

Australian Capital Territory

# Domestic Animals (Operation of Domestic Animals Registry Services) Code of Practice 2008 (No 2)

Disallowable instrument DI2008–72

made under the

**Domestic Animals Regulation 2001, section 22 (Code of practice about operation of domestic animals registry service)**

## EXPLANATORY STATEMENT

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### Explanation of the formal instrument

The Domestic Animals (Operation of Domestic Animals Registry Services) Code of Practice 2008 (No 2) is made under section 22 of the Domestic Animals Regulation 2001. The instrument records the Minister’s approval of the “Code of Practice for Operation of Domestic Animals Registry Services 2008” (the Code of Practice) which is attached to the instrument.

The instrument revokes Domestic Animals (Operation of Domestic Animals Registry Services) Code of Practice 2008 (No 1), which due to an administrative error, was made before the Domestic Animals Amendment Regulation 2008 (No 1), which inserted new section 22 into the Domestic Animals Regulation 2001.

### Explanation of the Code of Practice attached to the instrument

#### *Overview*

The objective of the Code of Practice is to make procedures for the operation of domestic animals registry services in the Territory consistent with the regulatory framework and industry best practice which applies in Victoria and New South Wales.

An identification process relying on implanting microchips in dogs and cats requires:

- reliable microchips that enable them to be read by scanners;
- the microchip is inserted permanently in the animal enabling the microchip to be easily found subsequently and read;
- the digital information recorded on the microchip needs to be cross-referenced to an external database which holds the information about an animal and its owner; and

- the information held on the database (or databases) needs to be reliable and readily accessible to persons needing to know the identity and other details about an animal.

The ACT Government is not establishing its own government-run database system for storage of information about microchipped dogs and cats similar to New South Wales, preferring instead to utilise and facilitate the use of the major privately-run registries which currently operate from Victoria and New South Wales.

The best regulatory model for compulsory identification of dogs and cats by implanting microchips supported by privately-run registries was found in the:

- *Domestic(Feral and Nuisance) Animals Act 1994* Vic. (the Victorian Act) and the
- *Domestic (Feral and Nuisance) Regulations 2005* Vic. (the Victorian Regulations).

Rather than trying to replicate the Victorian Act and Regulations in regard to the operation of domestic animals registry services which would require considerable cross-checking, regulation of domestic animals registry services in the Territory is being achieved by means of a mandatory Code of Practice.

Under section 22 of the Domestic Animals Regulation 2001 a person who operates a domestic animals registry service in the Australian Capital Territory must comply with the Code of Practice subject to a maximum penalty of 20 penalty units. An offence is a strict liability offence meaning a person can be held liable for not complying with the Code regardless of any wrongful intent or negligence.

#### *Provisions of the Code of Practice in detail*

1. **Background** outlines the basis of and use for the Code of Practice.
2. **Dictionary** at the end of the Code of Practice forms part of the Code.
3. **Obligations regarding information received** provides that operators of a domestic animals registry service must, on receipt of certain prescribed information provided by sellers of microchips, establish by checking records whether that information uniquely identifies a microchip; and on receipt of identifying particulars from any person that implants a microchip in an animal decide whether the information supplied uniquely links the microchip and the person to which the microchip was sold. An operator of a domestic animals registry service must not use the name and address of a person to which a microchip was sold for any other purpose than providing a domestic animals registry service. This provision is equivalent to section 27 of the Victorian Regulations.
4. **Notifying persons about incorrect information** provides that operators of a domestic animals registry service must notify a person who has implanted a microchip in a dog or cat within two working days of becoming aware that the person:
  - (a) has failed to provide all or part of the identifying particulars required under para. 9.1 of the Code of Practice for implanting Microchips in Dogs and Cats 2008;

- (b) has failed to provide all or part of the prescribed information under section 12(1) of the Regulation;
- (c) has supplied inaccurate or incorrect identifying particulars required under para. 9.1 of the Code of Practice for Implanting Microchips in Dogs and Cats 2008;
- (d) has supplied inaccurate or incorrect prescribed information under section 12(1) of the Regulation; and,
- (e) if incomplete, inaccurate or incomplete information is not supplied or re-supplied in an accurate form within 14 days, the operator of a domestic animals registry service must notify the Registrar of Domestic Animals Services.

This provision is equivalent to section 28 of the Victorian Regulations.

