

2019

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

Animal Welfare Legislation Amendment Bill 2019

REVISED EXPLANATORY STATEMENT

**Presented by
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Introduction

This revised explanatory statement relates to the Animal Welfare Legislation Amendment Bill 2019 (the Bill) as presented to the Legislative Assembly. It has been prepared 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 ACT Legislative Assembly.

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

Background

This Bill has been developed to ensure that the ACT has a best-practice, contemporary and effective regulatory system that protects and promotes the welfare of animals, prevents and deters cruelty to animals and responds appropriately to animal welfare abuses.

In 2017 the Government released the *Animal Welfare and Management Strategy 2017-22* (the Strategy). The Strategy committed to a review of animal welfare and management laws in the ACT to ensure, among other things, that animal welfare and management laws were up-to-date, best practice and in line with community expectations to ensure the highest standards of animal welfare and management.

The Strategy was developed in partnership with the Animal Welfare Advisory Committee (AWAC), the ACT Veterinary Surgeons Board, RSPCA ACT and ACT Wildlife, and following a community consultation process.

Consistent with the Strategy, animal welfare encompasses all aspects of animal health and wellbeing and all people have a responsibility to take reasonable measures to protect the welfare of animals in all human-animal interactions.

Animal welfare in a modern context describes how an animal is coping both mentally and physically, and recognises that animals are sentient beings that have the capacity to feel and perceive things. Achieving good animal welfare relies on recognising the five freedoms of animals, which are set out in the Strategy, and encompass at a high level the freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury or disease, freedom to express natural behaviour, and freedom from fear and distress. It also relies on recognising that animals deserve having a life worth living, in terms of both physical and mental wellbeing.

The Bill aims to give effect to this contemporary understanding of animal welfare and to recognise sentience and that animals have a right to both mental and physical wellbeing. The concept of animals as sentient beings reflects that animals have the ability to subjectively feel and perceive the world around them and are capable of experiencing both positive and negative states.

Substantial amendments were made to the *Domestic Animals Act 2000* in December 2017 and April 2018, in particular around the management of dangerous dogs. These amendments delivered on the commitment in the Strategy around reviewing animal management laws.

Animal welfare laws work in partnership with, and support, dangerous dog laws. It is well recognised in the academic literature and in evidence from other jurisdictions, that good animal welfare outcomes lead to good animal management outcomes and reduced dog attacks. For example, an owner who cares about and provides for the welfare of their dog is less likely to be an irresponsible owner. Responsible ownership is the key foundation for reducing dog attacks.

A review of the *Animal Welfare Act 1992* has been completed by the Transport Canberra and City Services Directorate to deliver on the commitment to review animal welfare laws. An exposure draft of the *Animal Welfare Amendment Bill 2019* was released for community consultation between 13 December 2018 and 14 February 2019. This Bill takes account of, and responds to, the significant number of comments received from the community during this process. Information has been included within this Explanatory Statement, where deemed appropriate and necessary, to address some of these comments.

Overwhelmingly, people were supportive of the aim and intent of the new animal welfare laws and the recognition by law of the sentience of all animals.

Overview of the Amendment Bill

In summary, the Bill provides amendments to the *Animal Welfare Act 1992* to:

- a) update the objects of the Act to reflect contemporary views on animal welfare, including recognition of animals as sentient beings.
- b) amend the governance framework for the Animal Welfare Advisory Committee (AWAC) so that the AWAC can provide advice to the Animal Welfare Authority in addition to the Minister. The Animal Welfare Authority was setup when the Act was introduced to administer the legislation, and is a Government appointed role responsible for animal welfare.
- c) set out a high-level framework for regulating pet business, and specifically pet shops and boarding kennels, to assure animal welfare outcomes. This provides the ability for the Animal Welfare Authority to impose conditions on a pet business licence. These conditions could restrict things such as the source and sale of certain types of animals, for example only dogs or cats sourced from shelters, pounds or foster organisations, as needed.
- d) set out a high level regulatory framework for assistance animals in the ACT that provides for the recognition, regulation and rights of access of assistance animals in the Territory, that is consistent with Commonwealth and ACT discrimination law. The Government will work with the assistance dog industry and key stakeholders to develop standards to support the new scheme, which will come into effect six months after the notification day.

- e) improve the regulatory framework for the Animal Welfare Authority so that:
 - a. the Authority can impose an interim prohibition order on a person owning or caring for animals of up to six months where there are serious concerns for the welfare of an animal or animals. This will be an appealable decision;
 - b. the Authority can seize, retain and/or sell or rehome an animal where appropriate, similar to powers under the *Domestic Animals Act 2000*; and
 - c. the Authority can impound an animal at a premises other than a Government pound (for example, keeping seized puppies with an animal rescue organisation).
- f) introduce a new offence category for minor duty-of-care or cruelty offences where warnings and fines can be issued where appropriate (for example, where a person does not leave out water for their dog or kicks a dog in anger). The existing serious offences that attract significant financial and court penalties will remain and still be available.
- g) make a number of amendments to introduce new or amend current offences in the Act. These include:
 - a. requiring a person to report the injury of an animal that is a mammal within 2 hours, rather than the current 24 hours in the Act in section 10 (for example, where a car collides with a kangaroo or a dog and the animal needs urgent veterinary treatment). Existing duty of care obligations remain for a person to take reasonable steps to alleviate pain and/or suffering for all animals, including non-mammals. For example, a person who hits a bird with their car and the bird is injured is required to take reasonable steps to alleviate pain and/or suffering;
 - b. introducing provisions that expressly address dog fighting and allow for effective enforcement of dog fighting offences; and
 - c. clarify provisions around violent animal activities and ensure the prohibition of pig-dogging and other similar activities where an animal is used to intentionally injure and/or kill another animal, or where live baiting takes place, are captured. This will not prevent hunting activities more generally, the owning of hunting dogs or participation in accredited dog sporting activities.
- h) increase maximum court imposed penalties for cruelty and aggravated cruelty offences.
- i) expressly make it an offence for a person to leave an animal in a hot car or in other circumstances where a dog is in serious danger, and providing appropriate provision for an authorised officer or person to break into a car to rescue an animal only in reasonable and exceptional circumstances where all reasonable steps have been taken by that person and the animal's life is in danger.

- j) amend a number of existing offences to make these offences strict liability and to update penalty amounts and infringement notices where appropriate.
- k) ensure provisions capture not appropriately restraining a dog in a moving vehicle.
- l) provide for a regulation making power to support the operation of the Act.
- m) make other minor changes to support the practical implementation and enforcement of the Act.

Human Rights Implications

Directorates are obliged under the *Human Rights Act 2004* (HR Act) to act and make decisions consistently with human rights. This includes ensuring any amendments result in a law that is proportionate – that is, that it limits rights in the least restrictive way possible to achieve the purpose of the legislation. This includes considering if any amendment is going to have a disproportionate impact on low income earners or other vulnerable people, engaging the right to equality under section 8 of the HR Act.

During the development of the Bill due regard was given to its compatibility with human rights as set out in the HR Act. The amendments introduced in the Bill give effect to a contemporary and best-practice animal welfare regulatory scheme.

As a law of the Territory, the Bill may be seen as engaging the following human rights in the HR Act:

- the right to be presumed innocent until proven guilty;
- the right to privacy;
- the right to equality before the law;
- the right not to have reputation unlawfully attacked;
- the right to move freely; and
- the right to have criminal charges, rights and obligations decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

An assessment of the Bill against section 28 of the HR Act is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relationship between the limitation and its purposes; and

- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

A compatibility statement under the HR Act has been issued by the Attorney-General.

Right to be presumed innocent until proven guilty

The following proposed amendments have been identified as potentially engaging this human right:

- Alleviation of pain – requirement to report
 - This amendment proposes to reduce the timeframe for a person to report injuring an animal in the ACT from 24 hours to 2 hours in the case of a mammal and to make this a strict liability offence. It is noted that an infringement notice is already attached to this offence.
 - Changing the timeframe on this duty could be seen to engage the right to presumption of innocence by changing the nature of the strict liability offence under section 10(2).
 - The ACT is a small jurisdiction where a person can reasonably be expected to make contact with an animal's owner or the ACT Government within two hours of injuring an animal, where that animal is a mammal. Access Canberra contact details can easily be found and can be contacted at all times, with rangers on-call to respond to incidents at any time of the day to assist an injured mammal. The obligation is only on a person to 'report', that is to make contact with and advise that the incident has occurred so that action can be taken. This will enable effective treatment of a mammal that is injured and suffering.
 - The current requirement of 24 hours is not considered to provide reasonable action to enable either an owner of a mammal (for example, a dog or a cat) or the ACT Government to assist a mammal that has been injured and alleviate pain and/or suffering.
 - There is also an important element of public safety in this offence. For example, an injured kangaroo near a road may re-enter the road area and cause an accident. If this is reported quickly, relevant Government personnel can attend the scene and take appropriate action.
 - Restricting this offence to a mammal goes to the reasonableness of the offence. Mammals are relatively large animals where it should be obvious to a person that an injury has occurred and ACT Government rangers are on-call 24 hours a day to assist. Existing duty of care obligations remain for a person to take reasonable steps to alleviate pain and / or suffering for all animals (including non-mammals), but this would depend on the circumstances. For example, where a small lizard is hit by a car.

