

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

**Domestic Animals Amendment Regulation 2008 (No 1)**

**SL2008-18**

**EXPLANATORY STATEMENT**

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

## **Domestic Animals Amendment Regulation 2008 (No 1)**

### **Outline**

This Amendment Regulation amends the Domestic Animals Regulation 2001 (the Regulation). The *Domestic Animals Act 2001* (the Act) and the Regulation provide the legislative basis for the management of domestic animals, predominantly dogs and cats, in the Territory. Domestic Animal Services administers dog registration, provides the regulatory and enforcement services for this legislation through its field force of domestic animals rangers and operates an animal shelter for dogs at Mugga Lane, Symonston. The Regulation commenced in June 2001.

These amendments are necessary due the Government's commitment to undertake a review of the *Domestic Animals Act 2000* (the Act) five years after its commencement in December 2000. The review of the Act commenced in 2005.

These amendments to the Regulation also take account of the Government's changes to the Act and the Regulation which took effect from 23 May 2006. These changes introduced a cat containment policy for the suburbs of Forde and Bonner in Gungahlin restricting domestic cats to residences and cat enclosures at all times. These amendments also made it compulsory for residents in Forde and Bonner to identify their domestic cats by implanted microchip.

Following completion of the review, the Government introduced an Exposure Draft of its Domestic Animals Amendment Bill 2006 to amend the Act into the Assembly in December 2006. Written comment on the Bill's proposals were received until 28 February 2007, and the final Bill was presented to the Assembly on 9 June 2007. The Domestic Animals Amendment Act 2007 was passed by the Assembly and notified on 22 November 2007. The commencement date of the amended Act is 1 May 2008.

The amended Act and the Amendment Regulation introduces:

- lifetime registration of dogs;
- compulsory microchipping of dogs at point of sale and for declared dangerous dogs;
- microchipping for all dogs over a three year period;
- improved regulation of seized dogs and revised penalties for dangerous dogs;
- cat de-sexing before age of first breeding exempting sellers;
- guidelines for determining animal nuisance;
- codes of practice for keeping animals;
- licensing keeping multiple cats at a lower fee than for dogs;
- declaration of dog prohibited areas by disallowable instrument; and
- extends administrative tribunal appeals rights to cover decisions by the Registrar on return of seized dogs to ensure they will be secure enough to prevent the dog escaping.

A primary effect of this Amendment Regulation is to make the Territory's dog and cat microchipping procedures and the regulations consistent with industry best practice and legislation elsewhere, particularly in Victoria and New South Wales.

The amendments provide for three instruments (a notifiable instrument and two disallowable instruments). These are:

- (1) *Identifying Microchip for Dogs and Cats Notice 2008 (No 1)* - a notifiable instrument approved by the Minister under s. 10 of the amended Regulation;
- (2) *Implanting Microchips in Dogs and Cats Code of Practice 2008* - a disallowable instrument to be made under s. 16 of the amended Regulation; and
- (3) *Operation of Domestic Animals Registry Services Code of Practice 2008* - a new disallowable instrument to be made under s. 22 of the amended Regulation.

Approval and tabling of these instruments will take place as soon as practicable after commencement of the amended Act and the Regulation.

In summary, the amendments:

- make the Regulation consistent with the amended Act;
- make it an offence to sell a microchip for implanting in a domestic animal which is not an identifying microchip as specified by notifiable instrument;
- specify identifying particulars for microchips implanted in cats and dogs which are consistent with industry best practice and the current Victorian legislation;
- progressively introduce compulsory microchipping for dogs making identification by implanted microchip compulsory for all dogs three years after the Regulation commences;
- require sellers of microchips to supply necessary information about microchips to registries by electronic means in a prescribed manner and format;
- require sellers to provide the names and addresses of the implanters of microchips to domestic animals registries;
- make it an offence for a person to implant an identifying microchip unless they are a veterinary surgeon or an authorised identifier;
- make it an offence to implant an identifying microchip in a dog or cat other than in compliance with a Code of Practice;
- make it an offence for an operator of an animal shelter or pound not to scan a dog or cat on its entry to the facility;
- make it an offence for a person to operate a domestic animals registry service in the Territory if that person is not licensed to do so under corresponding law or is prohibited to do so by the Registrar of Domestic Animal Services (the Registrar);
- make it an offence for a person who operates a domestic animals service in the Territory to fail to provide information about that service within seven days when requested to do so by the Registrar;
- make it an offence for a person who operates a domestic animals service in the Territory to fail to notify the Registrar within three days when the persons' licence under corresponding law is cancelled, suspended or the service ceases to operate; and
- give the Minister the power to approve a Code of Practice about the operation of domestic animals registry services.