**5. Holding of information separately until certain matters are confirmed** provides that operators of domestic animals registry services must retain any records of identifying particulars about dogs or cats implanted with microchips separate from the records established to provide a domestic animals registry service until the accuracy of the identifying particulars and prescribed information received from persons implanting microchips is determined. This provision is equivalent to section 29 of the Victorian Regulations.

**6. Prohibition against establishing new records for dogs and cats** provides that from 1 May 2008, operators of domestic animals registry services must not establish a new record for a microchip implanted in a dog or cat unless the operator is satisfied the microchip is a prescribed identifying microchip and it was implanted in accordance with the Act, Regulation and the Code of Practice for Implanting Microchips in Dogs or Cats 2008 and the operator has been supplied with the prescribed identifying particulars in accordance with para. 9.1 of the Code. Similarly, the operator must not establish a new record for a cat or dog implanted before 1 May 2008 or for an animal implanted outside the Australian Capital Territory unless satisfied the implanted microchip is capable of uniquely identifying the animal or the establishment of the record is approved by an officer appointed under Part 9 of the Act. This provision is equivalent to section 30 of the Victorian Regulations.

**7. Payment for domestic animals registry services** provides that the operator of a domestic animals registry service must provide the service on receipt of appropriate payment provided the operator is not prohibited from establishing a record for a dog or cat implanted with a microchip under para. 6.1 of the Code of Practice. This provision is equivalent to section 31 of the Victorian Regulations.

**8. New records to be established within 4 days** provides that the operator of a domestic animals registry service must enter the identifying particulars for a dog or cats into a new record for an animal within 4 days after receiving the information from the person who implanted the microchip in the animal and the operator is satisfied that he or she has received accurate and correct information under paras. 4.1 and 4.2 of the Code of Practice. This provision is equivalent to section 32 of the Victorian Regulations.

**9. Licence holder to provide certificate of identification** provides that the operator of a domestic animals registry service must provide the owner of a dog or cat for which a record has been established with a certificate of identification containing the identifying particulars of the animal which has been implanted with an identifying microchip and information about the procedures to be followed for amending the record. This provision is equivalent to section 33 of the Victorian Regulations.

**10. Records of dogs or cats to be maintained for life** provides that the operator of a domestic animals registry service that has agreed to supply that service in respect of a particular dog or cat must retain any record relating to that animal either for the lifetime of the animal or for 30 years after a record was first established for that animal by a domestic animals registry service, whichever is the lesser of these time periods. This provision is equivalent to section 34 of the Victorian Regulations.

**11. The manner of keeping records and copies of records** provides that the operator of a domestic animals registry service must retain any records of identifying particulars or prescribed information for a dog or cat for the same time period as specified in para. 10.1 in the Code of Practice. The prescribed manner for keeping records of identifying particulars and prescribed information is in an electronic format as specified in para 15.1 of the Code of Practice. This provision is equivalent to section 43 and 44 of the Victorian Regulations.

**12. Approved licence holder to notify keeper of certain matters** provides that if the operator of a domestic animals registry service has been notified that a dog or cat for which it holds a record has been presented for implantation with an identifying microchip, the operator must notify the owner of the animal and provide the owner with the name and address of the person who presented the animal for implantation. If the operator is unable to contact the owner of the animal for which it has a record, the operator must record the fact that the animal has been presented for implantation, the name, address and telephone number of person who presented the animal for implantation, the date the operator received the information about presentation for implantation and the date the operator attempted to notify the recorded keeper of the animal. This provision is equivalent to section 35 of the Victorian Regulations.

**13. Reunion of lost animals and keepers** provides that the operator of a domestic animals registry service must supply accurate information to ensure prompt reunion of any lost dog or cat with the owner of the animal. This provision is equivalent to section 36 of the Victorian Regulations.

**14. Approving a complaints system** provides that the Registrar of Domestic Animal Services may approve a complaints system in respect of a domestic animals registry service established under corresponding law provided that the Registrar is satisfied the complaints system is satisfactory for reporting the performance of the domestic animals registry service in the Territory. In approving a complaints system, the Registrar may request an operator of a domestic animals registry service to supply any information or documents the Registrar may reasonably require. This provision is equivalent to section 37 of the Victorian Regulations.

