

2017

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

DOMESTIC ANIMALS (RACING GREYHOUNDS) AMENDMENT BILL 2017

EXPLANATORY STATEMENT

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DOMESTIC ANIMALS (RACING GREYHOUNDS) AMENDMENT BILL 2017

INTRODUCTION

This explanatory statement relates to the Domestic Animals (Racing Greyhounds) Amendment Bill 2017 (the Amendment Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Amendment Bill and to help inform debate on it. It does not form part of the Amendment Bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the Amendment Bill. It is not, and is not meant to be, a comprehensive description of the Amendment Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The Amendment Bill will give effect to the ACT Government's decision to transition to end greyhound racing in the ACT by 30 June 2018, and must be read in conjunction with the Racing (Greyhounds) Amendment Bill 2017.

Together, the two Amendment Bills provide for:

- greyhound racing and trialling in the ACT to cease with effect from 30 April 2018;
- removal of provisions relating to a controlling body for greyhound racing in the ACT;
- amendments to the definition of 'race' so that it no longer includes greyhound racing in the ACT; and
- the ownership, breeding and training of greyhounds in the ACT for racing outside the ACT to continue on the basis that it:
 - is at no cost to the ACT community; and
 - complies with strict animal welfare standards.

The *Domestic Animals Act 2000* and the *Domestic Animals Regulation 2001* currently regulate the identification and registration of domestic animals and the duties of owners, carers and keepers.

The *Animal Welfare Act 1992* promotes animal welfare. The objects of the Act are to: promote the welfare, safety and health of animals; ensure the proper and humane care and management of animals; and reflect the community's expectation that people who keep or care for animals will ensure they are properly treated.

The *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005* is made under the *Magistrates Court Act 1930* and provides for infringement notices for certain offences against the domestic animals legislation.

BACKGROUND

Animal welfare issues in relation to the greyhound racing industry were highlighted in an episode of *Four Corners* on the ABC on 16 February 2015, which exposed the practice of live baiting by some involved in the industry. Following the *Four Corners* program, an extensive inquiry into greyhound racing was established by the New South Wales Government under the *Special Commissions of Inquiry Act 1983*. The Inquiry was headed by the Honourable Michael McHugh AC QC. The Special Commission's report was an extensive and thorough analysis of the greyhound racing industry in NSW. It was conducted over a period of 16 months, with a dedicated team of staff, legal expertise, and wide powers to interview witnesses under oath and to compel the production of documents.

The report *Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales* (the McHugh Report) was published on 16 June 2016. It identified an extensive range of serious animal welfare issues including that:

“... the greyhound industry has been exposed as an industry that:

- a) has implicitly condoned, as well as caused, the unnecessary deaths of tens of thousands of healthy greyhounds;
- b) has failed to demonstrate that in future it will be able to reduce the deaths of healthy greyhounds to levels the community could tolerate;
- c) has engaged in the barbaric practice of live baiting; and
- d) has caused and will continue to cause injuries to greyhounds that range from minor to catastrophic...”

The McHugh Report identified a litany of concerns for such practices as:

- live baiting (using live animals for training greyhounds; for example, by tying them to a mechanical lure while greyhounds are released to pursue and catch them);
- live blooding (feeding live animals to greyhounds to prime them prior to racing and coursing meetings);
- wastage (mass slaughter of young and older greyhounds bred for the purpose of greyhound racing, which are subsequently destroyed either prior to being named or raced, or on retirement from racing);
- injury, death and euthanasia; and
- rehoming (McHugh noted a poor record in NSW of finding alternative homes for greyhounds at the end of their racing careers or when they are otherwise unable to race).

The decision to end greyhound racing in the ACT is based on the significant welfare concerns associated with the greyhound industry, as disclosed in the McHugh Inquiry.

As part of the Parliamentary Agreement, the ACT Government committed to end Government funding for greyhound racing and to take active steps to transition to end the operation of the industry in the ACT.

On 7 February 2017, the 2016-17 Budget Review was published, stating that:

“The Government will cease grant funding for the greyhound industry in the ACT, effective from the expiry of the current Memorandum of Understanding on 30 June 2017. The grant funding of \$1.033 million in 2017-18 will be redirected to a transition program to assist workers to re-skill, as well as rehome and care for the greyhounds”.