## **Revenue and cost implications**

There are no additional financial implications to Government attributable to this Amendment Regulation.

Introducing compulsory lifetime dog registration to replace annual registration will reduce the overall cost of registration to dog owners throughout the life of a dog.

Preferring to use the services of privately-run domestic animals registries for the storage and retrieval of cat and dog ownership data linked to implanted microchips in each animal is the most cost-effective regulatory approach best suited to the Territory's needs. The NSW approach of establishing a government-run registry of microchipped information is regarded as unnecessary and too expensive for the Territory.

## **Clause Notes**

### **Clause 1 - Name of Regulation.**

This clause provides that this amendment regulation be called the Domestic Animals Amendment Regulation 2008 (No 1).

### **Clause 2 - Commencement.**

This clause provides that this Regulation commences on commencement of section 3 of the *Domestic Animals Amendment Act 2007*.

### **Clause 3 - Legislation amended.**

This clause states that this Regulation amends the Domestic Animals Regulation 2001.

### **Clause 4 – Section 2, Note 1.**

This clause substitutes a new Note 1 for section 2. The new Note 1 explains references to *signpost definitions* which appear in the Dictionary. For example, the signpost definition ‘*identifying microchip*’ is defined in section 10 of the Regulation.

### **Clause 5 - Section 6(f).**

This clause omits subsection 6(f) of the existing Regulation. Subsection 6(f) is no longer required because given that the *Domestic Animals Amendment Bill 2007* introduced lifetime dog registration replacing annual dog registration, it is no longer possible to specify on a registration certificate in advance of the day a dog’s registration ends.

### **Clause 6 – New Section 6A.**

This clause inserts a new section 6A in the Regulation.

The new section 6A is equivalent to existing section 18 in the Act except that in the Regulation it is defined as a strict liability offence with a maximum penalty of 20 penalty units and no imprisonment penalty. This change allows infringement notices to be issued and a fine to be imposed for this offence under the *Magistrates Courts Act 1930*.

### **Clause 7 – Section 7**

This clause substitutes a new section 7 replacing the existing section 7 specifying how dogs must be identified

### **Section 7. Identification of dogs – Act, s 83.**

This new section specifies how dogs must be identified by tag and by an identifying microchip.

### **Subsections 7(1) and 7(2).**

These new subsections specify that a registered dog must be identified by a tag attached to the collar worn by the dog. The tag must be the dog’s registration tag or another tag which shows the dog’s registration number. Allowing a substitute registration tag made from a more durable material allows an alternative tag to be used showing the registration number in cases where dogs habitually remove the standard issue dog registration tag.

**Subsection 7(3).**

This new subsection specifies that a dog that is at least twelve weeks old, has been sold, or is a declared dangerous dog must be identified by an implanted identifying microchip, see section 11 of the Act.

**Subsection 7(4).**

This new subsection specifies that an identifying microchip must be implanted in a dog, function properly and contain a *unique identification number* by which the identifying particulars for a dog can be worked out.

**Subsection 7(5).**

This new subsection specifies the identifying particulars for a dog and certain information about a dog's owner. These new identifying particulars for dogs are consistent with the amended Act and the standard for recording such information by domestic animals registries under corresponding law in Victoria. This information must be recorded and be capable of being worked out for the dog and be linked to the *unique identification number* identified in subsection 7(4).

