT BILL 2015**

EXPLANATORY STATEMENT

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DOMESTIC ANIMALS (BREEDING) LEGISLATION AMENDMENT BILL 2015

Introduction

This explanatory statement relates to the Domestic Animals (Breeding) Legislation Amendment Bill 2015 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The purpose of the Bill is to prevent the intensive breeding of dogs and cats in the ACT in what are colloquially known as puppy or kitten farms. The Bill has been developed following targeted industry stakeholder consultation.

The Bill seeks to achieve its purpose through amending the *Animal Welfare Act 1992* to create a new offence of intensively breeding a female cat or dog contrary to a breeding standard declared by the Minister. The Bill also inserts an objects clause into the Animal Welfare Act to aid in its interpretation.

The Bill further aims to achieve the purpose of preventing puppy and kitten farming in the ACT through amending the *Domestic Animals Act 2000* to create a licensing scheme to regulate breeders of dogs and cats. This breeding licensing scheme supplements existing licences and permits issued under the Domestic Animals Act, particularly multiple dog licences (division 2.2), multiple cat licences (division 4.1) and permits to keep dogs and cats that are not desexed (sections 75-79).

The Bill also makes consequential amendments to the *Domestic Animals Regulation 2001* to provide for review rights for administrative decisions made about the new breeding licensing scheme.

Human rights implications—presumption of innocence

The Bill inserts new sections 72 and 72K into the *Domestic Animals Act 2000*, which contain offences of strict liability. Specifically:

- new section 72 (1) provides a strict liability offence for a person who is the keeper or carer of a dog or cat and who breeds a litter from the animal for profit or commercial gain without holding a breeding licence; and
- new section 72K (1) provides a strict liability offence for the holder of a breeding licence to not include his or her breeding licence number in any published invitation to buy a dog or cat that he or she has bred.

The maximum penalties for the strict liability offences in new sections 72 and 72K are 50 penalty units and 10 penalty units respectively. The *Guide for Framing Offences* provides that the monetary penalty available for a strict liability offence is a maximum of 50 penalty units.

Offences of strict liability, such as those in new sections 72 and 72K, engage the right to be presumed innocent under section 22 (1) of the *Human Rights Act 2004* as they may reverse the onus of proof from the prosecution onto the defendant. While strict liability offences engage the presumption of innocence, they are not inherently incompatible with human rights.

Section 28 (1) of the Human Rights Act provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the Human Rights Act then provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. Section 28 (2) further provides five factors that must be considered when determining whether a limit on human rights is considered justified.

The limit that this Bill places on the right to the presumption of innocence in section 22 (1) is considered reasonable and justifiable in a free and democratic society, taking into account the factors enumerated in section 28 (2) of the Human Rights Act, namely:

(a) The nature of the right affected

The right to presumption of innocence before the law is a very important right that has been recognised by the common law for centuries, and is now codified in section 22 (1) of the Human Rights Act. The courts have held, however, that the right to presumption of innocence may be subject to limits, particularly where those who might be affected by an offence would be expected to be aware of its existence. The proposed offences in new sections 72 and 72K of the Domestic Animals Act are regulatory in nature, and target commercial breeders of dogs and cats. These breeders would be expected to know of the existence of the offences. That is, breeders would be expected to know of the requirement to hold a breeding licence before breeding from an animal that they own or that is under their control, and of the requirement to display their breeding licence number in their advertising.

(b) The importance of the purpose of the limitation

The purpose of providing a reverse onus of proof through the proposed strict liability offences is to ensure the effective enforcement of and compliance with new sections 72 and 72K of the Domestic Animals Act. A reverse onus enables the offences in new sections 72 and 72K to be more effectively prosecuted. The limitation on section 22 (1) is aimed at ensuring the effective operation of the proposed breeding licensing system, to allow oversight of the welfare of dogs and cats in breeding facilities through licence conditions.

The offences in new sections 72 and 72K are targeted at commercial breeders of dogs and cats who should be well aware of the requirement to hold a breeding licence before operating a breeding business, and to display

the unique number of their breeding licence in any advertisement for animals that they have bred.

(c) The nature and extent of the limitation

The strict liability offences in new sections 72 and 72K of the Domestic Animals Act engage the right to be presumed innocent by reversing the onus of proof from the prosecution onto a defendant. The offences only apply to a person who breeds a dog or cat for profit or commercial gain, and can be considered to be regulatory offences.

It is noted that the maximum penalty for a prosecution of the offence in new section 72 is 50 penalty units and the maximum penalty for a prosecution of the offence in new section 72K is 10 penalty units. These penalties are considered proportionate and not unduly harsh for offences of a regulatory nature.

