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

**ANIMAL WELFARE LEGISLATION AMENDMENT BILL 2012  
EXPLANATORY STATEMENT**

**Circulated by  
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## Introduction

This explanatory statement relates to the Animal Welfare Legislation Amendment Bill 2012 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. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said 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

The Animal Welfare Legislation Amendment Bill 2012 (the Bill) makes a number of changes to animal welfare law to improve the welfare of companion animals in the ACT.

The Bill proposes seven key changes:

1. Introducing mandatory licences for cat and dog breeders to ensure they meet the required minimum 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 mandatory provision of 'basic care information' to all buyers, the banning of the display of animals in store windows, and making it an offence to sell animals to children.
4. Restricting the advertising of animals for sale, except by limited 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 de-sexing of cats and dogs at the point of sale.
7. Improving 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.

Changes 1-6 are aimed at addressing the ongoing problems with unethical breeding, abandonment, and euthanising of companion animals. These result in the suffering of animals, as well as burdening the resources of animal welfare organisations and the Government. During the 2009/10 financial year, the ACT RSPCA alone was presented with 1670 dogs/puppies and 2748 cats/kittens.<sup>1</sup> This means that 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

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

dogs.<sup>2</sup> The above figures do not include animals that are rescued and rehomed by other volunteers and volunteer groups in the ACT.

Every year, hundreds of animals have to be euthanised. In 2009-10, for example, the RSPCA had to euthanise 1183 cats, and 98 dogs.<sup>3</sup> 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.<sup>4</sup>

The Bill targets a number of areas that are contributing to these problems:

- impulse buying of animals as pets, especially through stores and markets;
- unregulated breeding of animals. This allows breeding in poor conditions, with a focus on selling for profits instead of animal welfare. In recent years the public has particularly become aware of intensive dog breeding operations, usually referred to as 'puppy farms' or 'puppy mills';<sup>5</sup>
- selling through advertising, pet stores and markets, which have limited regulation and provide avenues for irresponsible animal breeders to find markets for their animals;
- animals that are not de-sexed. Currently sellers of cats/dogs are not required to de-sex the animals. Pet stores tend not to de-sex animals before they are sold, which contributes to the problem of unwanted litters; and
- difficulties in tracing animals back to their breeders, meaning the source of unhealthy, poorly bred animals remains unknown.

Change 7 (animal cruelty offences), increases the monetary penalties available for animal cruelty offences, obligates vets to report suspected cases of animal cruelty, and clarifies the language in the act around cruelty offences. These changes are intended to facilitate animal cruelty prosecutions, which are currently often difficult to detect and prosecute. They also ensure that there are adequate penalties available.

## Human Rights

The Bill primarily affects business and commercial entities that do not have human rights (see section 6 of the Human Rights Act 2004). However there are provisions that do potentially engage rights protected by the Human Rights Act 2004. Any limitation is minor and a section 28 justification is provided in the notes on clauses set out below.

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<sup>2</sup> ACT Budget 2010-11, Paper No.4, p 74

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

<sup>4</sup> ACT Budget 2010-11, Paper No.4, p 74

<sup>5</sup> Note that in the last 3 years, the RSPCA has prosecuted and shut down two 'puppy mill' operations that were breeding animals in very poor conditions just outside the ACT border and providing the animals to ACT pet stores for sale.

One general issue that could be raised is whether or not an arbitrary limitation on the right to privacy and personal affairs is created by the provision of the Bill. This is not the case and any limitation is proportionate on the basis that animals have a special status as sentient creatures and there is a long standing and well accepted basis for controlling how people may treat them. Animals are not the same as other regular goods or chattels, which would more clearly engage the right to privacy. What an individual does with his or her own clothes or furniture for example may be considered their own private business. However an animal has competing rights, and a person cannot treat an animal however they wish, even if they are the legal owner. A variety of laws - such as those governing animal cruelty – already place restrictions on how a person can treat an animal, and the new provisions under the Bill are only minor extension of these limitations.

### *Strict liability offences*

The Bill contains a number of strict liability offences. These are clearly identified in the Bill and in this explanatory statement. The offences are consistent with similar offences already set out in the *Domestic Animals Act 2000* and with other offences in ACT legislation. Maximum penalties for the new strict liability offences do not exceed 50 penalty units and do not propose a term of imprisonment. The offences are of a regulatory nature and have only been used either where it is simply not practicable to demonstrate a fault element or the requisite intention is necessarily present in the regulated activity, for example the sale of an animal.