**15. Access to and provision of information** provides that an operator of a domestic animals registry service must ensure access records by persons defined by

para. 21 in the Code of Practice must be available either electronically or by telephone 24 hours a day for identifying animals and during business hours for other purposes. If an operator receives a request for information about a dog or cat for which it does not hold a record, the operator must contact other operators of domestic animals registry services to determine whether the information is held by another operator. If a request for information is received for the purpose of reuniting a dog or cat with its owner, an operator of a domestic animals registry service must make reasonable efforts to contact the owner of the animal unless the Registrar or an animal shelter agrees to contact the owner. An operator must establish and maintain a system to keep records identifying persons defined by para. 21 in the Code of Practice to which identifying particulars of dogs and cats are supplied and records must be kept for the same periods as defined under para 10.1 in the Code of Practice. This provision is equivalent to section 38 of the Victorian Regulations.

**16. Copies of records to be provided periodically** specifies that operators of a domestic animals registry service which under corresponding law are required to deposit copies of all records of dogs or cats maintained in providing that service periodically, must also ensure that copies of the records for Territory animals to the licensing authority are accessible for inspection by an authorised officer of the Territory under part 9 of the Act. This provision is equivalent to section 39 of the Victorian Regulations.

**17. Amending information in records** provides that operators of a domestic animals registry service must not amend the identifying information contained in a record kept unless an application to amend the record has been received from the owner of the animal recorded in the identifying information for the record, from an authorised officer appointed under Part 9 of the Act, or from an animal shelter. In the case of an application of change of ownership from the new owner of an animal, the operator must not amend the record without first attempting to notify the previous owner identified in the identifying information contained in the existing record and after 14 days receive notification in writing of the change in ownership or not, as the case may be. The application from a new owner must be accompanied with a declaration stating that the applicant is the new owner of the animal. In the case of an application received from a new owner as a result of an order from a court, the operator must not amend the record unless provided with a copy of the court order. If the operator of the domestic animals registry service becomes aware of a dispute as regards ownership of a dog or cat in respect of which the operator keeps a record, the operator must not change the ownership record unless reasonably satisfied that a person other than the person identified in the record is the owner of the animal. If the ownership record is changed the operator must ensure a copy of previous ownership details are retained in the record. This provision is equivalent to section 40 of the Victorian Regulations.

**18. Reporting of complaints** provides that the operator of a domestic animals registry service must provide a written report to the Registrar every 3 months reporting complaints received regarding the keeping and maintaining of records of dogs or cats, access to those records, any failure of the operator to identify the owner of a dog or cats from the records kept; and the steps taken to address the complaints. This provision is equivalent to section 41 of the Victorian Regulations.

**19. Free access to information by certain people** provides that the operator of a domestic animals registry service must not charge any fee for access to records by the chief executive acting under the Act, Regulation or a Code of Practice; the owner of the animal, or any other persons where access to the records is for the purpose of reuniting an animal with its owner. This provision is equivalent to section 42 of the Victorian Regulations.

**20. Surrender of records if approved license holder ceases to provide domestic animals service** provides that if the Registrar becomes aware that an operator of a domestic animals registry service has ceased to provide that service for the owner of dogs or cats in the Territory, the Registrar may request any person who has possession or control of the records to give those records in electronic format to the Registrar. The person must comply with the request unless he or she has a reasonable excuse for not complying. This provision is equivalent to subsections 45(3) and 45(4) of the Victorian Regulations.

**21. Restrictions on provision of prescribed identifying particulars to certain persons** provides that the operator of a domestic animals registry service must not provide the identifying particulars that forms part of the domestic animals registry service for a dog or cat unless the person is an authorised identifier or the employee of an authorised identifier, the owner of the dog or cat, the chief executive or employee in the department administering the Act, an authorised officer under part 9 of the Act, any other person authorised by the chief executive, or the owner of the dog or cat has consented to provision of the information for the purpose of reuniting the owner with the animal. This provision is equivalent to section 63H(2) of the Victorian Act.

**22. Requirement to keep and retain prior records** provides that the operator of a domestic animals registry service must in relation to any record of identifying particulars kept and maintained for a dog or cat as part of a domestic animals registry service provided before approval of the Code of Practice, continue on or after approval of the Code of Practice, to keep and maintain all such records containing the prescribed information in the manner prescribed, including keeping copies of all such records in the manner prescribed. This provision is equivalent to section 63Z of the Victorian Act.