**Subsection 7(6).**

This new subsection provides that subsection 7(3) requiring a dog to be identified by identifying microchip does not apply if a dog is less than six months old or a veterinary surgeon has specified in writing before a dog was 12 weeks or it was sold that an identifying microchip would be a serious health risk to the dog.

**Subsection 7(7).**

This new subsection provides that subsection 7(3) does not apply if a dog has not been sold since the commencement of this section. The effect of this provision is that dogs which are already in the possession of their owners, that is, they have been acquired by their owners before this Regulation commences, are not required to be identified by an implanted identifying microchip unless three years since commencement of this amended Regulation has elapsed, see subsection 7(8) below.

**Subsection 7(8).**

This new subsection is transitional and provides that subsection 7(7) and this subsection 7(8) will expire three years after the amended Regulation commences. The effect of this subsection is that, apart from exemptions provided for in subsection 7(6) and 7(7) above, all domestic dogs in the Territory will be required to be identified by an implanted identifying microchip three years after the day this amended Regulation commences.

**Clause 8 – Part 3 heading**

This clause substitutes a new heading for Part 3 of the Regulation.

**Clause 9 – Section 9(1)(b).**

This clause inserts words in the Regulation which are consistent with the amended Act that identifies the number contained in an implanted microchip by which the identification particulars for a cat can be worked out. The identifying particulars constitute information which uniquely identifies a cat and its owner. The clause

inserts the words: ‘the *unique identification number*’ immediately after the word ‘number’ in section 9(1)(b).

**Clause 10 – Section 9(2).**

This clause replaces existing subsection 9(2) with a new subsection 9(2) defining a cat’s identifying particulars. This is necessary because the identifying particulars for a cat are different from the identifying particulars required for a dog.

**Subsection 9(2).**

This new subsection specifies the identifying particulars for a cat including the contact details for a cat’s owner. These new identifying particulars for cats are consistent with the amended Act and the standard for recording such information by domestic animals registries under corresponding law in Victoria. This information must be recorded and be capable of being worked out for a cat and be linked to the *unique identification number* identified in subsection 9(1)(b).

**Clause 11 – Section 9(3)(c).**

This clause replaces existing subsection 9(3)(c) with a new subsection 9(3)(c).

**Subsection 9(3)(c).**

This subsection specifies information required to be displayed on a tag attached to a collar worn by a cat. The information displayed allows a lost cat to be quickly re-united with a cat’s keeper or carer. This requirement is consistent with the amended Act and the Regulation and applies to all cats which are not identified by implanted microchip, cats which do not live in an area subject to a declaration under section 81 of the Act and cats which have not been sold since the Regulation was last amended in May 2006. Cats which do live in the 24 hour cat containment area declared under section 81 for the suburbs of Forde and Bonner in Gungahlin must be identified by implanted microchip only.

Under existing subsection 9(4), subsection 9(4) and the new subsection 9(3), including subsection 9(3)(c), expires on 30 June 2008. The effect of subsection 9(4) will be to make identification of all cats by implanted microchip compulsory in the Territory after 30 June 2008, three years since the Regulation was amended in May 2006.

**Clause 12 – New Section 9A.**

This clause inserts a new section 9A in the Regulation.

This new Section 9A is equivalent to the new section 6A in the Regulation which applies to dogs. Similar to that section, section 9A provides that a person commits an offence if they keep more than 4 cats on a residential premises and the person does not hold a multiple cat license to keep the cats. The offence for section 9A is defined as a strict liability offence with a maximum penalty of 20 penalty units. Defining the offence as a strict liability offence allows for infringement notices to be issued and a fine to be imposed under the *Magistrates Courts Act 1930*.

**Clause 13 – Part 4. Implanting microchips.**

This clause substitutes a new Part 4: ‘Implanting microchips’ in the Regulation replacing existing part 4 which previously applied to cats only. The effect of this

change is to allow the new Part 4 in the Act to apply to both dogs and cats. There is currently no intention to extend the provisions of this part to require microchipping of domestic animals other than dogs or cats.