To assist with the transition to end the greyhound racing industry in the ACT, an independent consultant, Ms Mary Durkin, was engaged to provide an analysis of options to support the transition. Ms Durkin consulted with the greyhound racing industry, as well as the animal welfare sector, and provided the Attorney-General with her report *Greyhound Racing Industry Transition Options Analysis* (the Durkin Report) on 15 May 2017.

The Durkin Report found that the ACT greyhound racing industry is small. The analysis identified that there are 70 Canberra residents who are active participants (i.e. owners, breeders and trainers) in greyhound racing in the ACT, with approximately 52 racing greyhounds owned by ACT residents and based in the ACT. NSW owners and trainers represent a significant majority of participants in greyhound racing in the ACT. In 2016 approximately 71 dogs that raced were based in the ACT, while 1107 were from NSW.

The Durkin Report also found that the industry in the ACT is part of a broader regional network of greyhound racing activities and that it is impossible to divorce the ACT greyhound racing industry from the NSW industry, as they are inextricably linked. There can be no certainty that dogs being brought to the ACT from other jurisdictions to race have not come from breeders and trainers engaging in practices highlighted by the McHugh Inquiry.

The Greyhound Industry Transition Taskforce has been established in the Chief Minister, Treasury and Economic Development Directorate to assist the people and animals involved in the industry to transition out of it. Not all people involved in the industry in the ACT will transition out of it – some may continue to breed and train racing greyhounds in the ACT. However, this will be on the basis of strict animal welfare controls and at no cost to the community.

The Amendment Bill, in conjunction with the Racing (Greyhounds) Amendment Bill 2017, gives effect to the Government’s decision to end greyhound racing in the ACT.

OVERVIEW OF THE AMENDMENT BILL

The Amendment Bill adds a new division to the *Domestic Animals Act 2000* that outlines the obligations attaching to those who own or have day to day control of greyhounds that are involved, or are intended to be involved, in greyhound racing other than in the ACT.

All greyhounds remain subject to the existing requirements in the Domestic Animals Act for the registration of dogs generally in the ACT. An owner of a greyhound that is to be used for racing will be required to apply for racing greyhound registration for that dog from the age of six months. Owners of pet or rescue greyhounds that will not be involved in racing, training or breeding will be required to make a declaration to this effect by the time the dog is six months old to avoid liability for additional registration requirements.

People who have control of racing greyhounds (for training, handling or rearing purposes) will be required to obtain a racing greyhound controller licence. Racing greyhound controllers will be subject to the obligations in a new mandatory code of practice made under the *Animal Welfare Act 1992*.

If a person has received assistance from the Territory to exit the industry, they will not be eligible to register a greyhound or apply for a racing greyhound controller licence for the period agreed in writing as part of the conditions attached to the provision of transition support.

Racing greyhounds are no longer automatically exempt from de-sexing requirements. The process for obtaining a permit to keep a sexually entire greyhound for the purposes of racing will be part of obtaining a racing greyhound registration.

The breeding of greyhounds for racing in other jurisdictions is specifically prohibited unless a breeding licence is held. In order to track the welfare of very young greyhounds, breeders will be required to notify the Registrar of Domestic Animal Services the details of any litters within seven days of their birth.

There is an increased cost associated with enhanced monitoring of those who choose to continue to own, breed and train racing greyhounds for racing in other jurisdictions. The Government has been clear that the cost for implementing the necessary monitoring and regulation will not be subsidised by the broader Canberra community. The cost of registering a racing greyhound and obtaining a racing greyhound controller licence will reflect this decision.

In addition to the Domestic Animals Act, three laws will be amended by the Amendment Bill.

- The *Domestic Animals Regulation 2001* will be amended to include the additional information that will be required for racing greyhound registrations, and the information that will be provided on certificates of registration.
- The *Animal Welfare Act 1992* will be amended to make it an offence to conduct, or facilitate the conduct of, a greyhound race in the Act. It will also be an offence for a person to allow a greyhound that they keep to take part in a greyhound race in the ACT.
- The Animal Welfare Act will also be amended to make it an offence to allow a female greyhound to breed in a way that contravenes a breeding standard (the standard addresses matters such as breeding ages and the number and frequency of litters).

The *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005* will be amended to include new offences for those failing to hold the necessary licence or registration for racing greyhounds.