(d) The nature between the limitation and its purpose

The imposition of a burden of proof on the defendant through creating the strict liability offence in new sections 72 and 72K of the Domestic Animals Act enables the offences to operate as effective deterrents. Those who are affected by the offence—commercial breeders of dogs and cats—are expected to be aware of the new requirement that they must hold a breeding licence before breeding for profit from a dog or cat that they keep or care for. Providing a strict liability offence of breeding from a dog or cat without a licence will help to ensure the operation of the breeding licensing scheme. Similarly, providing a strict liability offence for a breeder failing to include a breeding licence number in their advertising enables the government to monitor breeders' compliance with the licensing scheme.

(e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

An evidential onus, rather than a strict liability offence, would be less restrictive on the right to be presumed innocent found in section 22 (1) of the Human Rights Act. An evidential onus would not, however, prove to be as effective in prosecuting the proposed offences in new sections 72 and 72K of the Domestic Animals Act. This is because strict liability offences provide that the defendant's act alone should dictate the offence, rather than the reasons that the defendant acted in that way or his or her intention in so doing.

While the inclusion of strict liability within an offence limits the range of defences that may be available for a person accused of the offence to which it applies, a number of defences remain open to the accused, depending on the particular circumstances of each case. Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Section 23 (3) of the Criminal Code provides that other defences may also be available for use for strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the Criminal Code.

OUTLINE OF PROVISIONS OF THE BILL

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause provides that the name of the Act is the *Domestic Animals (Breeding) Legislation Amendment Act 2015*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on a day fixed by the Minister by written notice. Section 79 of the *Legislation Act 2001* provides that if a provision of the Act has not commenced within 6 months of the Act's notification day, the provision automatically commences on the first day after that period.

Clause 3 Legislation amended

This clause provides that this Act amends the *Animal Welfare Act 1992*, the *Domestic Animals Act 2000* and the *Domestic Animals Regulation 2001*.

PART 2 ANIMAL WELFARE ACT 1992

Clause 4 New section 4A

This clause inserts new section 4A into the *Animal Welfare Act 1992*, which provides an objects clause to aid interpretation of that Act. The new objects of the *Animal Welfare Act 1992* are to:

- (a) promote and protect the welfare, safety and health of animals;
- (b) ensure the proper and humane care and management of animals; and
- (c) reflect the community's expectation that people who keep or care for animals will ensure that they are properly treated.

Clause 5 New section 15B

This clause inserts new section 15B into the *Animal Welfare Act 1992*.

New section 15B creates two offences of intensively breeding cats or dogs:

- recklessly allowing a female cat or dog to breed in a way that contravenes a breeding standard (new section 15B (4)); and
- allowing a female cat or dog to breed in a way that contravenes a breeding standard if done with the intention of making a profit or commercial gain (new section 15B (5)).

The maximum penalty for the offence in section 15B (4) is 50 penalty units and the maximum penalty for the offence in section 15B (5) is 100 penalty units.

The Minister may determine a breeding standard for the purposes of this section under section 15B (1). Section 15B (3) provides for the matters that the Minister may include in a breeding standard; namely, any matter that the

Minister reasonably considers is appropriate to protect the welfare, safety or health of fertile cats and dogs in relation to breeding. Specific examples of matters that the Minister may provide for in a breeding standard include:

1. the minimum age for a dog before first mating;
2. the age at which, or number of litters after which, a dog must be retired from breeding; and
3. the maximum number of litters a cat may have in a 12-month period, or in her lifetime.

New section 15B (6) provides an exception to the offences in sections 15B (4) and (5) where a person allows a cat or dog to breed in accordance with the written approval of a veterinary surgeon.

Clause 6 Contents
Section 21, new paragraph (ea)

This clause inserts new paragraph (ea) into section 21 of the *Animal Welfare Act 1992* to provide that a code of practice made under that Act may deal with the breeding and selling of cats or dogs with heritable defects.

Under current provisions of the *Animal Welfare Act*, the Minister may approve two separate forms of codes of practice—an *approved* code of practice made under section 22 and a *mandatory* code of practice made under section 23. Under section 24A it is an offence to recklessly fail to comply with a mandatory code of practice while under section 24B, it is an offence to fail to comply with a written direction to comply with a mandatory code of practice.

PART 3 DOMESTIC ANIMALS ACT 2000

Clause 7 Offences against Act—application of Criminal Code etc
Section 4A, note 1

This clause amends note 1 of section 4A of the *Domestic Animals Act 2000* as a consequence of the insertion of new division 3.1 into that Act.

Clause 8 Multiple dog licences—approval or refusal
Section 20 (2) (c)

This clause amends current section 20 (2) (c) of the *Domestic Animals Act 2000* to recognise that the *Animal Welfare Act 1992* provides for both approved (section 22) and mandatory (section 23) codes of practice.