- An infringement notice already exists for this offence. It is proposed to continue to have an infringement notice available for this offence. Education and awareness activities will also take place around this provision.
- This strict liability offence supports the integrity of the regulatory regime to require positive action on a person where they have injured a mammal and to uphold community expectations around animal welfare. This action is only to report the incident and the known details. This is considered reasonable and proportionate.
- Creation or amendment of strict liability offences
 - A number of other proposed amendments result in the creation or amendment of strict liability offences.
 - Strict liability offences arise in a regulatory context where reasons such as animal welfare, public safety and the public interest in ensuring that regulatory schemes are observed require the sanction of criminal penalties. In particular, where a defendant can reasonably be expected to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. This is particularly the case for breach of a notice, licence, direction or order where the defendant is aware of the conditions attached.
 - The rationale for inclusion of strict liability offences is to ensure that a sufficiently robust and consistent monitoring and enforcement regime can operate efficiently as part of an escalating enforcement framework, without requiring prosecution in all cases, to meet the purpose of ensuring high animal welfare standards and public safety. The issuing of infringement notices is guided by internal policy, where education and awareness is the primary mechanism used for compliance with the law.
 - The offences that are strict liability are or will be infringement notices and are designed to enable a quick and effective response where parties have failed to meet obligations, and are intended to act to prevent a harm, being either an animal welfare or community safety harm.
 - The framework is designed to encourage compliance, not disproportionately penalise those who fail to comply, and will work hand-in-hand with a comprehensive education and awareness package.
 - In developing the amendments an assessment has been made as to whether there is any less restrictive means available to achieve the purposes of the Act. This is considered the least restrictive means whilst ensuring high standards of animal welfare and community safety.
 - Strict liability in these circumstances is considered to be reasonable and proportionate to the objective of the offence and its importance as a matter of public policy to achieve animal welfare objectives.

- This is also explained in the below explanatory statement for each offence.

Right to privacy

The following proposed amendments have been identified as potentially engaging this human right:

- Amendments around powers of inspectors and request for name, address and date of birth
 - The amendments engage the right to privacy and are considered to support the right to privacy.
 - The amendments will mean that an inspector can only request details from a person where they have first shown their identity card.

Right to not have reputation unlawfully attacked

The following proposed amendments have been identified as potentially engaging this human right:

- Amendments to around powers of inspectors and request for name, address and date of birth
 - The amendments engage the right to not have reputation unlawfully attacked and are considered to support the right not to have reputation unlawfully attacked.
 - The amendments will mean that an inspector can only request details from a person where they have first shown their identity card.

Right to equality before the law

The following proposed amendments have been identified as potentially engaging this human right:

- Court ordered animal ownership bans
 - The amendments have been identified as engaging the right to equality before the law.
 - The amendments would allow a court to make an interim order as it considers appropriate that a person is ineligible to own or care for an animal for up to 12 months where proceedings have not commenced.
 - This could have a disproportionate effect on people who are reliant on assistance animals and therefore may limit the right to equality (under s 8(3) HRA) of persons with a disability.
 - The Court can consider a range of factors when making an interim order where those matters are relevant. This would enable the Court to, for example, consider people with a disability who rely on an assistance animal where the court considers this relevant. This issue was discussed with assistance animal stakeholder groups in finalising the Bill.

- This is considered to be an appropriate safeguard.
- Animal welfare authority – interim prohibition order
 - It is proposed that the Animal Welfare Authority be able to impose an interim ownership ban of up to a maximum of six months.
 - This may have a disproportionate effect on people who are reliant on assistance animals and this may limit the right to equality (under s 8(3) HRA) of persons with a disability.
 - The considerations to be made in imposing the ban are outlined in the Bill and include any relevant matter. This would enable the Animal Welfare Authority to, for example, consider people with a disability who rely on an assistance animal where this was considered relevant. This issue was discussed with assistance animal stakeholder groups in finalising the Bill.
 - This is considered to be an appropriate safeguard.

Rights of access – assistance animals

- The proposed new framework for assistance animals and rights of access for people with a properly trained assistance animal is considered to support the right to equality before the law of persons with a disability.

Right to move freely

The following proposed amendments have been identified as potentially engaging this human right:

- Animal ownership bans and temporary prohibition orders
 - The amendments have been identified as engaging the right to move freely. The Bill would potentially enable a court to order that a person not reside at a place where animals are kept by another person. This could engage and limit an individual's right to choose his or her residence in the ACT.
 - An animal ownership ban or temporary prohibition order is a serious matter and the Court/Animal Welfare Authority must consider a range of matters in determining this, including the welfare of animals, the likelihood a person has or will commit an offence against the act, previous offences as well as any other relevant matter.
 - These are for the most serious cases. It is not uncommon for people who are subject to proceedings of such a serious nature to either acquire more animals, or to live with people who have animals and have control over those animals. This leads to further animal welfare abuses.
 - This issue has caused problems in previous prosecutions, and stakeholders including the RSPCA ACT have been advocating for reform in this space to ensure that animal ownership bans can genuinely prevent the future harming of animals from known offenders.

- One of the objects of the Act is to prevent animal cruelty and the abuse and neglect of animals. Animal ownership bans are critical to achieving this.
- To be able to make an order the Authority or the Court needs to be satisfied that an animal's welfare is at risk. The Authority or Court then has a discretion to make the order. If the Authority or Court makes an order it must consider animal welfare and certain other matters and may consider other relevant matters. The Authority or Court may consider the welfare of a person with disability who owns a companion animal so an order could be made, for example, prohibiting the person from owning an animal other than a particular companion animal. The Court or Authority has the discretion to balance the welfare of the person with the animal and other animals.
- In issuing a ban of this nature the Court or Animal Welfare Authority would consider all relevant matters, as specified in the Bill, and consider the case on its merits commensurate to the risk of abuse.

Right to have criminal charges, rights and obligations, decided by a competent, independent and impartial court or tribunal after a fair and public hearing

The following proposed amendments have been identified as potentially engaging this human right:

- Animal Welfare Authority prohibition order
 - It is proposed to allow the Animal Welfare Authority to impose an interim prohibition order on owning or caring for an animal, individually or jointly, for up to six months.
 - At law, animals are considered property. The common law recognises an individual's fundamental right to hold property without interference by government. This amendment would allow the Authority to interfere with an individual's common law right to property in animals.
 - As the Authority may not be regarded as an independent and impartial tribunal, this may engage and limit the right to have rights and obligations decided by a competent, independent, and impartial court after a fair and public hearing.
 - An animal prohibition order can only be imposed by the Animal Welfare Authority where an animal has been seized, a proceeding had not yet been started in court and the authority reasonably believes that an animal's welfare is, or would be, at serious risk if the person were to own, keep, care for or control the animal. Decisions would be robust, evidence-based and supported by an internal regulatory advisory committee.

- As an additional safeguard, there are a range of considerations that the Authority must consider in making an order including the welfare of the seized animal and other animals, the likelihood the person has or will commit an offence against the Act, previous convictions relating to animal welfare and any other relevant matter. This would extend to considerations of an animal that is used as an assistance animal, where relevant.
- To provide further safeguards the prohibition order can only be imposed up to a maximum of six months and ends the day a relevant proceeding starts if that is earlier. This is intended to act as an intermediate measure where an animal or animals are at serious risk and while proceedings are commenced in Court. There is often a time delay in initiating proceedings and it is critical that intermediate action can be taken in high risk cases to prevent the animal being returned to the at-risk situation, and prevent future animals suffering abuse. This is in line with the objects of the Act.
- During 2017-18 the RSPCA received 1,012 cases in relation to animal welfare, which required attendance at 998 matters and prosecution of 20 varying offences. This is a significant case load to manage and urgent action may need to be taken in the most severe cases to prevent animal abuse.

Human rights have been considered in developing the Bill and limiting rights in the least restrictive way possible, while achieving the purpose of the Bill.

The impacts on people's rights is considered reasonable and proportionate to the objectives of the legislation and the risks and outcomes for community and public safety and animal welfare.

Climate Change impacts

The Bill has no identifiable climate change impacts.

OUTLINE OF PROVISIONS OF THE BILL

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause sets out the name of the Act as the Animal Welfare Legislation Amendment Act 2019.

Clause 2 Commencement

This clause sets out that all provisions in the Act, other than the provisions expressly mentioned, commence on the seventh day after the Act's notification day.

The provisions expressly mentioned in this clause commence six months after the Act's notification day. These provisions relate to the introduction of a new regulatory scheme for pet businesses and for assistance animals, and allows for a six month transition into the new framework. This will allow time for associated policies and operational measures to be put in place, education and awareness activities to be undertaken and to work with effected stakeholders.

