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

DOMESTIC ANIMALS AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

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Minister for Urban Services

EXPLANATORY MEMORANDUM

Outline

This Bill sets out a series of amendments to the *Domestic Animals Act 2000* to address operational issues that have arisen since that Act came into force in June 2001.

Revenue/Cost Implications

There is no additional cost involved in the Bill as all infrastructure is in place under existing arrangements.

Formal Clauses

Part 1- Preliminary

Clauses 1 and 2 are formal requirements. They deal with the short title of the Bill, and the commencement provisions.

Clause 3 identifies the Act being amended.

Clause 4 replaces the existing offence (in section 15) relating to dogs not wearing their registration tags. The two new offences make it an offence for a person to take a dog out in public, or onto private premises without its registration tag, and make it an offence for the keeper of a dog for the dog to be away from home without its registration tag. This provision makes it clear that dogs should wear their registration tags whenever they are away from home.

Clause 5 provides for renumbering of the subsections of section 15 on next republication of the Act.

Clause 6 inserts a new provision relating to dangerous dog licensing. When a dog has been declared dangerous after being seized for an offence, the Registrar can only approve an application for a dangerous dog licence relating to the dog when the action to be taken in relation to the offence has been resolved. The action is considered resolved if no action is taken within 28 days, an infringement notice has been issued and then paid or withdrawn, or if criminal proceedings have finished.

Clause 7 provides for renumbering of the subsections of section 25 on next republication of the Act.

Clause 8 creates a new offence relating to dogs being unrestrained on private premises without a person there to control it. This brings this situation in line with the position for public places, where it is also an offence for a dog to be unrestrained (see section 44(3) of the Act).

Clause 9 extends the defences in subsections (5) and (6) to be defences against the offence inserted by clause 8.

Clause 10 provides for renumbering of the subsections of section 45 on next republication of the Act.

Clauses 11 and 12 amend section 50 to make it so that both subsections (1) and (2) apply to both attacking and harassing dogs. Now the carer of a dog must ensure that the dog neither attacks nor harasses other animals or people, and the keeper will be responsible for a dog attacking or harassing another animal or a person if the dog is loose without a carer.

Clause 13 makes a consequential change to paragraph 50(3)(b) to make it consistent with the change effected by clause 12.

Clause 14 substitutes new sections 62, 63 and 64. These provisions govern when a dog seized under division 2.7 of the Act must be returned to its keeper. The policy informing these provisions has not changed, but the provisions have been redrafted to be clearer about when the Registrar must release a dog.

Each section governs release of dogs seized under the different provisions empowering seizure of a dog. None of these three provisions apply to dogs declared dangerous after seizure. Return of such dogs is governed by section 65.

In each case, the Registrar is only obliged to release the dog if the person asking for the dog owns the dog, the dog is registered, the owner has not relinquished the dog, all fees have been paid and any infringement notice or prosecution action in relation to the dog has been resolved.

For dangerous dogs and dogs for which a multiple dog licence is required, the relevant licence must be in force before the dog can be released. For dogs seized because of an attack or harassment incident, the dog need not be released if the Court has ordered that it be destroyed.

Clause 15 inserts a new subsection in section 69, to clarify that the procedure there only applies to dogs seized under division 2.7 of the Act.

Clause 16 provides for renumbering of the subsections of section 69 on next republication of the Act.

Clause 17 makes a change to the range of people that a nuisance notice can be issued to. The existing provision allows issue of the notice to the occupier only when the keeper cannot be identified. This provision allows the occupier of the premises to be served with the notice when the owner of the animal does not reside there. This will allow the notice to be issued to the person most able to deal with the problem. The provision allowing the notice to be issued to the keeper has been retained.

Clause 18 amends subsection 114(1) to empower authorised officers to seize nuisance animals.

Clause 19 amends subsection 114(2) to allow entry of premises to seize nuisance animals under the new section 114A (discussed under Clause 20) instead of requiring authorised officers to obtain a warrant.

Clause 20 inserts new sections 114A and 114B. Section 114A authorises entry without warning to premises where animal nuisance exists without warrant. This can be done once proceedings have been issued for an offence relating to nuisance under section 110 of the Act. Section 114B empowers the officer to seize the animal causing the nuisance. Proceedings are only issued once there is sufficient evidence to justify the charge being laid, which would also be sufficient evidence to obtain the warrant required by the existing provision. It is therefore not necessary to formally require the warrant be obtained before allowing the animal to be removed from the premises.

Subsection 114A(2) allows entry to remove the animal at any reasonable time, or with the occupier's consent. Subsection (4) allows authorised officers to enter the premises to seek consent if they propose to seek entry at a time that is not otherwise reasonable. Subsection (5) makes it possible for the police to assist with entry if asked by an authorised officer.

Clause 21 replaces the existing consent to entry provision, to ensure that it covers entry under section 114A(2) as well as section 128(1).

Clause 22 notifies that part 3 of the Bill amends the *Domestic Animals Regulations 2001*.

Clause 23 replaces regulation 5. The new provision clarifies that a microchip implant containing a number that can be used to find out the name and address of the cat's owner will be sufficient. It also makes the identification requirement for a dog to be a registration tag. The previous provision allowed some other forms of identification, which caused some confusion about when a registration tag was required. As provided by the new section 15 (amended by clause 4 of this Bill), a registration tag must be worn by a dog whenever it is away from its home premises.