## **Notes on Clauses**

### **Part 1 – Preliminary**

#### **Clause 1 Name of Act**

This clause names the proposed Act as the Animal Welfare Legislation Amendment Act 2012.

#### **Clause 2 Commencement**

This clause explains that parts 3-5 of the proposed Act will commence 1 year after the Act's notification day. This allows an appropriate lead time for stores to adjust their operations, for breeders to become licensed, for the domestic animals registrar to establish appropriate procedures for the new duties and powers, and for the Government to educate the community about the new laws.

The remaining parts of the Act commence on the day after notification.

### **Clause 3 Legislation Amended**

This clause identifies that the Bill amends the *Animal Welfare Act 1992*; *Domestic Animals Act 2000*; *Domestic Animals Regulation 2001*; and the *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*.

### **Part 2 – Amendments to *Animal Welfare Act 1992***

#### **Clause 4 New division 2.1 heading**

This clause relocates the animal welfare offences in part 2 of the *Animal Welfare Act 1992* into a new ‘division 2.1’.

#### **Clause 5 Cruelty Section 7, penalty.**

The maximum penalty for the cruelty offence under section 7 is increased from 100 penalty units to 200 penalty units. The available term of imprisonment remains the same (one year). This brings ACT penalty options in line with other Australian jurisdictions, with community sentiment, and allows a greater range of penalties for cruelty offences. The available fine is particularly important, especially since jail terms are uncommon in animal cruelty cases. The maximum fine is also an important deterrent, particularly for people whose cruelty offences arise from breeding animals for profit, and who weigh up their ability to make profits with the risk of being caught and paying a fine.

#### **Clause 6 Aggravated cruelty Section 7A (1) and (2), penalty**

The maximum penalty for the aggravated cruelty offence under section 7A(1) and (2) is doubled – as with the cruelty offence in clause 5. The new maximum penalty is now 400 penalty units. The maximum term of imprisonment remains the same (two years).

#### **Clause 7 New section 20A**

The new section is a clarifying provision to assist prosecutions of animal welfare offences.

Currently section 20 provides that the animal welfare offences do not apply if the conduct making up the offence was in accordance with an approved code of practice or a mandatory code of practice.

This can be confusing, especially where conduct is purported to be in accordance with a non-mandatory code of practice, but does not actually meet this standard.

The new section 20A makes it clear that conduct falling short of the standard set in a code of practice may still be considered a breach of the Act’s general animal welfare offences. It does not matter that the code itself is ‘non-mandatory.’ In fact, failure to meet the standard set in a minimum code may

be evidence that the conduct is in breach of the Act's general animal welfare provisions.

### **Clause 8 New division 2.2 (reporting animal welfare offences)**

The clause inserts a new section 20B which requires vets to report suspected animal welfare offences (listed under division 2.1) to authorities. The obligation to report arises where the vet 'believes on reasonable grounds' that an offence has been committed. The Bill creates a strict liability offence, with a maximum penalty of five penalty units, where a vet fails to fulfill the reporting obligation.

The new section recognises that vets are in a unique position when it comes to discovering instances where an animal welfare offence has been committed. It is intended to help overcome the difficulties that authorities have in detecting animal welfare offences.

Strict liability is appropriate as the clause imposes a professional obligation on veterinary surgeons which they are well aware of, well qualified to undertake and without which it would be very difficult, if not impossible, to prosecute a breach. It should also be noted that a relatively low maximum penalty is proposed.

The section is accompanied by a 'good Samaritan' clause to protect vets from civil or criminal liability for making such a report.

### **Clause 9 New part 2A**

This clause inserts a new part 2A. Part 2A contains a number of new offences relating to the sale and display of animals.

20C Definitions—pt 2A: This section defines terms used in the new part 2A.

20D Displaying an animal in shop window: The new section 20D makes it an offence for a person to display an animal in a shop window. The definition of 'shop' in 20C ensures that animals can still be displayed at the premises of approved animal welfare organisations, vets that sell surrendered or abandoned animals, or the licensed premises of a licensed breeder.