Human rights implications

During the Amendment Bill's development due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004*. The measures introduced in the Amendment Bill implement the Government's decision to end greyhound racing in the ACT, in light of the animal welfare impacts of the industry.

As a law of the Territory, the Amendment Bill may be seen as engaging the following rights in the Human Rights Act:

- recognition and equality before the law, section 8;
- privacy and reputation, section 12; and
- rights in criminal proceedings – presumption of innocence until proven guilty, subsection 22(1).

An assessment of the Bill against section 28 of the Human Rights Act is provided below.

A Compatibility Statement under the Human Rights Act has been issued by the Attorney-General.

Section 28 Human Rights Act assessment

Section 28 of the Human Rights Act (HRA) 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) of the HRA 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 purpose; and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Interference with employment or livelihood

The two Amendment Bills together establish a framework that: removes the legal framework for the administration and control of greyhound racing in the ACT; proscribes greyhound racing and trialling in the Territory; and introduces measures to monitor and protect the welfare of greyhounds that continue to race elsewhere.

As identified in the Durkin Report, these changes will affect the livelihood and/or employment of a small number of people in the ACT.

The Amendment Bills do not interfere with the ability of ACT residents to engage in, or bet on, greyhound racing interstate. They also preserve the ability for ACT residents to own, train or breed greyhounds for racing elsewhere.

The nature of the rights affected

There is no express right to employment or livelihood in the HRA, but two rights may be engaged by these provisions.

Section 12 of the HRA sets out the right to privacy, which relevantly provides that everyone has the right ‘not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily’. The concept of ‘privacy’ is elastic and may conceivably extend to a right to be left alone to pursue a livelihood of choice. Any arbitrary interference with a chosen livelihood may conceivably then fall within the scope of the right to privacy.

In order to engage the right to privacy, there must first be a reasonable expectation of privacy. The nature of greyhound racing means that it is less likely to attract this kind of protection. The conduct of greyhound racing, and the livelihoods that are connected to racing, involve public acts in public spaces. Greyhound racing is also already heavily regulated by legislation, which limits the expectation of privacy that may be relied on by participants.

Section 8 of the HRA also protects the right to recognition and equality before the law, and relevantly provides that everyone has the right to “enjoy his or her human rights without distinction or discrimination of any kind”. The example in section 8 refers to protection against discrimination on a range of grounds, including ‘other status’.

Among other things, the *Discrimination Act 1991* includes protection from discrimination on the ground of ‘profession, trade, occupation or calling’. The measures necessary to end greyhound racing and trialling in the ACT and to implement a robust monitoring regime may engage the right to equality for those who make a livelihood from greyhound racing.

The importance of the purpose of the limitation

As outlined above, the Amendment Bills address the significant welfare concerns associated with the greyhound racing industry in other jurisdictions, together with the finding in the Durkin Report that the links between racing in the Territory and in other jurisdictions are inextricable.

The cessation of greyhound racing in the Territory will ensure that greyhounds from other jurisdictions, whose animal welfare arrangements are outside the control of the ACT, will not be brought here to race. For those greyhounds that are based in the ACT and will continue to race elsewhere, these amendments provide for specialist regulation and control that will enable an appropriate level of protection for those dogs.

The nature and extent of the limitation

As outlined above, the limitation on those seeking to make a livelihood from greyhound racing in the ACT is threefold. Together, the Amendment Bills will remove the legal and administrative basis for greyhound racing; proscribe greyhound racing and trialling; and place controls on those who will continue to own, breed or train racing greyhounds in the Territory.

The relationship between the limitation and its purpose

The decision to cease greyhound racing and trialling in the Territory was made based on the evidence of animal welfare concerns in other jurisdictions, in a context where the local industry is inextricably linked to interstate racing (for the most part, NSW) and where the ACT has no control over the way in which greyhounds are regulated in other jurisdictions.

The Amendment Bills remove the legal and administrative basis for greyhound racing in the Territory, which is necessary to prohibit further racing activities.

As the legislation continues to provide for ACT residents to own, breed and train racing greyhounds, it is necessary to implement a robust monitoring regime that will meet the purpose of ensuring high animal welfare standards for the industry. The efficacy of this regime will be considered by the government after a period of two years, to determine whether any further reforms are warranted.