Clause 3 Legislation amended

This clause states that the Act amends the *Animal Welfare Act 1992*, *Animal Welfare Regulation 2001*, *Discrimination Act 1991*, *Domestic Animals Act 2000*, *Domestic Animals Regulation 2001*, *Magistrates Court (Animal Welfare Infringement Notices) Regulation 2014* and *Magistrates Court (Domestic Animals infringement Notices) Regulation 2005*.

PART 2 ANIMAL WELFARE ACT 1992

Clause 4 Section 4A

This clause substitutes the current objects of the Act, with a new set of objects to ensure that animals are recognised as sentient beings (meaning they can subjectively feel and perceive the world around them), have intrinsic value and deserve to be shown compassion and have an acceptable quality of life, and to reflect the community's expectations around animal welfare and the proper treatment of all animals.

Importantly, this clause reflects the five freedoms of animals and that animals have a right to both mental and physical wellbeing.

This clause also states that an objective of the Bill is to recognise that people have a duty to care for the physical and mental welfare of animals. This includes, for example, providing opportunities for a dog to exercise and experience enjoyment and behaviours that are natural to the animal.

Clause 5 Section 6

This clause amends the existing delegations function to allow for a function of the authority to also be delegated to a non-public servant. This can only be done where necessary under the Act. This could allow for an organisation, such as the RSPCA ACT, to be delegated to undertake certain functions where necessary and appropriate, for example in rehoming animals. The power to delegate to a public servant will remain.

Clause 6 Sections 6A and 6B

This clause substitutes existing sections 6A and 6B and introduces new offences 6C to 6G.

This clause inserts new section 6A which provides for a new definition of 'cruelty' as well as a definition of 'confine' and 'poison' that applies to Part 2 (Animal welfare offences). These definitions are not exhaustive definitions. The term 'ingested' is defined in the dictionary.

This clause also substitutes existing section 6B (duty to care for animal) with new sections 6B to 6G which provide for a number of escalating and specific failures to provide appropriate care. A duty of care to animals is also now expressly provided for in the objects of the Act.

Section 6B is the most serious of offences and sets out the appropriate care requirements of a person in charge of an animal. The term 'appropriate' is used, which means appropriate to the animal. For example, grooming and maintenance requirements would differ for a dog and a cat, as they would from other animals that may not require grooming or maintenance. A person now has an evidentiary burden of proof in relation to proving they have taken reasonable steps as a defence to this duty of care requirement. Section 6B has a maximum penalty of 100 penalty units, imprisonment of one year or both. This reflects the potentially serious nature of failing to provide appropriate care, for example starving a dog. In less serious cases of an appropriate nature, an inspector or authorised officer can issue a direction to a person to do a reasonable stated thing within a reasonable stated time to rectify a failure of a duty of care (see section 85 and associated amendments under this Bill). This direction must be issued to the person. Where a person fails to comply with a reasonable direction, this is a strict liability offence with an attached infringement notice of \$500. This provides for an escalating enforcement framework for minor to medium-level offences, further detailed in amended section 85 under this Bill. Section 6B also includes a definition of 'appropriate' and 'treatment' to assist in interpreting the new offence provisions under this Clause.

In applying section 6B it is noted that providing opportunities for animals to display behaviour that is normal for the species does not mean that a person or animal can engage in otherwise illegal conduct. It is also noted that the term 'person in charge' is defined in the dictionary.

New specific offences have also been introduced in new sections 6C through to 6G.

Section 6C imposes a specific obligation on a person to provide access to water and shelter at any time the person keeps an animal on premises. This section applies to each animal on a premises. For example, if two animals are kept on a premises both animals must be able to access shelter at the same time. This is a strict liability offence with a maximum penalty of 25 penalty units and an associated infringement notice of \$500. This is considered reasonable and proportionate to the nature of the offence, and important in achieving animal welfare objectives.

Sections 6D and 6E make it a strict liability offence not to provide an animal with a hygienic living environment or to properly groom and maintain an animal. These relate to the obligations of a person in charge of an animal to provide appropriate care for an animal and provide for the welfare of an animal in their care. These offences have a maximum penalty of 25 penalty units and an associated infringement notice of \$500. This is considered reasonable and proportionate to the nature of the offence, and important in achieving animal welfare objectives.

Section 6F makes it a strict liability offence not to exercise a dog when a dog is confined, unless reasonable exercise is provided or the confinement is necessary for the dog's welfare. The defendant has an evidential burden of proof in relation to this offence, for example providing a veterinary certificate that the confinement is necessary. Regard must be had to the dog's age, physical condition and size in applying this provision. The section also makes it clear that the provision does not apply to keeping a dog in a backyard or a residence such as a house or apartment, unless the dog is stopped from moving freely (for example, tied up to a pole or in a small cage). This ensures that the provision does not mean a person commits an offence if they don't take their dog for a walk each day. This offence has a maximum penalty of 25 penalty units and an associated infringement notice of \$500. This is considered reasonable and proportionate to the nature of the offence, and important in achieving animal welfare objectives.

Section 6G applies where an animal has clearly been abandoned. Abandoned is defined in the dictionary and would apply where a person leaves behind a dog completely and finally and would not apply to a situation where, for example, a person leaves a dog ties up outside a supermarket while doing some shopping. Section 6G includes a more serious offence of abandoning with an element of intent or recklessness, as well as a strict liability offence that does not require a mental element. The strict liability offence has a maximum penalty of 50 penalty units, given the potentially serious nature of abandoning an animal, and an associated infringement notice of \$500. The infringement notice of \$500 is considered appropriate, given the other animal welfare infringement notices, but a higher maximum penalty has been applied given the serious consequences that can result from abandonment of an animal.

These new offences (other than new section 6F) are not limited to dogs or cats, but apply more generally to animals where appropriate, and importantly extend to matters such as grooming and maintenance of an animal and providing for a clean and hygienic living environment for the animal, which reflect the new objects of the Act.

Clause 7 Cruelty

Section 7, penalty

This clause increases the maximum penalty for a cruelty offence under section 7 to 200 penalty units, imprisonment for 2 years or both. This is considered reasonable and proportionate to the nature of this kind of offence, and reflects community views and attitudes around animal cruelty, as well as the new objects of the Act.

Clause 8 Aggravated cruelty

Section 7A (1), penalty

This clause increases the maximum penalty for an aggravated cruelty offence under section 7A (1) to 300 penalty units, imprisonment for 3 years or both. This is considered reasonable and proportionate to the nature of this kind of offence, which is an aggravated offence with intention or recklessness on the part of the offender that results in the death of an animal, and reflects community views and attitudes around animal cruelty, as well as the new objects of the Act.

Clause 9 Aggravated cruelty

Section 7A (2), penalty

This clause increases the maximum penalty for an aggravated cruelty offence under section 7A (2) to 300 penalty units, imprisonment for 3 years or both. This is considered reasonable and proportionate to the nature of this kind of offence, which is an aggravated offence with intention or recklessness on the part of the offender that results in a serious injury to an animal, and reflects community views and attitudes around animal cruelty, as well as the new objects of the Act.

Clause 10 New section 8

Hitting or kicking animal

This clause introduces a new offence for hitting or kicking an animal. This is a strict liability offence with a maximum penalty of 25 penalty units, with an infringement notice of \$500 attached. This reflects community views that it is not acceptable to hit, kick or throw an object at an animal in a way that is likely to cause injury, pain, stress or death.

An exemption from this provision is provided for horse racing where undertaken in accordance with a rule of racing. An exemption is also provided for a rider of a horse reasonably using a whip, or their foot, on the horse as part of an equestrian activity. There is a provision for other animal handling practices, approved by the Minister, to also be exempt from this section. However, this does not exempt a person from their animal welfare obligations elsewhere in the Act.

It is noted that a person can still act in self-defence. This is provided for in the *Criminal Code 2002* section 42.

Clause 11

Section 9

Unlawful confinement of animals

This clause amends existing section 9 (confined animals). The existing provision was ambiguous and had a low penalty attached. New section 9 provides for three new levels of offences with different levels of seriousness attached.

The first and highest offence provision is where a person confines an animal and the confinement causes, or is likely to cause, the animal injury or pain. This is a prosecutable offence with a maximum penalty of 100 penalty units, imprisonment for 1 year or both, reflecting the potentially serious nature of this offence.

The second level is where a person confines an animal and the animal is not able to move appropriately. This does not require demonstrating that injury or pain is likely. An example is provided to assist in interpreting this subsection and reflects that animals should not be inappropriately confined both for mental and physical welfare of the animal. This subsection does not apply if a person has a reasonable excuse, for example the containment is necessary for medical reasons or a person is acting in a reasonable way in relation to the animal, such as tethering a goat appropriately while feeding. This is a strict liability offence with a maximum penalty of 50 penalty units and an infringement notice of \$500 attached. This is considered reasonable and proportionate to the nature of the offence, and important in achieving animal welfare objectives. The infringement notice is commensurate with other infringement notices under the Act, but there is a higher maximum penalty attached given the potentially serious nature of long-term containment of an animal.