The intention of this section is to help address 'impulse buying' of shop animals, which contributes to the problem of animals going to inappropriate homes, and to the abandonment of animals. It also acknowledges that it can be stressful for animals to be on display in windows.

Note that the new Division 3.4 (see clause 26) also affects shops, ensuring that they will not be able to sell cats or dogs.

20E Selling or displaying animals at market: This new section makes it an offence to display or sell animals at the various places outside of shops where goods are sometimes sold, such as markets and fairs. The intention is to

ensure these currently unregulated environments are not avenues for selling animals. However, approved animal welfare organisations are allowed to display animals. This recognises that these organisations sometimes show animals at these locations to encourage people to help rehome abandoned animals. The exemption for domestic fowl allows the existing sellers of these animals to continue selling; these are primarily hobby breeders who operate small farms and do not sell for profit.

20F Basic care information about animals: This section provides that the Minister may determine information (via a disallowable instrument) that makes up the “basic care information” referred to in the new section 20G. To ensure the basic care information will be effective and will properly cover the welfare needs of the animal, the Minister is required to consult with an expert in the care of an animal of that kind.

20G Failing to display notice about or give basic care information: As with the new section 20D, the intention of this section is to help address ‘impulse buying’ of shop animals, as well as to ensure that potential pet owners are fully aware of their obligations in caring for the animal, and of the specific needs of particular species and breeds of animals. Consumers who are not aware of the realities of caring for an animal are more likely to abandon that animal.

The section requires anyone selling animals at a shop to clearly display a point of sale notice alerting customers to the fact that “basic care information” for the animals being sold is available on request. The seller must provide the information to anyone that asks for it, and must provide the information to anyone that buys the animal. Licensed breeders who sell animals do not have to display the point of sale notice, but must provide the information to anyone that buys their animals.

The offence for failing to display the notice or provide the information is a strict liability offence. This is consistent with other offences in ACT legislation requiring retailers to display notices or provide information, it applies to people engaged in the business of selling animals, and it will be important in ensuring this law can be enforced.

### **Clauses 10 - 14 New dictionary definitions**

These clauses add references to the dictionary, which note where various definitions can be found in the Act.

### **Part 3 - Amendments to *Domestic Animals Act 2000***

#### **Clauses 15 -18 New Notes**

These clauses amend or insert new notes into the *Domestic Animals Act 2000*

#### **Clause 19 Requirement to be licensed New section 18 (2) (g)**

This clause ensures that anyone obtaining a breeders licence under the new provisions proposed in this bill, does not also need to obtain a 'multiple dog licence' for the same animals. The checks necessary for a 'multiple dog licence' can be accommodated as part of the checks in consideration of a breeders licence. However, the multiple dog licence itself is still necessary as a separate licence for anyone who wants to own multiple dogs, but is not breeding the animals.

### **Clause 20 Section 58**

This clause amends section 58 to ensure that dogs will not be taken from a person in contravention of a multiple dog license when the animals' welfare is not compromised. Fines are already available to ensure a person becomes appropriately licenced. An animal is not like a normal 'good' and it would be detrimental to the animal to seize it from a situation where its welfare is not compromised and place it in a pound.

### **Clause 21 New division 3.1, heading**

This clause inserts a new 'division 3.1' heading.

### **Clause 22 Section 73**

This clause inserts new definitions for part 3 of the *Domestic Animals Act 2000*.

'Approved animal welfare organisations' will be permitted to sell and advertise cats and dogs for sale. The definition is therefore limited to selected organisations that are focused on animal welfare and rehoming abandoned animals. These include the RSPCA, which is the primary rescuer and re-homer of animals in the ACT; the Government's Domestic Animals Service; and not-for-profit organisations dedicated to animal welfare.

Additional entities may be approved under section 73A by the registrar only if the registrar is satisfied the entity has relevant experience and competency in caring for and handling dogs or cats that have been mistreated or abandoned. This is to ensure that the legislation does not hinder genuine entities from helping care for, rescue and rehome animals in the ACT.

One of the key goals of the Bill is to carefully limit who may sell cats and dogs in the ACT, to ensure that selling does not compromise animal welfare. The definition declares that an 'authorised seller' is an approved animal welfare organisation; vets who sell surrendered or abandoned animals; people who sell surrendered or abandoned animals on a not-for-profit basis; the domestic animals registrar; or breeders who have obtained a licence under the new breeder licensing system set up by this bill (under which they will need to satisfy a number of 'ethical breeding' requirements).