As a result of the need to track and monitor the welfare of those greyhounds involved (or intended to be involved) in racing, there will be additional costs for those who decide to continue participating in greyhound racing in other jurisdictions. Greyhound racing is a commercial activity, and it is the animal welfare concerns associated with this activity that have driven these reforms. It is not appropriate for the broader ACT community to bear the costs associated with regulating and monitoring the care of racing greyhounds. Accordingly, there will be new costs associated with registering a racing greyhound, and maintaining a licence to keep or train a racing greyhound.

Less restrictive means reasonably available to achieve the purpose

These Amendment Bills represent the least restrictive manner in which to achieve the purpose of protecting the welfare of racing greyhounds in the ACT. As noted above, the inability to appropriately control the welfare management of greyhounds in other jurisdictions requires an end to racing that necessarily involves a vast majority of greyhounds from interstate. Given evidence about the numbers of local greyhounds involved in Canberra race meetings, it is not viable to entertain a greyhound racing industry that is limited to ACT based dogs.

While terminating the opportunity of any entity to race or train greyhounds in the ACT will impact on individual owners and trainers, many of them currently do, and will continue to be able to, work in the industry in various locations in NSW.

Strict liability offences

The Amendment Bill introduces strict liability offences for:

- having day to day control of a racing greyhound without holding a racing greyhound licence;
- having day to day control of a racing greyhound and failing to comply with a condition of the racing greyhound licence; and
- failing to report details of a litter of greyhounds within seven days.

The nature of the right being limited

The incorporation of strict liability elements has been carefully considered during the Amendment Bill's development. Strict liability offences arise in a regulatory context where reasons such as animal welfare 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, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

The importance of the purpose of the limitation

The rationale for inclusion of strict liability offences is to ensure that a sufficiently robust monitoring regime can operate efficiently to meet the purpose of ensuring high animal welfare standards for the industry.

As outlined above, the legislation continues to provide for ACT residents to own, breed and train racing greyhounds. The animal welfare concerns associated with the commercial activity of greyhound racing have driven these reforms.

The nature and extent of the limitation

The offences that are imposed are infringement offences and are designed to enable a quick and effective response where parties have failed to meet obligations. This framework is

designed to encourage compliance, not to disproportionately penalise those who fail to comply.

The relationship between the limitation and its purpose

The overriding rationale for the strict liability offences is to protect the welfare of greyhounds which are, or are intended to be, connected with the greyhound racing industry. This is a commercial industry that has previously been connected to established animal welfare concerns in other jurisdictions; and, as the ACT is inseparably linked to racing in the NSW region, it is important to provide capacity for efficiently enforcing the regulatory mechanisms that encourage adherence with animal welfare requirements.

The offences included have been assessed against current community standards and norms, and are an important element in ensuring the policy intent of regulating to ensure that animal welfare standards particular to racing greyhounds are met.

Less restrictive means reasonably available to achieve the purpose

In developing the legislation an assessment was made as to whether any less restrictive means were available to achieve the purpose of the Amendment Bill. There is no less restrictive means available for the strict liability offences as these offences are limited to those key aspects that are required to achieve the government's intent of tracking the ownership, control and treatment of racing greyhounds.

Due regard has been given to the *Guide for Framing Offences* and the maximum penalty units applied for the strict liability offences (10 penalty units). Furthermore, the Criminal Code defences are still available to a person charged under these offence provisions, particularly the mistake of fact defence (*Criminal Code 2002* section 36 and section 53) and the defence of intervening conduct or event (*Criminal Code* section 39, noting section 54).

While due consideration has been given to the framing of offences in the Bill and the impact on human rights, it should be noted that the new strict liability offences introduced by the Amendment Bill all apply to those involved in breeding, owning and training racing greyhounds.

In order to ensure that those people in the ACT who continue to engage, or who begin to engage, in breeding or training of racing greyhounds are aware of their obligations under this regulatory framework, the government will undertake a proactive and targeted awareness raising campaign with stakeholder groups. It is therefore reasonable to expect these parties will know, or ought to know, their legal obligations.

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause is a formal provision setting out the name of the Act as the *Domestic Animals (Racing Greyhounds) Amendment Act 2017* (the Amendment Act).

Clause 2 Commencement

This clause provides that the Amendment Act will commence on 30 April 2018.