The third applies only to vehicles, making it an offence for a person to confine an animal in a vehicle in a way that causes, or is likely to cause, the animal injury, pain, stress or death. This is a strict liability offence of 20 penalty units with an infringement notice attached. This would capture a situation where a person leaves a dog in a car on a hot summer day. The importance of being able to take action against this relatively common occurrence through an infringement notice is considered important, and so an infringement notice of \$500 is attached even though the maximum penalty amount is only 20 penalty units. Where the confining of an animal in a vehicle leads to a serious injury or

death more serious prosecution could be undertaken under other provisions of the Act.

These provisions do not act as a defence to the appropriate carriage of animals on public passenger services without having them contained. For example, section 70AAD of the *Road Transport (Public Passenger Services) Regulation 2002* makes it an offence for a person to carry any animal (other than an assistance animal) on a light rail vehicle unless it is confined in a box, basket or other container or carried in a way allowed under a determination.

Clause 12 Sections 10 and 11

This clause amends sections 10 and 11.

Existing subsection 10 (1) is amended for clarity and to remove an anomaly that means that a person in charge of an animal does not commit an offence if that person injures the animal and does not take reasonable steps to alleviate any pain suffered by the animal. The onus on a person in charge should be the equivalent, if not higher, than another person to alleviate the pain or suffering of their animal. A person must take reasonable steps to assist an injured animal. For example, a person that hits a bird with their car and the bird is injured on the ground would be required to take reasonable steps to alleviate pain and/or suffering of the bird. This could include seeking veterinary assistance.

This clause also substitutes existing section 10 (2) and reduces the timeframe required for reporting an injured animal from 24 hours to two hours in the case of a mammal. A person who injures a mammal must, within 2 hours after the injury, contact a relevant person and inform them that the animal was injured and provide the location where the animal was injured. An example is provided where a person hits an animal with a car. 'Relevant person' is defined to include Access Canberra. Access Canberra can be contacted at any time of the night or day (the phone number for Access Canberra is readily available and easily searchable), and can make contact with ACT Government personnel who can take appropriate action in relation to the injured animal both in terms of animal welfare and community safety. It is considered reasonable for a person within the ACT to be able to make contact, by phone or otherwise, within two hours of causing injury. This offence is a strict liability offence with maximum penalty of 20 penalty units an infringement notice of \$200 attached. This is considered reasonable and proportionate to the nature of the offence, and important in achieving animal welfare objectives.

New section 11 sets out a range of amended provisions around unlawful release of an animal. Releasing an animal from another person's custody or control, where that person does not have the consent of the other person to release the animal, can have animal welfare and community safety impacts. For example, taking a dog of its lead without permission could result in a roaming dog and lead to an attack incident. Alternatively, opening the gate for a yard of cattle without permission, could have both animal welfare and public safety consequences where cattle are roaming across a public road.

There are similar consequences where a person does not prevent their own animal, or an animal in their care, escaping. For example, by not ensuring an animal is contained on premises.

The first offence in new section 11 (1) provides for a serious offence including an element of recklessness and has a maximum penalty attached of 100 penalty units, imprisonment for 1 year or both.

The remaining two offences are considered most suitable to a financial penalty, either through an infringement notice or in the most serious cases through court prosecution. Both of these offences will be a strict liability offence with 50 penalty units and an infringement notice of \$500 attached. This is considered reasonable and proportionate to the nature of the offence, and important in achieving animal welfare objectives. The amount of the infringement notice is commensurate with other animal welfare infringement notices, but the maximum penalty is higher given the potentially serious consequences of unlawfully releasing an animal.

There will be a reasonable excuse defence, and there is an exclusion for areas that are not cat containment areas, consistent with the existing provision. The reasonable excuse provision includes a note to clarify that a person acting honestly and without recklessness may release an animal locked in a motor vehicle in certain circumstances (see new section 109A).

Clause 13 Laying poison

Section 12A (3) to (5)

This clause substitutes existing sections 12A (3) to (5) and no longer requires a reasonable likelihood that the poison will kill or injure a domestic or native animal, and to remove the reasonable steps defence. This is considered to be more appropriate to the strict liability nature of this offence and the importance of preventing people laying poison that could injure or kill a domestic or native animal where a poison is used in a way other than it is intended to be used. Subsection (3) is already a strict liability offence.

More serious offence penalties will remain under section 12A as well as under the broader animal welfare obligations in the Act.

This clause also increases the penalty units from 10 to 20 penalty units, to more appropriately reflect the nature of the offence. An infringement notice of \$500 will be attached to the offence. This is considered reasonable and proportionate to the nature of the offence, and importance of being able to issue a financial penalty through an infringement notice to achieve animal welfare objectives. The infringement notice amount is consistent with other animal welfare infringement notices of a similar nature, although the maximum penalty amount is not as high. This is because more serious penalties are available under section 12A in respect of poisoning.

Clause 14 Electrical devices

New section 13 (2) and (3)

This clause adds a new subsection to section 13 that makes it an offence to place a device on, or attach a device to, an animal if the device is able to administer an electric shock. This is considered to be an offence of a serious nature, noting that electric shock collars or similar items can cause severe pain and serious injury to an animal. The term 'able' is defined in respect to the device,

This is separate to the existing offence in section 13(1) which applies where a person administers an electric shock to an animal using a device that is not prescribed by regulation.

This new offence would apply where a person places a shock collar or a device on an animal, such as a dog or a cat, and the device is able to administer an electric shock. This is distinct from other items that administer a shock to an animal but are not placed on an animal. This penalty attracts a maximum penalty of 100 penalty units, 12 months of imprisonment or both.

Clauses 15-17 Use or possession of prohibited item

Section 14 (1), 14 (2A) and 14 (4)

These clauses amend section 14 so that all prohibited items are specified by regulation, meaning that the list can be updated as needed. These clauses also make it a strict liability offence to possess a prohibited item that is listed by regulation. This is considered a less serious offence than section 14 (1) which relates to using a prohibited item on an animal, and is considered appropriate for a strict liability offence with an infringement notice attached. The offence has a maximum penalty of 20 penalty units, but given the nature of the possessed items an infringement notice of \$500 is considered reasonable and proportionate and in line with other infringement notices under the Act. The maximum financial penalty is set at 20 penalty units, noting more serious penalties are available where the item is used. There are a list of existing specific exclusions where the offence would not apply, for example where the person keeps the item only for display or collection.

Clause 18 Transport and containment

Section 15

This clause rewords existing section 15 for clarity and applies in a situation where a person transports or contains an animal in a way that causes, or is likely to cause, the death of or unnecessary injury, pain or stress to the animal. This means that action can be taken before serious injury occurs. Examples are included to provide clarity, for example where a person transports an animal, such as a dog, in a vehicle and does not adequately restrain the animal or where a person keeps a dog in a hot car.

This provision does not act as a defence to the appropriate carriage of animals on public passenger services without having them contained. For example, section 70AAD of the *Road Transport (Public Passenger Services) Regulation 2002* makes it an offence for a person to carry any animal (other than an assistance animal) on a light rail vehicle unless it is confined in a box, basket or other container or carried in a way allowed under a determination.

Clause 19 Intensive breeding of cats or dogs

Section 15B (4) to (7)

This clause substitutes existing sections 15B (4) to (7) and consolidates these into a single offence for allowing a cat or dog to breed in a way that contravenes a breeding standard, with a maximum penalty of 50 penalty units. This clause removes the elements of recklessness and intention, and instead provides for a strict liability offence. A person who breeds in the ACT must have a breeding licence, and the breeding licence will specify that a person must comply with breeding standards. All people involved in the breeding industry could reasonably be expected to be aware of all breeding requirements, and in particular breeding standards. It is an exception to this offence where there is written approval from a veterinary practitioner.

An infringement notice of \$750 is attached to this offence, reflecting its serious nature, the importance of preventing unlawful breeding and that breeding can be a profitable exercise.

Clause 20 Sections 16 and 17

This clause substitutes existing sections 16 and 17.

Section 16 has been amended to more broadly apply to the 'use' of an animal in any way where the animal is unfit for the use. 'Use' is defined to include to display, drive, ride, show or work the animal. The terms 'display' and 'show' are also defined to assist in interpreting the section. The existing dual offences in section 16 remain in that it is an offence for a person to use an animal when the animal is unfit for use and also for a person in charge of an animal to authorise the use of an animal in such a way. The knowledge and negligence elements also remain. A new strict liability offence, with a reduced penalty amount of 50 penalty units, has been introduced where a person uses an animal that is unfit for the use. This does not require proving negligence or intent. This offence has an infringement notice attached of \$500. This is considered reasonable and proportionate to the nature of the offence, and important in achieving animal welfare objectives, and in line with other animal welfare infringement notice amounts. The maximum penalty of 50 penalty units reflects the potentially serious consequences of using an animal that is unfit for the use.