## Clause 23 New division 3.2

The provisions in this new division set out a scheme for licensing breeders of cats and dogs, and ensure that only licensed breeders may breed cats and dogs for sale.

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

Section 73B makes it an offence to breed cats or dogs for sale without a licence. There is an exemption from this offence in section 73B(2) 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.

Anyone wishing to obtain a breeders licence will need to apply in writing to the registrar and agree for their breeding premises to be inspected (s73D). Licences can be for up to three years (s73H). A breeder can apply for a licence renewal and in this case the existing licence remains in force until a decision is made on the renewal (s73J). Licences will be in writing, and will contain unique identifying numbers (s73G). As explained in clauses 26 and 35, these numbers need to be displayed in any advertising the breeder does, as well as registered in the microchip of animals that are bred. The Registrar can ask for additional information from applicants if the Registrar reasonably believes this is necessary for determining a decision regarding the licence (s73I).

Section 73K ensures that licensed breeders must give written notification to the registrar within 14 days of any change to their name, address or licensed premises, so that the licence can be amended. This is a strict liability offence. It is regulatory in nature and it would be very difficult to enforce without strict liability. It also applies to people operating in a specific, regulated environment, who should be aware of their obligations.

The registrar has an important discretion in deciding whether to issue a breeding licence. People issued with licences will be the only ones permitted to breed cats and dogs, and will be some of the few people permitted to sell cats and dogs. A key component of the bill is to ensure that licences will only be given to breeders that meet the strict ethical breeding requirements and prioritise the welfare of the animals in their care.

The registrar must be satisfied of a number of things before issuing a licence (s73E). These requirements centre on ensuring the applicant is a legitimate breeder who is likely to be able to find homes for all the animals they breed (taking into account the new selling requirements that do not permit selling in markets and pet stores) and who prioritises the health and wellbeing of the animals in their care. Specific 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 and ventilation etc); and
- that the animals are not separated from their mothers earlier than 8 weeks of age.

Sections 73E(4) and (5) set out additional factors that the registrar must consider in deciding the application, such as whether the breeder will comply with the ‘ethical breeding code’, which will be prescribed by regulation and are appropriate for specifying further detail (s73C). 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 (s73E(6)).

Due to the variety of different circumstances that may exist at breeding premises, the Registrar also has the flexibility to approve a licence only if certain conditions are met that are necessary for the animals’ welfare (s73F). In addition, the Registrar retains a discretion to amend a breeder’s licence if the Registrar believes on reasonable grounds that the amendment is reasonable or necessary in the interests of animal welfare (s73L). This can only be done where the licensed breeder is given a fair opportunity to respond, so the Registrar must give written notice and consider and comments from the breeder.

These requirements are designed to weed out any breeders who compromise the welfare of animals, from ‘puppy mill’ breeders who intensively breed animals for profit, to ‘backyard breeders’ who are not properly set up to accommodate animals, or to rehome animals through legitimate channels.

The bill adds additional sections to the Act in relation to inspection of premises, which are described below under clause 33.

The new subdivision 3.2.2 sets out how the Registrar may take regulatory action to amend, suspend or cancel a breeder’s licence. Section 73N sets out the grounds for taking regulatory action. Section 73O allows for different regulatory action depending on the seriousness of the situation. This ranges from putting a condition on or amending a condition on the breeder’s licence to cancelling the breeder’s licence and disqualifying the breeder from applying for a breeder’s licence for a stated period or until a stated thing happens. The flexibility given to the Registrar is to ensure that the licensing system remains effective as circumstances change and that licences aren’t held by people who are not meeting ethical breeding requirements.

Section 73P ensures that notice is given to a breeder before regulatory action is taken, that the person has the opportunity to respond, and that the Registrar must consider this response. The Registrar's decision to take regulatory action can only be taken on reasonable grounds, and the Registrar must give written notice to the breeder when taking regulatory action. In conjunction with s73P, the Registrar may also suspend a licence immediately (for not longer than 30 days) if the Registrar reasonably believes it is necessary in the interests of animal welfare (s73Q). During the suspension period, the Registrar must decide how to proceed in terms of regulatory action. This flexibility allows the Registrar to take the necessary action to mitigate situations where animals may be being mistreated and to have the circumstances corrected.