#### **Section 10. Approval of identifying microchip.**

This section, the same as existing section 11 in the Regulation, provides for the Minister to specify the kind of *'identifying microchip'* to be used for identifying domestic animals (ie. cats and dogs). This is achieved by the Minister approving a notifiable instrument which defines the kind of microchips which must be used.

#### **Section 11. Selling or supplying fake identifying microchips.**

This new section creates an offence if a person sells or supplies a microchip to another person and that microchip is not an identifying microchip as approved by the Minister under section 10. This new section extends liability for supplying compliant microchips to the microchip seller, not just to the person implanting the microchip, see existing section 12(2). This approach is consistent with the corresponding law in Victoria. The maximum penalty for this offence remains unchanged at 10 penalty units. The offence is a strict liability offence meaning a person can be held liable for the offence regardless of any wrongful intent or negligence.

#### **Section 12. Information to be given to domestic animals registry services.**

This new section specifies the information a microchip seller must supply about each microchip sold to a veterinary surgeon or authorised identifier which must be supplied to operators of a domestic animals registry service in the Territory. The section creates an offence if the information as specified is not supplied. The information includes the name and address of the veterinary surgeon or authorised identifier to whom the microchip was sold or supplied, the unique identification of the microchip in a prescribed format linked to the manufacturer and a distribution batch number, and an allocation list linking the unique identification number of the microchip to the veterinary surgeon or authorised identifier to whom the microchip was sold or supplied. This provision is in keeping with standard industry practice in Victoria and corresponding Victorian law. It facilitates domestic animals registries keeping a master list of microchips issued allowing registries to track microchips so that routine checking for duplicate records is possible. The information supplied must be in electronic format suitable for incorporation in the records held by operators of domestic animals registry services.

The maximum penalty for an offence under this section is 20 penalty units. Under subsection 12(3) it is a defence against prosecution for an offence under this section if the defendant believed, on reasonable grounds, that the information to be supplied to an operator under subsection 12(1) had already been or would be supplied by someone else.

#### **Section 13. Authorisation of identifiers.**

This new section replaces the equivalent existing section 14. The new section provides that identifiers may be authorised to identify domestic animals (ie. both dogs and cats), not to cats only, as previously.

Persons apply to the Registrar to become authorised identifiers of domestic animals. The Registrar authorises a person to be an identifier if satisfied that the person is



qualified and will comply with the requirements of Part 4 of the Regulation about implanting microchips. The Registrar must give written notice to the applicant of any decision made under this section.

#### **Section 14. Withdrawal of authorisation.**

This new section replaces the equivalent existing section 15 unchanged except that withdrawal of authorisation may apply to identifiers of domestic animals (ie. both dogs and cats), not to cats only, as previously. The Registrar may withdraw authorisation by means of a written notice. Withdrawal may be authorised because the Registrar is satisfied a person is no longer qualified or competent, has been negligent, or has failed to comply with the requirements of part 4 of the Regulation about implanting microchips.

#### **Section 15. Identifying microchip to be implanted only by authorised people.**

This new section 15 replaces existing section 12 unchanged except that the section wording recognizes microchips must be implanted by authorised identifiers of dogs and cats, not by authorised identifiers of cats only, as previously.

Under subsection 15(1) a person commits an offence if he or she implants an identifying microchip in a dog or cat and the person is not a veterinary surgeon or an authorised identifier under section 13. The maximum penalty for this strict liability offence is 10 penalty units.

Under subsection 15(2) a persons commits an offence if he or she implants a microchip in a dog or cat which is not a identifying microchip as approved by the Minister, see section 10. The maximum penalty for this strict liability offence is 10 penalty units.

Subsection 15(3) specifies that, offences against subsections 15(1) and 15(2) are strict liability offences. This means a person can be held liable for these offences regardless of any wrongful intent or negligence.