Section 17 has been amended to set out a clear offence framework for participating or taking part in dog or animal fighting, as well as other violent animal activities. It is intended to clarify provisions around violent animal activities and ensure that there is a clear prohibition for pig-dogging and other similar activities where an animal is used to intentionally injure and / or kill another animal, as well as for circumstances of live-baiting. This is a serious offence. Hunting generally or dog sports are not included in this as they are not proposed to be prohibited under the Bill, unless they involve intentionally using one animal to injure or kill another. For example, it would not apply to a dog accompanying a person on a hunt, flushing an animal or retrieving a dead animal. There are exceptions provided for, in line with the existing exceptions in the Act. It is also not intended to ban the keeping of hunting dogs or other hunting activities in any way under the proposed Bill. The use of plastic lures or other items that are not animals but are used in dog sporting events, for example dummies used in a retrieving event, are also not captured. There is a defence of 'reasonable excuse' to this offence, for example a journalist reporting on a violent animal activity or an inspector enforcing the Act.

Clause 21 **Rodeos and game parks**
Section 18 (3), new definition of rodeo

This clause includes a definition of rodeo for completeness and clarity in interpreting the section.

Clause 22 **Exception – conduct in accordance with approved code of practice or mandatory code of practice**
Section 20 (e)

This clause is a consequential amendment as a result of amending and renaming section 17.

Clause 23 **Contents**
New sections 21 (ta) to (tc)

This clause supports the proposed new regulatory scheme for pet businesses and allows for a code of practice to deal with the operation of pet shops and other businesses that buy or sell animals as pets, the operation of businesses that board animals, and the operation of any other business that deals with pets.

Clauses 24-29 Complying with codes of practice - directions

Sections 24B (2), 24C (1), 24C (1) (b), 24C (2) (b), 24C (2) (c), 24D

These clauses give effect to a new escalating framework around complying with codes of practice. It provides that an inspector or authorised officer must first give a direction to comply with a code of practice where a person is in breach of a code, before issuing an infringement notice. The direction must state, where appropriate, what must be done to rectify the breach, who must do it and a reasonable timeframe within which the person must provide evidence of compliance. If a person fails to comply with a direction, then it is a strict liability offence and an infringement notice can be issued.

This is important as part of an escalating enforcement framework to support codes of practice. Given this, and the importance of codes of practice in meeting animal welfare objectives, and that this breach involves not complying with a direction as part of an escalating enforcement approach, it has a maximum penalty amount of 50 penalty units and an infringement notice of \$500. The infringement notice amount is comparable with other animal welfare infringement notices.

These clauses also ensure that a Code of Practice, and any associated escalating compliance action, can apply to a business activity as well as a non-business activity. Previously, these provisions did not apply to a non-business activity. This is considered important in terms of providing an escalating enforcement framework against codes of practices for everyone, including pet businesses under the new pet business regulatory framework.

Clause 30 New part 3A

Pet businesses

This clause introduces a new regulatory framework for pet businesses, including appropriate offence provisions. Currently there is no regulation of pet businesses in the ACT. This has been identified as a gap in the current legislation, and jurisdictions around the world are starting to move to regulating pet businesses where there is the potential for animal welfare abuses

The framework sets out a high-level framework for regulating pet businesses, and specifically boarding kennels and pet shops, with the ability regulate other pet businesses in the future as needed. It is not intended to be overly burdensome on businesses, but to be outcomes focused and to ensure community confidence in the animal welfare integrity of pet shops and boarding kennels. Flexibility has been built into the framework so that other pet businesses can be included as appropriate and necessary (e.g. through regulation). A person who is a breeder and has a breeding licence has been excluded from this to avoid duplication, as breeding activities are already regulated.

It has been recognised internationally that animal welfare laws need to not only be targeted to individuals but also to animal businesses and industries, and that licensing / registration is the best way to achieve this, including through requiring the keeping of records and ensuring welfare standards through registration / licensing processes.

This clause sets out a high-level regulatory framework through registration and conditions of registration, as well as the development of Codes of Practice, for pet businesses.

The framework provides for:

- licensing of each type of business set out by regulation, and specifically pet shops and boarding kennels (for day or overnight care), including timeframes for application and approval/refusal of a licence, as well as the term of a licence and details required on a licence.
- conditions to be imposed on a pet business licence, including compliance with any relevant mandatory code of practice. These conditions could include minimum qualification requirements or restrictions on the source/sale of pets.
- transfer of a pet business licence and a decision around transfer.
- renewal of a pet business licence and a decision on renewal.
- amendment of a pet business licence.
- ability for the Animal Welfare Authority to request more information in a licence application.
- pet shops are required to keep records of where they obtain animals for inspection by the Animal Welfare Authority on request. This will enable the tracking of puppies associated with puppy farming or illegal breeding, and is similar to provisions in other jurisdictions.
- offences for a pet shop failing to keep records or share records, for operating a pet business without a licence and for breaching a licence, including associated infringement notices. The offence of operating without a licence or breaching a condition of a licence is a strict liability offence with a maximum penalty unit of 50 penalty units, and an infringement notice of \$500.

Registered businesses will be published on the DAS website, which will enable pet owners to check they are using a registered and reputable pet business. Under the Bill, a direction can be issued to comply with a code of practice. Codes of practice can expressly be developed for the operation of a pet business. Where a business is in breach of a licence, the Animal Welfare Authority can amend a licence or suspend, cancel or disqualify a person. This is provided for under 'regulatory action' available under the Bill.

Fees can be established for registration.

In developing Codes of Practice relevant industry stakeholders will be consulted. It is proposed that the new scheme would not come into effect for 6 months to give time to inform and educate pet business operators and to start developing and / or updated Codes of Practice in partnership with industry, where needed.

Clause 31 Licence conditions

New section 28 (2) and (3)

This clause inserts new subsections (2) and (3) into section 28 that makes it a strict liability offence for a licensee to fail to comply with a condition of a license. A licensee should be well aware of the requirements of their licence. Given the importance of a person complying with a licence for animal welfare outcomes, and that a breach would involve a person breaching conditions of which they are aware of, a maximum penalty of 50 penalty units has been applied and an infringement notice of \$500. This is consistent with other animal welfare infringement notices.

Clause 32 New section 35A

This clause inserts a definition of 'authorised staff member' into division 4.2. This supports amendments that enable a corporation, as well as individual, to seek and be granted an authorisation.

Clauses 33-36 Authorisations

Sections 37 (1), 37 (1A), 38 (2) (a), 38 (2) (d)

These clauses enable a person or a corporation to apply for an authorisation, and updates corresponding provisions accordingly. This will assist in streamlining the licence / authorisation process so that multiple licences / authorisations do not need to be applied for under the Act for one organisation.

Clause 37 Authorisation conditions

New section 39 (2) and (3)

This clause introduces a new strict liability offence for when an authorisation holder fails to comply with a condition of the authorisation. An authorisation holder should be well aware of the conditions on their authorisation.

Given the importance of a person complying with a licence for animal welfare outcomes, and that a breach would involve a person breaching conditions of which they are aware of, a maximum penalty of 50 penalty units has been applied and an infringement notice of \$500. This is consistent with other animal welfare infringement notices.

Clause 38 Form of authorisation

New section 40 (aa)

This clause requires the authorisation to state why the authorisation is required. This is considered important for clarity and record keeping purposes, and to clearly articulate the purpose of an authorisation to any person that reads and/or relies on the authorisation.

Clause 39 Identity card for authorisation holder

Section 42

This clause updates section 42 to apply to both individual and corporation licence holders.

Clause 40 Interstate researchers' authorisation in the ACT

Section 49B (3)

Section 49B (3) has been amended to include new subsection 3(d) which provides that the authority may decide to end the application of subsection (1) in relation to an interstate researcher's authorisation where the authority is satisfied on reasonable grounds that it is not appropriate for the researcher to use or breed animals in the ACT the same way, to the same extent and for the same purposes as the researcher is permitted to use or breed animals in the State where the researcher's interstate research authorisation is granted. 'State' includes the Northern Territory. This provides for the utmost protection of the ACT's high animal welfare standards in situations where the same protections may not be provided for in other jurisdictions.

Clause 41 Circus or travelling zoo permit conditions

New section 56 (2) to (4)

This clause introduces offence provisions where a person does not comply with a condition of their circus or travelling zoo permit condition. These are strict liability offences. A permit holder should be well aware of the conditions on their permit.

Given the importance of a person complying with a permit for animal welfare outcomes, and that a breach would involve a person breaching conditions of which they are aware of, a maximum penalty of 50 penalty units has been applied and an infringement notice of \$500. This is consistent with other animal welfare infringement notices.

Clause 42 Steel-jawed traps and prohibited traps

Section 60(1)

This clause substitutes existing section 60 and makes it an offence to set a steel-jawed or prohibited trap and kill or injure an animal. These kinds of traps are prohibited, and the resulting action of an animal dying or being injured from the use of such a trap is a serious offence. The amendment removes the requirement for ‘intention to kill’ and only requires that an animal is killed or injured as a result of setting the trap.