Clause 3 Legislation amended

This clause identifies that the *Domestic Animals Act 2000* (the Domestic Animals Act) and the *Domestic Animals Regulation 2001* will be amended. In addition, schedule 1 of the Amendment Act includes amendments to the *Animal Welfare Act 1992* and the *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*.

PART 2 DOMESTIC ANIMALS ACT 2000

Clause 4 Offences against the Act – other legislation applies New dot points in s 4(a) note 1

Clause 4 adds five new dot points to note 1 in s 4(a) of the *Domestic Animals Act 2000*. These are the new offences against the Act to which the *Criminal Code* will apply, and they are derived from the additional monitoring and regulation required for those who continue to breed, own or train greyhounds for racing elsewhere.

Clause 5 Registration applications Section 6 (1)

Clause 5 substitutes the term ‘owner’ for ‘keeper’ in the section of the Domestic Animals Act that outlines the requirements for registration applications. Recognising that in the case of racing greyhounds it may be that the person who has day-to-day control of the dog is different to the person or persons who own it, this amends the existing registration obligation to clarify that an owner of a dog is responsible for applying to register the dog.

Clause 6 New note with regard to registration applications Section 6(1)

Clause 6 adds a note to the section of the Domestic Animals Act that outlines the requirements for registration applications. The note reflects that a greyhound which is, or is intended to be, involved in racing elsewhere than the ACT is required to be registered both as a dog under the general registration provisions and additionally as a ‘racing greyhound’ under Division 2.4A of the Domestic Animals Act.

Clause 7 Registration numbers, certificates and tags

Section 11

Clause 7 clarifies that, on registering a dog, the Registrar must provide proof of that registration to the owner of the dog. This recognises particular circumstances of racing greyhounds, where it may be that the person who keeps the dog is different to the person or persons who own it.

Clause 8 Change of keeper

Section 12(1)

As above, clause 8 clarifies that the obligation in section 12 is to keep the Registrar apprised of a change of dog ownership, and this is achieved by inserting the word ‘registered’ before ‘keeper’, in recognition of the circumstances of those racing greyhounds that are kept by persons other than their registered owner (or owners in the case of a syndicate).

Clause 9 Change of keeper

Section 12(2)

Clause 9 substitutes a slightly amended section 12(2) that clarifies responsibilities with respect to notifying the Registrar that ownership of a dog has changed.

Clause 10 Registration – cancellation

Section 13(1)

Clause 10 makes a minor amendment to existing section 13(1) by replacing ‘him or her’ with ‘the person’.

Clause 11 Unregistered dogs

Section 14(3)

The Domestic Animals Act imposes penalties for keeping a dog that is unregistered, or a dog for which a person is not the registered owner. There are some existing exceptions to this, and clause 11 extends the existing exception in section 14(3) to ensure that people who are working to train, breed or otherwise care for racing greyhounds owned (and registered) by others will not be committing an offence, as long as they hold a racing greyhound controller licence.

Clause 12 Tag offences

Sections 15(1) and 15(2)

The Domestic Animals Act makes it an offence for a person to be in control of a dog that is not wearing its registration tags – either on private premises not owned by the keeper or carer, or in a public place. Clause 12 makes a slight amendment to clarify that these offences attach to the *registered* keeper, who is the owner of the dog, as well as any temporary carers.

Clause 13 **Tag offences**
Section 15(3)

Clause 13 provides similar clarification to clause 12 above, inserting the word *'registered'* before *'keeper'* to make it clear that the relevant obligation attaches to the registered owner of a dog.

Clause 14 **Tag offences**
Section 15(4)

Clause 14 replaces the phrase *'dog's keeper'* in section 15(4) with the phrase *'dog's registered keeper'* to make it clear that the relevant obligation attaches to the registered owner of a dog.

Clause 15 **Tag offences**
Section 15(5)

Clause 15 provides similar clarification to clauses 12 and 13 above, inserting the word *'registered'* before *'keeper'* to make it clear that the relevant obligation attaches to the registered owner of a dog.

Clause 16 **Requirement to be licensed**
New section 18(2)(da)

Clause 16 adds a new exception to the requirement in section 18 of the Domestic Animals Act to be licensed to keep four or more dogs. A person who holds a *'racing greyhound controller licence'* will not need to apply for an additional licence to keep four or more dogs because the considerations about the ability of the licence holder to cater for the welfare of a number of dogs will be built into the approval process for the racing greyhound controller licence.