Under subsection 15(4), a person who is not an authorised identifier commits an offence if the person represents himself or herself as an authorised identifier. The maximum penalty for this offence is five penalty units.

#### **Section 16. Code of practice about implanting identifying microchips.**

This new section 16 replaces equivalent existing subsections 13(2), 13(3) and 13(4) which gave the Minister the power to issue guidelines for procedures about implanting microchips in cats in a code of practice as a disallowable instrument presented in the Assembly. This new section extends the Minister's power to issuing a code of practice for procedures covering implanting of microchips for domestic animals (ie. including for both dogs and cats).

Subsection 16(1) provides that the Minister may approve a code of practice about implanting identifying microchips in a domestic animal.

Subsection 16(2) provides that a code of practice is a disallowable instrument.

Subsection 16(3) provides that a implanting a microchip in a domestic animal must comply with an approved code of practice with a maximum penalty for non-compliance set at 10 penalty units.

Subsection 16(4) specifies that an offence against subsection 16(2) is a strict liability offence meaning a person can be held liable for the offence regardless of any wrongful intent or negligence.

### **Section 17. Requirement to scan for identifying microchips.**

This new section introduces a compulsory requirement for operators of animal shelter or pound to scan a dog or cat to find out whether it has been implanted with an identifying microchip within three days of it entering such a facility. This provision is in keeping with current practice in the Territory and corresponding law in Victoria - see section 63J of the *Domestic (Feral and Nuisance) Animals Act 1994* (Vic.).

Subsection 17(1)(b) creates an offence if a person operating a pound or animal shelter fails to scan a dog or cat within three days of entry. The maximum penalty for this offence is 10 penalty units.

Subsection 17(2) specifies an offence against the section is a strict liability offence meaning a person can be held liable for the offence regardless of any wrongful intent or negligence.

Subsection 17(3) defines the meaning of *animal shelter* and *pound* for the purposes of section 17.

### **Section 18. Operation of domestic animals registry services.**

This new section creates an offence if a person operates a domestic animals registry service for residents in the Territory and that person is not licensed to operate such a registry under corresponding law in another jurisdiction or is prohibited from operating in the Territory by written notice under section 19. This provision acknowledges that domestic animals registries already operate in providing the Territory's registry services and; for example, several of these are licensed to operate under corresponding law in Victoria (ie. the *Domestic (Feral and Nuisance) Animals Act 1994* (Vic.). Under this regulation the ACT Government intends to encourage licensed registries to continue to operate lawfully in the Territory. The ACT Government does not intend to set up its own licensing procedures for domestic animals registries.

The maximum penalty for an offence against this section is 20 penalty units.

Subsection 17(2) specifies an offence against the section is a strict liability offence meaning a person can be held liable for the offence regardless of any wrongful intent or negligence.

### **Section 19. Prohibition of certain operators.**

This new section gives the Registrar the power, by written notice, to prohibit a person who is licensed under corresponding law in another jurisdiction from operating a domestic animals registry service in the Territory. This power may be exercised if the person is not operating, or will not operate the service in accordance with a code of practice made under section 22.

### **Section 20. Operator to provide information.**

This new section creates an offence if a person is operating a domestic animals registry service in the Territory and the Registrar asks the person to provide information about the service and the person does not provide the information within seven working days. This provision is similar to provisions made under equivalent legislation in Victoria and allows the Registrar to acquire information to document any concerns there may be about the effective operation of a domestic animals registry service in the Territory. The proposed maximum penalty for this strict liability offence is five penalty units, similar to corresponding penalties under the equivalent Victorian law. A strict liability offence means a person is liable for the offence regardless of any wrongful intent or negligence.

### **Section 21. Notification of ceasing to operate domestic animals registry services.**

This new section creates an offence if a person is operating a domestic animals registry service in the Territory and the person's licence to operate the service under corresponding law is suspended or cancelled, or the person ceases to provide the service for any reason and the person does not notify the Registrar within three days. This provision is similar to provisions made under the equivalent law in Victoria. The proposed maximum penalty for this strict liability offence is 5 penalty units.