The clause also introduces a new offence provision where a person sets a prohibited or steel-jawed trap. This is a less serious offence that does not require the death or injury of an animal to actually occur.

Both offences are strict liability offences that do not require a mental element. This is consistent with the existing offence provision.

Given the less serious nature of section 60(1A), but also noting its importance in practically ensuring animal welfare outcomes, a maximum penalty of 50 penalty units has been attached along with an infringement notice of \$500. The infringement notice amount is consistent with other animal welfare infringement notices.

Clause 43 Section 60 (2), penalty

This clause updates the penalty for possessing a steel-jawed trap or prohibited trap from 5 to 15 penalty units. This is considered reasonable and proportionate to the nature of the offence. A steel-jawed trap and a prohibited trap are not permitted under the Act, and can cause serious injury or death to an animal. As such it is considered appropriate to attach an infringement notice of \$250 to possession of a steel-jawed trap or prohibited trap.

Clause 44 Section 60 (5)

New definition of *steel-jawed trap*

This clause moves the definition of steel-jawed trap to assist in interpreting and applying the provisions.

Clause 45 Restricted traps

Section 61

This clause removes section 61. Section 60 and 61 perform similar purposes, in that a trap can be defined as a prohibited or restricted trap by regulation. No restricted traps have been specified by regulation. There is no need to have two categories under the new Bill, and this section is considered no longer needed to assist in understanding, applying and enforcing the law.

Clauses 46 Trapping – general

Section 62

These clauses remove the intention element from the offence in section 62 (1) and make it a strict liability offence to set a trap, without a permit and unless certain exceptions are met. While there are exceptions for setting a trap on a person's premises, a person must still meet the general cruelty and animal welfare provisions set out elsewhere in the Act and cannot set a trap to catch a domestic animal. It is not considered necessary to prove intention to catch an animal, as it should be an offence to set any type of trap without a permit. The imprisonment term has been removed and this offence is a strict liability offence. The penalty units have remained the same, but an infringement notice of \$500 has been attached. This is considered reasonable and proportionate to the nature of the offence, and in achieving animal welfare outcomes, and consistent with other animal welfare infringement notices. It is considered important to be able to issue an infringement notice for this kind of offence as a deterrent and escalating enforcement action. Where a person sets a trap that results in a serious animal welfare abuse, prosecution can occur in the general cruelty provisions which have a range of imprisonment terms attached.

Section 62 has also been amended to clarify that where a person holds a nature conservation licence that authorises the person to set a trap, they do not need to apply for a trapping permit for the same purpose. This is intended to reduce duplication and regulatory burden.

Appropriate exceptions apply to this section, including setting a trap on a premises other than for a domestic animal. It is noted that the provisions of the Act around cruelty and appropriate care would still be applicable.

Clause 47 Trapping permit conditions

New section 65 (2) and (3)

This clause introduces an offence for a trapping permit holder not complying with a condition of a trapping permit, with a maximum penalty of 50 penalty units. This is a strict liability offence. A trapping permit holder should be aware of the conditions on a trapping permit.

Given the importance of a person complying with a licence for animal welfare outcomes, and that a breach would involve a person breaching conditions of which they are aware of, a maximum penalty of 50 penalty units has been applied and an infringement notice of \$500. This is consistent with other animal welfare infringement notices.

Clause 48 **Definitions – Pt 6A**

Section 73A, definition of *approval*, new paragraph (ca)

This clause amends the definition of approval to include a pet business licence, as a consequential amendment of the new pet business regulatory framework.

Clauses 49 **Section 73A, definition of *regulatory body*, paragraph (b)**

This clause amends the definition of regulatory body to be the authority for a licensed pet business, as a consequential amendment of the new pet business regulatory framework.

Clause 50 **Grounds for regulatory action**

New section 73B (1) (aa)

This clause inserts a new ground of regulatory action where the regulatory body (a term defined in section 73A) becomes aware of circumstances that, if the regulatory body had been aware of when the application for approval was decided, would have resulted in the application being refused. This ensures that in circumstances where new information or circumstances becomes available, this can be considered in taking regulatory action.

Clauses 51-52 **Section 73B (2), definition of *relevant provision* and *relevant section***

These clauses add the relevant licensed pet business sections to the definition of ‘relevant provision’ and ‘relevant section’ as a consequential amendment of the new pet business regulatory framework.

Clause 53 **Return of amended, suspended or cancelled approvals**

New section 73G (3)

This clause clarifies that an approved person may return an approval by returning the approval or providing a written statement electronically surrendering the approval.

Clause 54 **Action by regulatory body in relation to amended or suspended approval**

Section 73H (4), definition of *relevant section*, new paragraph (aa)

This clause includes the relevant section for a licensed pet business in the definition of ‘relevant section’ under section 73H as a consequential amendment of the new pet business regulatory framework.

Clause 55 **Public access**

Section 75A

This clause makes a technical amendment to replace ‘him or her’ with ‘the authority’.

Clause 56 **Section 77**

This clause substitutes existing section 77 and means that the director-general can appoint a public servant who is a veterinary surgeon as an authorised officer, but also includes a new section that enables the authority to be an authorised officer if the authority is accompanied by a veterinary surgeon or following the written advice of a veterinary surgeon.

Currently an authorised officer can only be a public servant who is a veterinary surgeon. Practically, this is very limited and most public servant veterinarians are not employed by the Transport Canberra and City Services Directorate and are not necessarily available when needed. This will ensure that action is always taken on the advice of a veterinary surgeon or where a non-veterinarian is accompanied by a veterinarian, but this advice can be sought externally when needed, for example in entering a premises used for research or teaching and examining and giving assistance to an animal. This is important to the efficient and effective operation of the Act.

Clause 57 **Identity cards**

Section 78 (4), penalty

This clause increases the penalty units where a person does not return their identity card from 1 penalty unit to 5 penalty units to be reasonable and proportionate to the nature and risk associated with the offence. An infringement notice of \$150 is attached. This is considered reasonable and proportionate, and necessary to act as a deterrent.

Clause 58 New section 81A

This clause introduces a new section that sets out and clarifies seizure powers. It allows for an inspector to seize any animal that the inspector believes on reasonable grounds to be connected with an offence, seize any dependant offspring of an animal seized in connection with an offence and to seize any animal that the inspector believes on reasonable grounds is kept by, or in the care or control of, a person in contravention of a number of sections under the Act. This is to provide for effective seizure powers to remove an animal or animals at risk, as well as those that have been the subject of animal welfare offences. It also allows for the seizure of offspring, for example puppies or kittens, and for appropriate care and action to be taken. The interests of the animal are critical here, and seizure and impoundment is only to be undertaken when necessary in the interests of animal welfare.

Clause 59 Powers of inspectors

Section 82 (1)

This clause makes a technical amendment to replace ‘he or she’ with ‘the inspector’.

Clause 60 Section 82 (1) (f) to (h)

This clause consolidates the existing seizure provisions under sections 82 (1) (f) to (h) and provides a general power to seize anything (including a document) that the inspector believes on reasonable grounds to be connected with an offence.

Clauses 61 Section 82 (1) (i)

This clause makes a technical amendment to replace ‘his or her’ with ‘the inspector’s’.

Clause 62 Section 82 (1) (j)

This clause makes a technical amendment to replace ‘him or her’ with ‘the inspector’.

Clause 63 New section 82 (2) (d)

This clause inserts a new subsection in section 82 (2) to clarify that an inspector must not give any information obtained under subsection (1), as part of entering a premises, to anyone else other than the authority.

Clause 64 Section 82A heading

This clause substitutes the existing heading for section 82A with a new heading reflecting amendments to this section.

**Clauses 65-67 New section 82A (2) (c), substituted
section 82A (3), New section 82A (6) and (7)**

These clauses add a new subsection (c) to subsection (2) to enable an inspector to direct a person to provide their date of birth. This assists in further enquiries and identification of persons involved in an offence. However, the clauses also first require the inspector to show the person the inspectors' identity card. This promotes and balances the right to privacy.

It also makes it a strict liability offence for a person not to provide the requested details with a maximum penalty amount of 15 penalty units and an infringement notice of \$300. This is considered reasonable and proportionate to the nature of the offence, and the importance of assisting with animal welfare offence investigations.

**Clause 68 Research and educational institutions – powers of
entry and search
Section 83 (1) (a)**

This clause makes a technical amendment to replace 'he or she' with 'the officer'.

Clause 69 New section 83A

This clause introduces a new section that sets out and clarifies seizure powers for authorised officers. This replicates the seizure powers available for inspectors, set out in amended section 82.

**Clause 70 Powers of authorised officers
Section 84 (1)**

This clause makes a technical amendment to replace 'he or she' with 'the officer'.

Clause 71 Section 84 (1) (g) to (j)

This clause substitutes sections 84 (1) (g) to (j) and provides a general seizure power, including for a document, where the authorised officer believes on reasonable grounds that the thing is connected with an offence.