Clause 17 **Division 2.4 heading**

Clause 17 amends the heading of Division 2.4 to recognise the addition of the *'racing greyhound controller licence'* to the list of special licences available under the Domestic Animals Act. The heading now indicates that the division deals with the general provisions applicable to a range of special licences that may be issued under the Act.

Clause 18 **Meaning of *special licenses* for Division 2.4**
Section 29, definition of *special licence*

Clause 18 adds the new category *'racing greyhound controller licence'* to the definition of what constitutes a special licence for the purposes of the Domestic Animals Act.

Clause 19 Special licences – duration
Section 31(1)

Clause 19 adds the racing greyhound controller licence to section 31(1) of the Domestic Animals Act, which specifies the duration of a special licence relating to multiple dogs or racing greyhounds as being twelve months, if not sooner surrendered or cancelled.

Clause 20 Variation of special licences
New s33(4)(ba)

Under the Domestic Animals Act, the Registrar may vary a special licence after an application from a licence holder, or if the Registrar believes it is in the public interest to do so. Clause 20 inserts a new section 33(4)(ba) that requires the Registrar to consider the matters outlined in new section 39I(3) when deciding whether to vary a licence. These matters include consideration of both the numbers and the manner in which other dogs are kept, and any previous conviction or disciplinary action relevant to the suitability of the applicant to hold a racing greyhound controller licence.

Clause 21 New s33(7A)

Clause 21 creates a new provision that makes it clear that the Registrar must refuse an application to vary a racing greyhound controller's licence if the application involves a variation that would have been refused if it was made as an original application, according to the matters to be considered in new section 39I(3), as discussed above.

Clause 22 Definition of vary
Section 33(10)

Clause 22 ensures that the existing section 33(10) caters for the variation of racing greyhound controller licences by amending the provision to include, similarly to other special licences, that a variation includes substitution of one racing greyhound for another racing greyhound.

Clause 23 Racing Greyhounds
New Division 2.4A

Clause 23 inserts a new division in the Domestic Animals Act that outlines the obligations attaching to those who own or have day to day control of greyhounds that are involved, or are intended to be involved, in greyhound racing other than in the ACT.

New section 39A Racing greyhounds

New section 39A defines 'greyhound racing' and 'racing greyhound', for the purposes of the Act. These definitions attach a broad meaning to both terms. The definition of 'greyhound racing' extends beyond a formal greyhound race to include greyhound trials and training races, and racing in a test of speed of one or more racing greyhounds. A 'racing greyhound' includes a greyhound that is intended to be used for racing.

The scope of these definitions is intended to provide coverage for the kinds of activities that the government seeks to regulate and monitor to ensure robust animal welfare protections for those greyhounds in the Territory who will still be involved in the racing industry elsewhere.

A note refers to the fact that it is an offence under section 18A of the Animal Welfare Act to conduct or take part in a greyhound race.

New section 39B Presumption greyhound is a racing greyhound

As identified in the McHugh Report, a number of concerns about the potential mistreatment of racing greyhounds arise in the first few months of life, such as wastage in litters of puppies, and early training techniques that impact the ability of retired dogs to be re-homed.

New section 39B provides that any greyhound that is six months or older is taken to be a racing greyhound unless the owner of the greyhound declares that it is not, and is not intended to be used for greyhound racing. This provision is necessary to distinguish between greyhounds which are part of the racing industry and those which are pet, rescue or re-homed greyhounds.

There is a period of time prior to the formal commencement of racing where a greyhound is connected to racing. Greyhounds which are bred, reared and educated in the months before formal training will not necessarily be registered with a controlling body in another jurisdiction, but are not living simply as pets. It is important that these dogs are able to be tracked and monitored by animal welfare professionals to ensure that their welfare is protected in this period.

As the majority of young greyhounds are still connected to racing in ways such as these, the Registrar will proceed on the basis that a greyhound that is six months or older is a racing greyhound within the terms of the Act, unless the owner makes a declaration to the contrary. Making such a declaration is not an onerous process, but it will be an offence to make a false or misleading declaration.

New section 39C Racing greyhounds – registration

Under the Domestic Animals Act, dogs older than 56 days in the ACT are required to be registered. This kind of general registration is for the lifespan of the dog, and applies equally to greyhounds as it does to all other dogs in the ACT.