Under s73S, when a licence is suspended, the breeder must return the licence to the Registrar within 7 days. This strict liability offence is justified as the offence is regulatory in nature, would be difficult to enforce without strict liability, and applies to people operating in a specific, regulated environment, who should be aware of their obligations.

#### **Clause 24 Dogs and cats to be de-sexed if over a certain age Section 74 (5)**

This clause adds an exemption to the existing requirement to de-sex dogs and cats when they reach the appropriate age for de-sexing. The new exemption ((5)(b)) ensures that anyone who rescues a dog or cat that is pregnant at the time has additional time before needing to de-sex the animal.

#### **Clause 25 Section 74A**

This clause amends section 74A and inserts new sections 74B-74E. The changes require a person selling a cat or dog to have the animal de-sexed (section 74A and 74C) prior to sale or, if the animal is younger than the appropriate de-sexing age, to provide a redeemable de-sexing voucher to allow the new owner to later have the animal de-sexed (sections 74B and 74D). This addresses the problem of non-de-sexed animals breeding unwanted litters, which results in animal abandonment.

The bill does not alter the current minimum de-sexing ages (3 months for cats; 6 months for dogs).

It is expected that the ACT Government will provide assistance establishing a network of veterinary surgeons to facilitate the provision of redeemable de-sexing vouchers. In the circumstance that the buyer is in another jurisdiction, the seller must provide a de-sexing voucher for a vet in that jurisdiction only on the buyer's request. This recognises that other jurisdictions have different laws in relation to de-sexing requirements, and also the difficulty that sellers may have in finding vets in other jurisdictions to provide a voucher.

For section 74A and 74C, strict liability applies to the element of the offence that is selling a dog or cat that has not been de-sexed. Strict liability does not apply to the element of the offence that is the person's belief of the animal's age. This is consistent with the existing 74A offence.

For section 74B and 74D, strict liability applies to the element of the offence that is selling a dog or cat that has not been de-sexed. Strict liability does not apply to the element of the offence that is the person's belief of the animal's age, or to the element of selling the dog or cat without a redeemable de-sexing voucher. This is necessary, given that a voucher is not always required if the buyer comes from outside the ACT.

The penalty for a seller failing to de-sex the animal or provide a voucher (maximum 50 penalty units), is the same as that for the existing offence of keeping a non-de-sexed animal without a permit.

Exemptions are available to the requirement to de-sex a cat or dog or to provide a de-sexing voucher (section 74E).

An exemption applies in relation to cats or dogs that will be used for breeding or for showing at cat or dog shows. To ensure legitimacy, the Registrar must be satisfied that the animal will be used for this purpose, and the animal must also be registered with an entity that manages the showing or breeding of dogs or cats, and takes appropriate care to ensure that the dogs or cats are legitimately for showing or breeding. An example of such an entity is the National Kennel Council, which maintains a register of dogs that are used for breeding or showing, and has a series of criteria that must be met to be entered on this register.

The seller does not have to de-sex an animal or provide a voucher when the buyer holds a permit for the animal under s76, which provides a de-sexing exemption.

An exemption also applies to a person selling an animal that they have rescued (or the litter from such an animal) in a situation where it would be unreasonably financially onerous for the person to have the animal de-sexed or to sell the animal with a redeemable de-sexing voucher. This recognises that rescuers provide a valuable service. There will still be an onus on the person receiving the animal to de-sex it, if it meets the existing de-sexing requirements.

Section 74F requires that any time a person sells an animal that has not been de-sexed, the person must notify the Registrar within 3 working days of the name and address of the buyer.

The strict liability offence is justified by the fact it is regulatory in nature, would otherwise be difficult to enforce, and will apply to people operating in a specific regulatory environment.

## **Clause 26 Approval or refusal of applications Section 76 (2)**

This clause amends the situations under which a person is permitted to keep a non de-sexed dog or cat, to include people who hold a breeders licence.

### **Clause 27 Section 77**

This clause clarifies the language in the existing section 77 and ensures that the decision to revoke a permit is taken 'on reasonable grounds'.

### **Clause 28 New division 3.4**

This clause adds a new division 3.4, which contains new offences relating to the selling of cats and dogs, and the advertising of cats or dogs for sale.