Clause 72 Section 84 (1) (k)

This clause makes a technical amendment to replace 'him or her' with 'the officer'.

Clause 73 Powers of veterinary practitioners regarding seized animals and carcasses

Section 84A (1)

This clause makes consequential changes to section 84A (1) as a result of the other seizure amendments in this Bill.

Clause 74 Inspectors and authorised officers

Section 85 (1) (a)

This clause makes a consequential amendment to section 85 (1) (a) as a result of new section 6B, which allows for a direction to be issued in any circumstance where an inspector or an authorised officer believes on reasonable grounds that an animal has not been given a thing mentioned in section 6B. This provides for an escalating enforcement framework under section 6B.

Clause 75 Section 85 (2) (c)

This clause makes a technical amendment to replace ‘he or she’ with ‘the inspector or officer’.

Clause 76 Section 85 (5) (a)

This clause makes a consequential amendment to section 85 (5) (a) as a result of new Section 6B.

Clause 77 New section 85 (5) (c)

This clause adds a new requirement when an inspector or authorised officer is issuing a direction that the direction state a reasonable time within which the person must give the inspector or authorised officer evidence that the direction has been complied with.

Clause 78 Section 85 (6)

This clause adds a new requirement that a direction under subsection (5) must be personally served on a person and explained to a person. This adds in an additional safeguard to this provision. This clause also adds in new section 6A which makes it a strict liability offence when a person fails to comply with a direction, with a maximum penalty of 50 penalty units and an infringement notice of \$500. This is considered reasonable and proportionate to the offence, noting that an infringement notice would only be issued after a direction has been personally given and explained to a person, and where the direction is reasonable to ensure animal welfare outcomes. Directions are intended to be used in less serious circumstances, and more serious offence provisions are available.

Clause 79 **New division 7.6A**

This clause sets out a range of new provisions for dealing with seized animals, including allowing for seized animals to be housed with an animal welfare entity and providing for the animal welfare authority to be able to issue a temporary prohibition order.

This clause defines an animal welfare entity as the RSPCA ACT or an entity declared by the Minister, and sets out that the Minister may make guidelines about the way an animal welfare entity may deal with a seized animal under this new division. A declaration of an animal welfare entity is a notifiable instrument.

New section 86B allows for the authority to accommodate a seized animal with its owner where the authority is reasonably satisfied that the animal can be kept under suitable care of the person (in effect home impoundment). This can be under conditions. This section also allows for the authority to place the animal in the care of an animal welfare entity. This provides for alternate options to impoundment, in the interests of animal welfare, recognising that a pound can have a negative impact on the welfare of an animal, particularly for prolonged periods. It is a strict liability offence for a person to not comply with conditions of home impoundment, with a maximum penalty of 50 penalty units and an infringement notice attached of \$500.. This is consistent with home impoundment provisions recently introduced under the *Domestic Animals Act 2000* and other infringement notice amounts in this Bill for failing to comply with given directions/conditions.

New section 86C allows for the authority to sell a seized animal or give a seized animal to an animal welfare entity for selling or rehoming when certain criteria are met. The criteria requires reasonable enquiries to have been made to find out who the person in charge of the animal is and where the identity is known, give the person written notice of the authority's intention to sell or rehome the animal and give the person 14 days to apply for a review of the decision to the ACT Civil and Administrative Appeals Tribunal. In all cases the authority can only sell or rehome an animal if the authority is satisfied on reasonable grounds that it is in the best interests of the welfare of the seized animal. This provision does not apply where an animal has otherwise been relinquished by its owner and the current processes in place for this continue to apply. Relinquishment is provided for under the *Domestic Animals Act 2000*. The term 'to give a seized animal to an animal welfare entity' does not necessarily require physically moving an animal where it has already been seized, for example by the RSPCA ACT under seizure powers. The intention of the new provisions, in partnership with delegation powers, is to provide operational flexibility to ensure best practice animal welfare outcomes in partnership with animal welfare entities, including the RSPCA ACT. This provision also does not affect seizure powers, which are provided for elsewhere in the Act in respect of inspectors and authorised officers.

New section 86E allows for a temporary animal prohibition order to be imposed by the animal welfare authority where an animal has been seized, a proceeding has not yet been started in court and the authority reasonably believes that an animal's welfare is, or would be, at serious risk if the person were to own, keep, care for or control the animal individually or jointly with another person. The temporary prohibition order would prevent a person from purchasing or acquiring an animal within a period stated in the order, or keeping, caring for or controlling an animal within the period stated in the order. Decisions would be robust, evidence-based and supported by the internal regulatory advisory committee. Depending on the circumstances, the Authority could provide notice and enable submissions from persons potentially affected. As an additional safeguard, there are a range of considerations that the authority must consider in making an order including the welfare of the seized animal and other animals, the likelihood the person has or will commit an offence against the Act, previous convictions relating to animal welfare and any other relevant matter. This would extend to considerations of an animal that is used as an assistance animal, where relevant. To provide further safeguards the prohibition order can only be imposed up to a maximum of six months and ends the day a relevant proceeding starts if that is earlier. This is intended to act as an intermediate measure where an animal or animals are at serious risk and while proceedings are commenced in Court. There is often a time delay in initiating proceedings and it is critical that intermediate action can be taken in high risk cases to prevent the animal being returned to the at-risk situation, and prevent future animals suffering abuse. This is in line with the objects of the Act. It is a serious offence if a person fails to comply with a prohibition order, with a maximum penalty of 100 penalty units.

The intention is that this order would be used in circumstances where an investigation is underway with a view to deciding whether proceedings would be initiated. As noted, the decision is reviewable and limited in time.

Clause 80 **Consent to entry**
Section 88 (2) and (3)

This clause makes a technical amendment to replace 'he or she' with 'the occupier'.

Clause 81 **Section 88 (4)**

This clause makes a technical amendment to replace 'his or her' with 'the officer's'.

Clause 82 **Definitions – div 7.9**
Section 93, definition of *officer*, paragraph (d)

This clause makes a technical amendment to correct the term 'veterinary officer' to 'veterinary practitioner'.

Clauses 83-84 Certificate evidence

Section 98 (1) (a) and Section 98 (1) (b) to (d)

These clauses makes a consequential amendment to section 98 to reflect the new pet business licensing framework.

Clause 85 Animal offences – court orders (interim)

Section 100A (1) (a)

This clause makes a consequential amendment to section 100A (1)(a) as a result of the amended seizure powers introduced in this Bill.

Clause 86 Section 100A (2)

This clause allows the court to make an order that a person must not do certain things either individually or jointly with another person. This allows for the Court to order that a person cannot jointly purchase or acquire any animal or keep, care for or control any animal.

A court ordered animal ownership ban is a serious matter and the Court must consider a range of matters in determining this, including the welfare of animals, the likelihood a person has or will commit an offence against the act, previous offences as well as any other relevant matter.

Only the Court can impose such a restriction where a person individually or jointly with another person cares is in any way responsible for the keeping, caring for or controlling of an animal.

These are for the most serious cases. It is not uncommon for people who are subject to proceedings of such a serious nature to either acquire more animals, or to live with people who have animals. This leads to further animal welfare abuses.

This issue has caused problems in previous prosecutions, and stakeholders including the RSPCA ACT has been advocating for reform in this space to ensure that animal ownership bans can genuinely prevent the future harming of animals from known offenders.

One of the objectives of the Act is to prevent animal cruelty and the abuse and neglect of animals. Animal ownership bans are critical to achieving this.

In issuing a ban of this nature the Court would consider all relevant matters, as specified in the Bill, and consider the case on its merits commensurate to the risk of abuse.

Clause 87 **New section 100A (2A)**

This clause inserts new considerations that the court must have regard to in making an interim order, including the welfare of the seized animal and any other animal, the likelihood the person has or will commit an offence against the Act, and any conviction or finding of guilt of the person against an offence under ACT law relating to animal welfare or of another State or Territory relating to animal welfare. While consideration as to whether the person uses an animal for assistance with a disability is not an express consideration, the Court can consider any other relevant matter, including the circumstances of vulnerable people or a person relying on an assistance animal. This approach was discussed with the assistance animal industry and is considered the preferred approach.

Clause 88 **Section 100A (3) (b)**

This clause increases the duration of an interim court order to be up to twelve months. This reflects the reality of prosecution timeframes and provides for greater protection of animals in serious cases. This is a maximum timeframe and the Court will have discretion as the timeframe most appropriate within this, considering the circumstances of the case.

Clause 89 **New section 100A (3A)**

This clause inserts a new provision around the duration of an interim order that states that an interim order ends if a seized animal is returned to the person in charge of the animal and the proceeding for an offence against the person is withdrawn. This is intended to protect the right of a person subject to an interim animal welfare ban, where proceedings are withdrawn.

Clause 90 **Section 100A (4)**

This clause makes a consequential amendment to section 100A (4) as a result of new section 100A (3A).