New section 39C provides for a new registration category for racing greyhounds. This registration is in addition to the lifetime registration that is described above. Where a person seeks to keep a racing greyhound, they can apply for special racing greyhound registration that will require annual renewal. In considering whether to grant an application of this kind,

the Registrar must refuse to grant the registration if the applicant is disqualified from keeping an animal or is disqualified or suspended from participating in greyhound racing – in the ACT or elsewhere.

New section 39D Offence – unregistered racing greyhound

New section 39D introduces offences for a person who keeps a racing greyhound that is not registered as such, or one that the person is not the relevant registered keeper or licensed racing greyhound controller for. This is to assist in the tracking of those greyhounds involved in racing, and to ensure that those who have day-to-day control of racing greyhounds are appropriately licensed, which imports a series of obligations with respect to animal welfare, including adherence to the mandatory code of practice for the keeping of racing greyhounds.

There is an exception in new section 39D(2)b that ensures those who provide temporary care for a racing greyhound, or who have recently moved to the ACT, will not commit an offence if they have charge of a racing greyhound for whom they are not the registered keeper or licensed racing greyhound for less than 28 days. This provides sufficient time for any person who will have a longer term relationship with a racing greyhound in the ACT to obtain the necessary registration or licence.

New section 39E Racing greyhounds – registration numbers etc

New section 39E clarifies that the existing requirements for general registration of dogs (the allocation of and evidence for a registration number) also apply to the registration of racing greyhounds.

New section 39F Racing greyhounds – cancellation of registration

New section 39F provides for the situation where, for a variety of reasons including death, retirement or transfer of a racing greyhound, the registrar is required to cancel the racing greyhound registration. In the event that a greyhound is no longer connected to racing, this relieves the registered owner of the obligation to maintain the annual racing greyhound registration. If a greyhound who will continue to be involved in racing is sold or transferred to a new owner, it will be the responsibility of the new owner to make their own racing greyhound registration application for that dog.

New section 39G Day-to-day control of racing greyhounds – requirement to be licensed

New section 39H Racing greyhound controller licences – applications

New section 39G introduces a requirement for those who have day-to-day control of a racing greyhound to be licensed as a racing greyhound controller. This will include a breeder, trainer, handler, educator or an owner who retains control of their own dogs. The requirement to be licensed is based on the need for appropriate monitoring of those parts of a racing greyhound's life where animal welfare concerns are most likely to arise.

As outlined above, the licence is an addition to the existing class of annually renewable special licences in section 29 of the Act. The general requirements for special licences are outlined in section 30 of the Act, which specifies that they must state the name of the licensee, the registration of each dog to which the license relates, the address of the premises to which the licence relates and any conditions of the licence.

For a racing greyhound licence, new section 39H also requires the applicant's address to be provided, and the details of any controlling body with which the greyhound or greyhounds are registered. Compliance with the mandatory code of practice for the keeping of racing greyhounds will be a condition of the licence.

Having day-to day control of a racing greyhound without this licence will be a strict liability offence. For those that do hold a licence, it will also be a strict liability offence to fail to comply with the conditions of that licence. The offences will not apply to those who are temporarily looking after a racing greyhound, such as a vet or rescue/re-homing organisation.

New section 39I Racing greyhound controller licences – approval or refusal

The Registrar will be required to give written notice of either approval or refusal to the applicant for a racing greyhound controller licence.

New section 39I requires the Registrar to be satisfied that the applicant can meet a range of requirements for the welfare of the greyhounds in their care. The Registrar must also consider the suitability of the applicant in light of any convictions or findings of guilt for animal welfare offences, or disciplinary actions taken against the applicant under gaming laws or with respect to racing or betting.

New section 39J Racing greyhound controller licences – conditions

Licensed racing greyhound controllers will be subject to the obligations outlined in the mandatory code of practice, as a condition of their licence. The Registrar may also impose other conditions on a licence when it is issued, which will provide an opportunity to address any matters that require specific attention. New section 39J outlines the matters the Registrar is required to consider when deciding whether or not to impose a condition on a racing greyhound controller licence, and the kinds of conditions that may be specified.

Clause 24 Offence – breeding dogs or cats without licence
New section 72 (1A) and 1(B)

Existing section 72 makes it an offence to breed a litter from a dog or cat for profit or commercial gain without holding a breeding licence. This existing offence is a strict liability offence.