Preventing the selling of cats and dogs in pet stores (and markets) addresses a number of problems in domestic animal welfare:

- it cuts off an avenue of sale for animals bred in poor conditions;
- it limits opportunities for 'impulse buying' of animals;
- it responds to concerns about the conditions in pet stores, which are not subject to a detailed and mandatory code of practice for the care of animals; and
- it is an important corollary to the new breeder licensing regime. 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.

The proposal is in line with other international jurisdictions that have 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.<sup>6</sup> Pet stores are also uncommon across Europe and cat and dog euthanasia rates in Europe remain significantly lower than Australia's.

80A Offence—keeping dog or cat at shop for sale: this new section makes it an offence for a person to keep a dog or cat at a shop for the purpose of selling it.

However it does allow an animal that is being sold for an approved animal welfare organisation to be kept at the shop, provided the animal is not kept there outside business hours. Under s80B stores are also permitted to sell animals on behalf of an approved animal welfare organisation. This scheme will allow pet stores to establish relationships with animal welfare organisations and to facilitate the rehoming of abandoned animals. Animal welfare organisations will be able to visit stores for a day with animals that

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<sup>6</sup> Humane Society International  
([http://www.hsi.org/world/canada/news/news/2010/10/canada\\_puppy\\_ban\\_101410.html](http://www.hsi.org/world/canada/news/news/2010/10/canada_puppy_ban_101410.html))

need to be rehomed. Some pet stores that do not sell dogs or cats because of ethical concerns already use this model.

80B Offence—selling dog or cat from shop: This new section makes it an offence to sell cats or dogs from a shop, unless the dog or cat is sold on behalf of an approved animal welfare organisation. As noted in s80A, stores will still be able to facilitate sales of animal welfare organisations' animals.

The offence in this section is a strict liability offence. Strict liability is appropriate for this offence; it will apply to businesses – primarily pet stores - who should understand as part of their business obligations that they may not sell cats and dogs from shops. This is consistent with the offence of generally selling an animal when not an authorised or approved seller (s80C), which is not a strict liability offence. It is also the case that the fault element to this offence – the intention to sell the animal from a store – will almost never be an issue of contention.

80C Offence—selling dog or cat if not authorised seller or approved person: This new section limits the people who may sell cats or dogs. They may only be sold by 'approved sellers' or people who receive approval from the Registrar (an 'approved person').

Authorised sellers are those defined in the new definition of 'authorised seller' in s73 (see clause 20). These are entities can sell generally. An 'approved person' however is someone that gains one-off approval from the Registrar to make an individual sale, as set out in sections 80E-80I.

The penalty of 50 penalty units is the same as that s80C (selling a cat or dog from a shop). However, this offence is not a strict liability offence, recognising that it is more likely to be committed by individuals who are not involved in the business of selling animals.

80D Offence—advertising sale of dog or cat: This new section makes it an offence for a person to publish an advertisement for the sale of a dog or cat if that person is not an authorised seller or approved seller. As with section 80D, authorised sellers can advertise generally. An 'approved person' however is someone that gains one-off approval from the Registrar to advertise, as set out in sections 80E-80I.

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)

This obligation applies to the person who is selling the animal, as well as to the publisher. This obligation will prevent publishers from publishing advertisements from sellers who are not authorised or approved and cannot provide the necessary details.

As a regulatory offence applying to people operating in a specific area of business, it is appropriate that this offence is one of strict liability.

Due to the requirement that anyone who is not an authorised seller must gain approval from the Registrar to advertise the sale of cats/dogs, this new regime will prevent any unlicensed 'backyard breeders' from advertising animals for sale. The Registrar will be able to monitor all advertisements made by unauthorised sellers and will be able to identify suspicious sellers.

'Advertise' is defined broadly, and includes radio, internet and newspapers. These new laws will apply to publications, broadcasters, etc that are located in the ACT – for example, the Canberra Times, or a Canberra radio station. If a person from another jurisdiction wishes to advertise in the ACT via one of the media located in the ACT, they will need to seek approval from the Registrar for the advertisement.

Section 80E specifies that an individual may apply to the Registrar for selling or advertising approval. This will allow them to become an 'approved person' so that they can make a one-off sale, or advertisement. To assist the determination, the Registrar may, in writing, require the individual to give the Registrar information in writing or documents that the Registrar reasonably needs to decide the application.

