

2021

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

DOMESTIC ANIMALS LEGISLATION AMENDMENT BILL 2021

REVISED EXPLANATORY STATEMENT

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DOMESTIC ANIMALS LEGISLATION AMENDMENT BILL 2021

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The purpose of the Domestic Animals Legislation Amendment Bill 2021 (the Bill) is to introduce a requirement for dogs to be registered annually in the ACT.

CONSULTATION ON THE PROPOSED APPROACH

In mid-2019, the ACT Government commissioned independent community research in the form of a Pet Census. The census spoke to 2783 households and undertook an additional 304 face to face surveys at dog parks in the ACT. The report found that 28% of households own a dog with 51,227 dogs living in the ACT. The report also found a high degree of awareness and compliance with dog registration requirements with 87% of dog owners saying they know how to register their dog with 85% of dogs being registered.

In May 2019, the ACT Government published the Canberra Dog Model (the Model), which sets out how the community will manage dogs responsibly, effectively and fairly for a safer, more pet-friendly Canberra. The Model set out an action plan that included ten key actions for responsible dog management. Action 9 of the Model commits to implementing annual dog registration in 2020-21. The Model committed to implementing the registration at no additional cost to dog owners.

CONSISTENCY WITH HUMAN RIGHTS

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.

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 best practice annual dog registration scheme.

As a law of the Territory, the Bill may be seen as engaging the right to be presumed innocent until proven guilty in the HR Act.

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.

Rights engaged

The Bill may engage the right to be presumed innocent until proven guilty, section 22 (1) of the HR Act, and the right to privacy, section 12 of the HR Act.

Rights Limited

1. Nature of the right and the limitation (s28(a) and (c))

Right to be presumed innocent until proven guilty

Section 22 (1) of the HR Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The Bill may limit this right as it creates a strict liability offence for not complying with a reminder notice about a dog's registration. By creating a strict liability offence, the right to presumption of innocence is limited as it imposes guilt without the need to prove the person's fault.

Right to privacy

Section 12 (a) of the HR Act provides that everyone has the right to not have their privacy interfered with unlawfully or arbitrarily. Clauses 12 and 14 may limit this right as it expands the type information recorded about registered keepers on the register. This includes but is not limited to:

- contact details;
- details of any convictions or findings of guilty within the last ten years about an animal welfare offence or offence against the Act; and
- contact details of the previous owner.

Clause 8 may also limit the right to privacy as it permits the Registrar of Domestic Animals, via written notice, to require a registered keeper to provide any information reasonably necessary to carry out the administration of the Act.

2. Legitimate purpose (s28(b))

Right to be presumed innocent until proven guilty

The intention of the strict liability offence is to deter people from, and appropriately and proportionately respond to, allowing their dog's registration to lapse. While dogs are an important part of everyday life for many people in Canberra, they can pose a health and safety danger to humans and other animals if they are not appropriately managed. The purpose of this Bill is to improve public safety by encouraging responsible dog ownership and facilitating the collection of consistent, accurate and up to date data about dogs in the community. This data can then inform the provision of targeted government services towards irresponsible dog ownership.

Right to privacy

The amendments in clauses 8, 12 and 14 are intended to ensure that the Territory can collect accurate and up to date information about dogs in the ACT. By having a clearer understanding of dog ownership in the ACT, the Territory can

improve public safety by reducing the health and safety danger posed by unmanaged dogs through evidence-based service delivery. For example, improved data capture allows for irresponsible dog owners to be more readily identified and managed. It also facilitates lost dogs being more easily returned to their keepers.

3. *Rational connection between the limitation and the purpose (s28(d))*

Right to be presumed innocent until proven guilty

A strict liability offence should have a clear yes / no criteria as to whether the offence has occurred, and the person should reasonably know they have an obligation under law. The limitation posed by the strict liability offence on right to the presumption of innocence is rationally connected to the legitimate purpose as it provides a measure to protect the community from potential health and safety risks from instances of irresponsible dog ownership and unregistered dogs. This is important as the 2019 Pet Census found there were over 50,000 dogs in Canberra, and the RSPCA has endorsed registration and microchipping as critical components of reducing the risk of dog attacks.