Clause 91 **New section 100A (6)**

This clause allows, in issuing an interim court order, for the court to consider any matter it considers relevant.

Clause 92 Animal offences – court orders (general)

Section 101 (1)

This clause substitutes existing section 101 (1) about when section 101 can apply, which is in relation to certain offences under the Act to reflect changes under this Bill. Court orders may be made in relation to animal welfare offences in Part 2 of the Act or the breach of a court ordered animal ownership ban (temporary or permanent) or temporary prohibition order by the Animal Welfare Authority.

Clause 93 Section 101 (2) (b)

This clause amends section 101 (2) (b) and provides that the court may, in addition to any penalty which it may otherwise impose, make an order it considers appropriate in relation to the payment of expenses incurred by the Territory, an animal welfare entity or another person that incurred expenses in the care of an animal. Previously, expenses could only be paid back to the Territory. However, expenses may be incurred by other organisations in relation to an offence and care of an animal.

Clause 94 New section 101 (2A)

This clause inserts new subsection 2A and clarifies that a court order under subsection 2 in relation to expenses incurred can be made at any time and for any stated period of care.

Clause 95 New section 101 (3A)

This clause inserts new section 101 (3A) that sets out considerations the court must have regard to in making an animal ownership prohibition order. These considerations include the nature of the offence committed by the person and any other conviction or finding of guilt in another State in relation to animal welfare. While consideration as to whether the person uses an animal for assistance with a disability is not an express consideration, the Court can consider any other relevant matter, including the circumstances of vulnerable people or a person relying on an assistance animal. This approach was discussed with the assistance animal industry and is considered the preferred approach.

Clause 96 New section 101 (4A)

This clause allows, in issuing a general court order, for the court to consider any matter it considers relevant.

Clause 97 Section 101 (5), definition of *expenses incurred*

This clause amends the definition of 'expenses occurred' as a consequential amendment to the change in section 101 (2) (b).

Clause 98 New sections 101A to 101C

This clause inserts a range of new provisions around prohibition on animal ownership by a Court. It provides for a permanent prohibition on animal ownership, individually or jointly, where a person has been found guilty of an aggravated cruelty offence (the most serious offence) and the court believes that it is reasonably likely the person will commit an animal welfare offence if the person were to own, keep, care for or control an animal. It also provides for a prohibition order in certain circumstances. This could have the effect of limiting where a person can reside.

Under new section 101A in making a permanent prohibition order there are a range of factors the court must consider in making the order, including the nature of the offence committed, and other conviction or finding of guilty in relation to animal welfare in Australia, and any other relevant matter. While consideration as to whether the person uses an animal for assistance with a disability is not an express consideration, the Court can consider any other relevant matter, including the circumstances of vulnerable people or a person relying on an assistance animal. This approach was discussed with the assistance animal industry and is considered the preferred approach. A permanent prohibition order can only be set aside by a court in exceptional circumstances, as outlined in section 101B. In section 101B the Court must allow for the authority to make a submission about the setting aside of a permanent prohibition order. In doing this, the Authority would consult with relevant parties, for example the RSPCA ACT where they are involved in a case or could provide expertise.

Under new section 101C the court can make a prohibition order in special circumstances where an animal has been seized, the authority reasonably believes a person in charge of the animal has committed an offence and is likely to engage in conduct in relation to animal that requires the seizure of an animal, but it is not appropriate to bring proceedings against the person. For example, where a person has starved several animals in their care but there are mental health considerations and the person requires support rather than entering the criminal justice system, however it is paramount in the interests of animal welfare that the person does not own or care for any more animals. The court must consider a range of factors, including any relevant matter. This may include whether the person is relying on an animal as an assistance animal.

Clause 99 Establishment and functions

New section 109 (3) (aa)

This clause inserts a new subsection that enables the Animal Welfare Advisory Committee (AWAC) to provide advice to the authority about matters in relation to animal welfare, including animal welfare legislation, in addition to the Minister. This does not limit the advice that AWAC can provide, including on operational matters.

Clause 100 Section 109 (4) and note

This clause clarifies that the instrument of establishment is a disallowable instrument, and that appointments to the Committee of AWAC must be made in accordance with the Legislation Act.

Clause 101 New section 109A

This clause inserts a new provision that expressly provides for rescuing an animal in a locked vehicle where the animal is clearly at risk of injury or death and where there are no other reasonable options available to the person to avoid the serious injury or death of the animal. The person must be acting honestly and without recklessness.

There are some situations where immediate and urgent action is required to save an animal from a life-threatening situation, for example where a dog is left in a hot car on a summer day and is at genuine risk of death. Where a person has taken all reasonable steps, for example calling the authorities, and there are no other reasonable options available, the person may choose to forcibly enter the vehicle to save the dog. This clause provides a 'good Samaritan' protection for this situation, but does not provide for protection where a person acts recklessly or in any way provides for an excuse for breaking and entering into a vehicle.

Clause 102 Regulation-making power
New section 112 (2) (i)

This clause provides for the ability for a regulation to be made about the qualification a person must hold, or experience a person must have, in relation to paragraphs (a) to (h).

Clauses 103-104 Reviewable decisions

These clauses amend Schedule 1 to add in new reviewable decisions as a result of the Bill.

Clauses 105-119 Dictionary - various

These clauses make various amendments to the definitions in the dictionary to support the changes in the Bill.

PART 3 ANIMAL WELFARE REGULATION 2001

Clause 120 New section 5A

This clause lists prescribed prohibited items by regulation as a consequential amendment to the Bill. A soft-jaw trap has been added to the list.

PART 4 DISCRIMINATION ACT 1991

Clause 121 Meaning of *disability*

Section 5AA (3), definition of *assistance animal*

This clause amends the definition of an assistance animal to include (not an exhaustive definition) a guide dog and a hearing dog. This would also include any other kind of assistance dog, including a service dog.

PART 5 DOMESTIC ANIMALS ACT 2000

Clause 122 Part 5 – Assistance animals

This clause sets out a new regulatory framework for assistance animals that intends to clarify, promote and protect the rights of people who use assistance animals, including access to public spaces. Specifically, this clause:

- provides a framework for assistance animal trainers and assessors to be registered, acknowledges existing training organisations such as Guide Dogs Australia and also allows individuals to train their own assistance animals.
- allows for an assistance animal to be accredited by a registered trainer, assessor, an existing organisation such as Guide Dogs Australia or the registrar for Domestic Animals
- allows for a person to act on behalf of a person with a disability under the new scheme
- creates a framework to allow accredited assistance animals to be registered. Registration includes a registration number and certificate (or other form of identification, such as a registration card). Identification requirements can be set out by Regulation and will be developed in partnership with stakeholders and may include a medallion and/or identification card
- clarifies the rights of access to public places and premises for people with assistance animals and creates new offences for denying someone with an assistance animal this access. This includes a strict liability offence with an infringement notice for denying access to a person who has shown evidence that their assistance animal is accredited and registered (for example, through approved identification such as an identification card)
- provides for rights of access to assistance animals in training or being assessed as assistance animals

- provides for when an accredited assistance animal is no longer going to be used as an assistance animal. For example, in the case of an assistance dog that is no longer being used to assist a person with a disability and becomes a pet
- provides for information to be provided with an application to enable a person to be registered as an assistance animal trainer or assessor. This must include any information prescribed by regulation, but would only include information that is reasonably necessary for the registrar to assess an application
- creates an offence for carrying on a business as an assistance animal trainer or assessor without being registered. The term 'business' would have its ordinary meaning, and apply to a situation where a person carries on an occupation, profession or trade (i.e. sale of services) for training or assessing accredited assistance animals without being registered under the Act.

The accreditation framework is not mandatory meaning that a person can have an assistance animal and choose not to accredit or register it. A person who chooses not to participate in the framework has the same access rights as people who do choose to participate however they may be asked to produce evidence that the assistance animal is trained to gain access to a public place or premises, consistent with ACT and Commonwealth discrimination law.

This clause sets up an important scheme for people who use assistance animals and which the assistance animal industry has been advocating for, and is supported by appropriate infringement notices.

It is noted that the term 'person in charge' is a defined dictionary term.

Clauses 123-128 Definitions - various

These clauses update definitions as a result of the changes in this Bill.

PART 6 DOMESTIC ANIMALS REGULATION 2001

Clause 129 Reviewable decisions

Schedule 1, new items 34A to 34I

This clause inserts new reviewable decisions.

**PART 7 MAGISTRATES COURT (ANIMAL WELFARE
INFRINGEMENT NOTICES) REGULATION 2014**

Clause 130-131 Schedule 1

This clause updates the penalty infringement notice framework to support the changes in this Bill, and outlined above.

**Part 8 MAGISTRATES COURT (DOMESTIC ANIMALS
INFRINGEMENT NOTICES) REGULATION 2005**

Clause 132 Schedule 1

This clause updates the penalty infringement notice framework to support the changes in this Bill in respect of assistance animals.