Section 80F requires the Registrar to make a decision when someone applies to become an approved person. The section requires the Registrar to give approval only in limited circumstances. The Registrar must give approval to advertise or sell if satisfied that the applicant isn't breeding cats/dogs sale or selling them on behalf of another unlicensed breeder, and that they are either:

- selling their own pets (which covers people who need to occasionally rehome their pets for legitimate reasons, such as moving house); or
- selling a rescued dog or cat (or a litter from a dog or cat that was rescued while it was pregnant) on a non-profit basis. Rescuers and rehomingers of dogs need to be able to advertise and sell the animals they've rescued. While they are not permitted to sell these animals for profit, they are permitted to recover costs of caring for the animal, microchipping, de-sexing it, etc.

Subsection (3) also specifies that the Registrar may approve an advertisement from a person from another jurisdiction, only if satisfied that the person would satisfy the ACT requirements for meeting the same requirements that a breeder in the ACT must meet. This will require documentary evidence from the potential seller, which is permitted under s80E(2). This ensures that legitimate, ethical sellers are not just excluded

from advertising in the ACT, but at the same time ensures that they receive scrutiny from the Registrar to check on this status.

In relation to selling of animals, the Bill will not prevent a person located outside the ACT from selling cats or dogs. However the opportunities for making unregulated sales of unethically bred animals into the ACT will remain significantly restricted: cats and dogs will not be able to be sold from ACT pet stores or markets, and any advertising will need approval by the Registrar.

Section 80G requires that the selling or advertising approval is in writing, contains the approved person's name and address, and contains a unique identifying number. This is the number that must be displayed in the advertisement.

Section 80H specifies that an advertising or selling approval may be a maximum of six months. This is a sufficient time for a person to rehome an animal, or sell a pet.

Section 80I allows the Registrar to revoke an approval if satisfied on reasonable grounds that the approved person does not meet the requirements for gaining advertising or selling approval. This permits the Registrar to revoke approval when new information comes to light. For example, it may become clear upon further investigation that the approved person is using the approval to sell animals they have bred for sale.

### **Clause 29 New division 3.6 heading**

This clause renames a heading in the Act to accommodate the new divisions.

### **Clause 30 Identification of dogs and cats—requirement New section 84 (2A)**

This clause alters the existing requirement for microchipping of cats and dogs to place the microchipping onus on the breeder of the cat or dog. This works in conjunction with the amendments made in clauses 34-38, which require breeders to record their own details in the microchip.

### **Clause 31 Multiple cat licences—requirement to be licensed New section 84A (2) (g)**

This clause ensures that anyone obtaining a breeders licence under the new provisions proposed in this Bill, does not also need to obtain a 'multiple cat licence' for the same animals. The checks necessary for a 'multiple cat licence' can be accommodated as part of the checks in consideration of a breeders licence. However, the multiple cat licence itself is still necessary as a separate licence for anyone who wants to own multiple cats, but is not breeding the animals.



## Clause 32 New part 4A

This clause makes it an offence to sell an animal to a person who is under 18 years old. This reflects the fact that owning and caring for an animal is a serious responsibility and commitment, often requiring considerable financial commitment (food, vet care, equipment etc) in order to ensure the animal's welfare needs are met.

There are likely to be people who are under 18 years of age who are responsible owners, just as there are people older than 18 who are irresponsible. However, 18 is the general age that the law chooses to deem people mature enough to make decisions and be accountable for them.

This section raises human rights issues, because it restricts the rights of people under the age of 18. Most notably affected is the right to recognition and equality before the law. However, it is proposed that this is a reasonable limitation on human rights, as described under s28 of the *Human Rights Act 2004*, because:

- The limitation is important to protect animal welfare, by reducing instances in which animals go to homes where they do not receive adequate care;
- The limitation has a close relationship to its purpose of improving animal welfare. Animal abandonment is often caused by impulse purchases, a change of mind, or a realisation that the owner's circumstances are not suitable for supporting the animal in the long term. The circumstances of people under 18 are often less permanently settled than adults, and people under 18 are often targeted by impulse purchase campaigns; and
- The extent of the limitation is narrow. It does not prevent people under 18 from owning animals or people over 18 from purchasing animals on behalf of people under 18. The effect is that a guardian or older person will need to be involved in the purchase.