Right to privacy

There is a clear connection between the limitation and the legitimate purpose as collecting more information about registered keepers facilitates evidenced based decision-making about domestic animal services. The collection of this information is important in improving public safety outcomes as without accurate and consistent data on the number and location of dogs in the ACT, it is not possible to effectively target service delivery to the community.

4. *Proportionality (s28 (e))*

Right to be presumed innocent until proven guilty

The Bill is necessary to achieve the purpose of ensuring that the government has up to date information about the registration of dogs in the ACT. The strict liability offence is necessary to deter people from failing to keep their dog's registration information up to date. There are no other less restrictive means reasonably available to achieve this purpose.

To ensure the right to presumption of innocence is limited as little as possible the Bill has been drafted to create an obligation for the Registrar of Domestic Animals to give a reminder notice to the keeper of the dog at least 14 days before registration lapses. The offence only applies if the keeper has been provided with a reminder notice that contains the relevant information listed in section 10(2) and does not comply with it.

If the Registrar does not send a reminder notice to the owner of the dog, and registration lapses, the strict liability offence at new section 10A does not apply. New section 10A only applies in circumstances where a reminder notice was sent, and not complied with.

Operationally, if the Registrar has not sent a reminder notice and the dog's registration lapses, Domestic Animal Services would not apply the existing strict liability offence for keeping an unregistered dog under section 14 of the Act. In

these circumstances the purpose built registration database will flag the registration as 'lapsed' which triggers a manual investigation into the cause of the lapse and, if needed, a manual reminder notice. Consistent with the intention of the Bill, Domestic Animal Services will make every effort to contact the keeper for the registration to be renewed or cancelled if it is found there is reason to cancel the registration (e.g., if the dog is deceased).

The reminder notice must state that it is an offence for the keeper to fail to comply with the notice before the dog's registration ends. The reminder notice is considered sufficient notice to the keeper that they have a legal obligation to renew their dog's registration. An infringement notice can be issued as an alternative to prosecution for this offence.

The strict liability offence may only apply to the reminder notice for registration renewal as outlined in section 10 (2). Any notice provided by the Registrar for Domestic Animals to a keeper separate to registration renewal does not apply to the strict liability offence under section 10A, as other requirements of responsible dog ownership relate to separate offences already provided for in the Act (e.g., keeping a non-desexed dog without a licence).

The offence under section 10A has a maximum penalty of 10 penalty units and an infringement notice amount of \$150. The penalties are consistent with other similar offences in the Act and is considered proportionate and an appropriate deterrent for non-compliance with a reminder notice to renew registration.

Additionally, the defence of mistake of fact, which preserves the principle that a person is innocent until proven guilty, is available in response to the strict liability offence. That is for example if the registered keeper, upon receiving the reminder notice, took action to comply with the notice but failed to do so due to a technical error with their compliance method. In this instance, their conduct would not constitute an offence as they were under the reasonable and honest belief they had complied.

Right to privacy

The amendments in clauses 8, 12 and 14 are considered to be a reasonable and proportionate limitation on the right to privacy in order to achieve the purpose of protecting public safety from unmanaged and unregistered dogs. The collection of this information is necessary to ensure that irresponsible dog owners can be identified, contacted and managed effectively. There are no other less restrictive means reasonably available to achieve this purpose.

Additionally, the information collected as result of the amendments in clauses 8, 12 and 14 is consistent with information collected in other jurisdictions and will be handled and stored in accordance with Territory Privacy Principles as provided in the *Information Privacy Act 2014*.

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause states that the name of the Act is the *Domestic Animals Legislation Amendment Act 2021*.

Clause 2 Commencement

This clause sets out that the Act commenced on 1 July 2021.

Clause 3 Legislation amended

This clause sets out the legislation that is amended by this Act, being the *Domestic Animals Act 2000*, the Domestic Animals Regulation 2001 and the Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005.

PART 2 DOMESTIC ANIMALS ACT 2000

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

This clause inserts a note including the offence created under section 10A below into section 4A of the Act which states that other legislation applies in relation to offences in the Act.

Clause 5 Registration – duration Section 9

This clause substitutes the existing section with a provision that states that the registration of a dog remains in force for 12 months unless it is sooner surrendered, cancelled or renewed.

Clause 6 New section 10 to 10B

This clause inserts a section requiring the Registrar of Domestic Animals to give the keeper of a dog a written notice (a reminder notice) at least 14 days before the day the dog's registration ends.