Clause 9 Seizure of dogs—general
New section 56 (ea)

This clause inserts new paragraph (ea) into section 56 of the *Domestic Animals Act 2000* as a consequence of the enactment of the *Domestic Animals Amendment Act 2014*.

Clause 10 Releasing dogs seized under attacking and harassing power
New section 64 (2) (c)

This clause substitutes section 64 (2) (c) of the *Domestic Animals Act 2000* as a consequence of the enactment of the *Domestic Animals Amendment Act 2014*.

Clause 11 New division 3.1 and division 3.2, heading

This clause inserts new division 3.1 into the *Domestic Animals Act 2000*. This new division 3.1 creates a scheme to regulate the breeders of dogs and cats. This is done through the requirement that a person must hold a breeding licence if the person is the keeper or carer of a female dog or cat and breeds a litter from the animal for profit or commercial gain.

New division 3.1 provides for the administration of breeding licences, including:

- a person may apply for a breeding licence (section 72A);
- on receipt of an application for a breeding licence, the registrar must either approve or refuse to issue the licence after considering specified criteria (section 72B);
- a breeding licence remains in force until it is surrendered or cancelled (section 72C);
- a breeding licence must be in the specific form outlined in section 72D;
- the registrar may impose conditions on a breeding licence after considering the criteria specified in section 72E;
- the registrar may vary a breeding licence, either on the application of the licence holder or at the registrar's own initiative (section 72F); however, before varying a licence, the registrar must consider the criteria outlined in section 72B (3);
- the registrar may cancel a breeding licence after considering any response to a written notice made by a licence holder (section 72G);
- a court may cancel a breeding licence or disqualify a person from holding a breeding licence if the person is convicted or found guilty of an offence against the welfare, keeping or control of an animal (section 72H); and
- the holder of a breeding licence must notify the registrar of a change of address within 30 days (section 72I).

New division 3.1 provides several offences related to breeding licences, including:

- a strict liability offence of being the keeper or carer of a female dog or cat and breeding a litter from that animal for profit or commercial gain without holding a breeding licence (with a maximum penalty of 50 penalty units) (section 72);
- an offence for the holder of a breeding licence who fails to inform the registrar of a change of address within 30 days (maximum penalty of 1 penalty unit) (section 72I);
- a strict liability offence for the holder of a breeding licence who breeds a dog or cat to advertise the sale of that dog or cat without including the

- breeder's breeding licence number in the advertisement for sale (maximum penalty of 10 penalty units) (section 72K); and
- an offence for the holder of a breeding licence who fails to surrender the holder's licence to the registrar within 30 days of ceasing to operate a dog or cat breeding business (maximum penalty of 1 penalty unit) (section 72L).

A discussion of the human rights implications of the strict liability offences in sections 72 and 72K can be found in the overview of the Bill above.

**Clause 12 Multiple cat licences—approval or refusal
Section 84C (2)**

This clause amends current section 84C (2) of the *Domestic Animals Act 2000* to recognise that the *Animal Welfare Act 1992* provides for both approved (section 22) and mandatory (section 23) codes of practice.

**Clause 13 Entry and exercise of powers in emergency situations
Section 130 (1) (a)**

This clause amends section 130 (1) (a) of the *Domestic Animals Act 2000* as a consequence of the enactment of the *Domestic Animals Amendment Act 2014*.

Clause 14 Dictionary, definition of *animal welfare offence*, new paragraph (oa)

This clause amends the definition of ***animal welfare offence*** in the dictionary of the *Domestic Animals Act 2000*, inserting new paragraph (oa). This amendment is a consequence of the insertion of new section 15B into the *Animal Welfare Act 1992* and recognises that the intensive breeding of cats or dogs is an animal welfare offence for the purposes of the Domestic Animals Act.

Clause 15 Dictionary, new definitions

This clause inserts definitions of ***breeding licence*** and ***recognised breeding organisation*** into the dictionary of the *Domestic Animals Act 2000* as a consequence of the insertion of new division 3.1 into that Act.

PART 4 DOMESTIC ANIMALS REGULATION 2001

**Clause 16 Reviewable decisions
Schedule 1, new items 13A to 13E**

This clause inserts new items 13A to 13E into schedule 1 of the *Domestic Animals Regulation 2001*, to provide that certain administrative decisions related to dog and cat breeding licences are reviewable by the ACT Civil and Administrative Tribunal; namely the decisions to:

- refuse to issue a breeding licence to an applicant;
- impose a condition on a breeding licence;
- refuse to vary a breeding licence on the licensee's application;

- vary a breeding licence on the registrar's own initiative; and
- cancel a breeding licence.

Clause 17 Dictionary, definition of corresponding law, paragraph (b)

This clause amends an obsolete reference to New South Wales subordinate legislation in the dictionary of the *Domestic Animals Regulation 2001*.