### **Section 22. Code of practice about operation of domestic animals registry service.**

This new section gives the Minister the power to approve a mandatory code of practice about procedures for the operation of domestic animals services. A code of practice is a disallowable instrument presented in the Legislative Assembly.

The section makes it compulsory that a person must comply with an approved code of practice and creates an offence for non-compliance. Key elements of the code correspond with provisions separately legislated for elsewhere and made mandatory under equivalent law interstate eg. see relevant sections of the *Domestic (Feral and Nuisance) Animals Act 1994* (Vic.) eg. section 63N and the *Domestic and (Feral and Nuisance) Animals Regulations 2005* (Vic.) eg. see sections 27-43.

The maximum penalty for an offence against this section is 20 penalty units. Subsection 20(4) specifies an offence against the section is a strict liability offence meaning a person can be held liable for the offence regardless of any wrongful intent or negligence.

### **Section 23. Review of decisions.**

This amended and expanded section replaces the existing section 16 in the Regulation. The section identifies those decisions by the Registrar which are reviewable by a person making application to the administrative appeals tribunal in accordance with the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B(1). The reviewable decisions include:

- (1) refusing to authorise a person to be an identifier of domestic animals under section 13;
- (2) withdrawing a person's authorisation as an identifier of domestic animals under section 14; or
- (3) prohibiting a person from operating a domestic animals registry service in the ACT under section 19.

**Clause 14 – Section 17. Dishonoured cheques.**

This clause renumbers existing section 17 in the Regulation as section number 24 in the amended Regulation. The content of the provision is unchanged.

**Clause 15 – New section 25. Incorporation of documents.**

This new section provides for applying, adopting or incorporating within a statutory instrument made under the Regulation, other instruments in force within the Territory or in another jurisdiction according to the relevant provisions of section 47 of the *Legislation Act 2001*. For example, it may be expedient to incorporate a particular instrument in force in the Territory or another jurisdiction and include it as part of an instrument made under this Regulation.

**Clause 16 – Dictionary, note 3, new dot points.**

This clause adds two more terms: ‘dangerous dog’ and ‘incorporated document’ to the list of terms listed under *Note 3* in the Dictionary. These terms used in the Regulation have the same meaning as they do as defined in the dictionary of the *Domestic Animals Act 2000*.

**Clause 17 – Dictionary, definition of *authorised identifier*.**

This clause substitutes a new definition for *authorised identifier* in the Dictionary in accordance with the new section 13 of the Regulation.

**Clause 18 – Dictionary, new definitions.**

This clause inserts new definitions, as required, to the Dictionary for the Regulation.

The new term *authorised identifier* is in accordance with the new section 13 of the Regulation.

*corresponding law* is corresponding legislation, identified by its title as made by another jurisdiction, which is relevant to provisions of the Regulation. For example, sections 18, 19, 20 and 21 of the Regulation recognise that operators of domestic animal registries licensed under corresponding law in Victoria can operate in the Territory. The corresponding legislation is defined as::

- (a) *Companion Animals Act 1998 (NSW)*;
- (b) *Companion Animals Regulation 1999 (NSW)*;
- (c) *Domestic (Feral and Nuisance) Animals Act 1994 (Vic.)*; and
- (d) *Domestic (Feral and Nuisance) Animals Regulations 2005 (Vic.)*.

*domestic animals registry service* requires definition for Part 4 of the Regulation. A domestic animals registry service is a privately run service of keeping and maintaining records for domestic animals and their owners for animals which have been identified by an implanted microchip. Such a service can operate in the Territory, but be licensed to operate by corresponding law in another jurisdiction.

The definition for *identifying microchip* is as defined in section 10 of the Regulation

*unique identification number* is defined for a dog in the proposed new subsection 7(4)(b); and for a cat, in the existing subsection 9(1)(b).