Section 94: this new section creates a new obligation on the sellers of animals to ensure that they do not sell animals to people under 18 years of age. The section also creates an explicit defence to the offence provision. A concern could be raised that this created a limitation on the right to the presumption of innocence. However the requirement on sellers to prove certain matters only applies in relation to the availability of an explicit defence (effectively that the seller was shown a false ID) which will acquit them of recklessness. The other elements of the offence – in particular that the defendant was reckless in the first place - must still be proved by the prosecution.

The presumption of innocence is not limited in this circumstance. Rather, the accused person enjoys this presumption until the prosecution proves beyond reasonable doubt both the physical and fault elements of the offence. The defendant then has an additional opportunity to prove on the balance of probabilities that a particular circumstance existed and therefore that they haven't committed an offence. The obligation remains with the prosecution to

prove the offence occurred, and any person accused of an offence will continue to be presumed innocent until they are found guilty. The availability of specific defences and the requirements for those defences to be successful does not alter the fundamental presumption of innocence.

The wording of the offence parallels the offence for selling tobacco products to a minor under the Tobacco Act 1927. It is important for giving efficacy to scheme by encouraging retailers to actively ensure they do not sell animals to minors, and check IDs if necessary. It should also be noted that the onus applies to people who already operate in a regulated business environment and who should be aware of the various rules applicable to them.

### **Clause 33 New sections 127 and 127A**

These new sections relate to the powers of inspection granted to the Registrar under the breeders licence scheme.

Section 127 and 127A these sections clarify that in order to decide on a licence, or a condition of a licence, an authorised person may enter the premises to be licensed when given consent by the applicant, but may not enter any part of the premises that are not used for breeding or housing cats or dogs. This limits the power of the officer to ensure they only inspect the parts of an applicant's premises that are relevant for determining the licence application.

### **Clause 34 Inspection of premises Section 131**

This clarifies that an officer who inspects premises as part of the breeding licence scheme may undertake a number of activities to assist with the inspection.

### **Clause 35 Dictionary, new definitions**

This clause adds references to the dictionary, which note where various definitions can be found in the Act.

## **Part 4 – Amendments to *Domestic Animals Regulation 2001***

### **Clause 36 How dogs must be identified—Act, s 83 New section 7 (3) (d)**

This clause amends the existing section 7(3) to require a breeder to microchip a dog when it is made available for sale.

### **Clause 37 New section 7 (5) (ba) and (bb)**

This clause adds new subsections to the regulation requiring breeders to record their own details in the microchip of dogs they have bred for sale. The existing microchip registration system used in the ACT will 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 breeders licence.

In the case of 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. The scrutiny is likely to discourage bad breeders from other jurisdictions selling into the ACT.

This new system will mean that dogs will be permanently traceable to their breeder. It will help authorities to recognise any breeder that is producing animals with problems (diseases, genetic defects, etc).

#### **Clause 38 New part 2A**

This clause applies when a breeder sells a cat or dog but is not required to microchip the animal, due to one of the available exemptions. In this circumstance, the breeder is required to provide the buyer with the breeder's information that the breeder would otherwise have entered into the microchip.

After 6 months, the owner will still have an obligation to microchip the animal, and at this point they must enter the breeder's information in the microchip. This ensures there will not be a hole in the traceability scheme and that the breeder information is still recorded, even if it is not done immediately by the breeder.

#### **Clause 39 Cats to which compulsory identification applies—Act, s 83 New section 8 (1) (c)**

This clause amends the existing section 8(1) to require a breeder to microchip a cat when it is made available for sale.

#### **Clause 40 How cats must be identified—Act, s 83 New section 9 (2) (ba) and (bb)**

This clause places the same requirements on breeders of cats as clause 35 places on breeders of dogs. Breeders of cats will need to record their own details in the microchip of cats they have bred for sale. In the case of cats 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. This change will have the same benefits for cats that are noted in clause 35.

#### **Clause 41 Schedule 1, new items 13A to 13I**

This clause adds the new items from the bill to schedule 1, specifying that they are reviewable decisions.

#### **Part 5 – Amendments to *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005***

#### **Clause 42 Schedule 1, part 1.1, new items 37A to 37D**

This clause amends schedule 1 to allow for infringement notices to be given for new offences.