Subsection (2) requires the notice to state:

- the date the registration ends
- that the keeper is required to confirm or update the information about the dog's registration
- either information about the dog's registration required to be confirmed or updated or how the keeper may electronically access that information
- that if the keeper is less than 16 years old and resides with a parent or guardian, the parent or guardian must provide written consent for the renewal of the registration
- how the keeper may comply with the reminder notice
- that it is an offence to fail to comply with the reminder notice
- any other information prescribed by regulation.

Subclause 10A makes it a strict liability offence for a keeper to fail to comply with a reminder notice for registration renewal they have been given. The maximum penalty is 10 penalty units.

Subclause 10B provides that a dog's registration is automatically renewed if the keeper is given a reminder notice and complies with the reminder notice.

Clause 7 Registration numbers and certificates

New section 11 (1A)

This clause inserts a provision into the section on registration numbers and certificates that requires the Registrar of Domestic Animals to give the registered keeper of a dog a certificate for the dog if the registration is renewed.

Clause 8 New section 12A

This clause inserts a new provision that allows the Registrar of Domestic Animals to, by written notice, require the keeper to give them any information that is reasonably necessary to carry out a function under the Act.

The notice must state the information that is to be given, how they may give the information, the period in which the notice must be complied with which must be not less than 28 days and that the dog's registration may be cancelled if the keeper fails to comply with the notice.

Clause 9 Registration – cancellation

Section 13 (1) (a)

This clause substitutes the existing clause with a provision that requires the Registrar of Domestic Animals to cancel the registration of a dog if they are told in writing, or become aware, that the dog has died.

Clause 10 New section 13 (2) (c) to 13 (2) (e)

This clause inserts provisions into the section that allows the Registrar of Domestic Animals to cancel the registration of a dog. The new provisions allow cancellation of registration if the dog is not implanted with a microchip as required under the Act, de-sexed as required under in Act or if the keeper fails to comply with a written notice under section 12A.

Clause 11 New section 164

This clause inserts a provision for transitional arrangements. The transitional arrangements apply to a registration that is in force before 1 July 2021 and states that the registration of a dog ends:

- if the date of the registration is in July or on 1 August – 1 month after the next anniversary of the registration date; or
- if the date of the registration is any other day – on the next anniversary of the registration date.

The transitional arrangements do not apply if the registration is sooner surrendered, cancelled or renewed.

PART 3 DOMESTIC ANIMALS REGULATION 2001

Clause 12 Dog registration information – Act, s 8 Section 5 (a)

This clause substitutes section 5 (a) with a requirement for the Registrar of Domestic Animals to record the name, address and, if known, other contact details of the keeper of the dog and any conviction or finding of guilt of the keeper of the dog within the last 10 years against an animal welfare offence or an offence against this Act.

Clause 13 New section 5 (ba)

This clause inserts a new section requiring the Registrar of Domestic Animals to record the dog's name, if known.

Clause 14 New section 5 (i) to (l)

This clause inserts a new section requiring the Registrar of Domestic Animals to record:

- that, if the dog has been de-sexed, a statement to that effect
- if ownership of the dog, or who keeps the dog, has changed – the name, address and other contact information of the former owner or keeper, if known
- if the registrar has been told the dog has died under section 13 (1) (a), a statement to that effect
- if the registration of the dog is renewed – the date of the renewal.

Clause 15 Information on dog registration certificates – Act s 11 (2) New section 6 (g) and (h)

This clause inserts information that is to be stated on the registration certificate, specifically the date the registration starts and ends and the date a registration renewal starts and ends.

Clause 17 Reviewable decisions Schedule 1, item 1, column 2

This clause fixes a typographical error.

Clause 17 Schedule 1, item 2, column 2

This clause fixes a typographical error.

Clause 18 Dictionary, note 3

This clause inserts examples into the note 3 of the dictionary definition.

**PART 4 MAGISTRATES COURT (DOMESTIC ANIMALS INFRINGEMENT
NOTICES) REGULATION 2005**

**Clause 19 Domestic animals legislation infringement notice offences and
penalties
Schedule 1, part 1.1, new item 1A**

This clause inserts section 10A (1) into the infringement notice regulation to provide an infringement notice amount of \$150.