New section 72(1A) introduces an offence with respect to the breeding of greyhounds, which also attracts strict liability. Any person who breeds a litter from a greyhound without holding a breeding licence will commit an offence, unless they are able to demonstrate that the litter was not bred for the purpose of greyhound racing.

In the context of greyhound racing, breeding occurs in a variety of settings and may not be demonstrably connected to profit or gain. Given the importance of the obligations imposed by a breeder's licence, it is necessary to make it clear that these licences are required for any greyhounds bred for the purpose of racing.

Clause 25 Breeding licence – conditions
Section 72E(2)

All breeding licences are currently subject to the condition that the licensee must comply with a relevant breeding standard determined under the Animal Welfare Act. This clause inserts an additional condition that the licensee must also comply with any relevant mandatory code of practice made under the Animal Welfare Act. This will require breeders to comply with the elements of the *Mandatory Code of Practice for the Keeping of Racing Greyhounds* as a condition of their licence. Failure to comply with a condition of a breeding licence may lead to cancellation of that licence by the Registrar, under existing section 72G of the Act.

Clause 26 Offence – reporting on breeding of greyhounds
New section 72M

New section 72M requires a person who breeds a litter of greyhound puppies to notify the Registrar in writing within seven days of the details of that litter (including the number of puppies and sex of each puppy born). This is to assist in the tracking of greyhounds from the earliest stages of their lives. As outlined above, many of the significant animal welfare concerns identified in the McHugh Report relate to dogs that are too young to have begun racing, and taking a robust approach to addressing these issues requires a higher level of regulation of this early stage.

Requiring notification of the birth of greyhound puppies will provide a mechanism for monitoring the numbers of puppies born and tracking the progress of these dogs. Failure to comply with this notification provision is a strict liability offence.

Clause 27 Dogs and cats to be de-sexed if over certain age
New section 74(4)(c)

The Act currently requires dogs to be de-sexed from six months of age, unless the owner holds a permit to keep the dog sexually entire. Clause 27 inserts a new sub-section into this section of the Act that exempts racing greyhounds from this requirement. This means that the

registered keeper of a racing greyhound will not be required to apply for an additional permit for their dogs, as long as racing greyhound registration is in place. When a greyhound is no longer connected to racing, an owner will be subject to the same rules that apply to all dogs generally, and will need to consider whether to de-sex their greyhound, or apply for a permit to keep it sexually entire.

Clause 28 Sale of older dogs and cats to be notified if not de-sexed
New section 74A(3)

As outlined above, the holder of a racing greyhound registration does not require a special permit to keep their greyhound not de-sexed. New section 74A(3) will accordingly exempt racing greyhound registration holders from the existing requirement in section 74A of the Act to notify the Registrar within three working days of sale of the name and address of the buyer.

Clause 29 Approval or refusal of applications
Section 76(2)(c)

Clause 29 removes the previously existing provision in section 76(2)(c) of the Act that required the Registrar to approve any application to keep a greyhound not de-sexed. This reflects the change in arrangements where racing greyhound registration will include an automatic exemption from this requirement, as outlined above.

Clause 30 Cooperation with other jurisdictions – racing greyhounds
New division 9.3

While the Bills will prohibit greyhound racing in the ACT, greyhounds that are owned by ACT residents (or that reside or are trained here) will still be able to race in other jurisdictions.

Clause 30 inserts a new division in the Act that provides for ACT authorities to share necessary information with gaming, racing or animal welfare authorities in other jurisdictions. These provisions support both racing integrity and animal welfare.

Clause 31 Transitional – Domestic Animals (Racing Greyhounds) Amendment Act 2017
provisions
New Part 12

New section 160 Racing greyhound controller licences – existing racing greyhound keepers

New section 160 is designed to ensure that people currently involved in the greyhound racing industry in the ACT will have sufficient time to comply with the amended regulatory obligations for racing greyhounds. People living in the ACT, who are currently in day-to-day

control of a greyhound that is based here (and registered with a greyhound controlling body), will be taken to hold a racing greyhound controlling licence, which will remain in force for six months after the legislation commences. This will provide coverage for those people who wish to continue their involvement with greyhound racing in other jurisdictions to meet the requirements for obtaining a racing greyhound controller licence.

New section 161 Eligibility of recipients of Territory assistance

As part of the transition to ending greyhound racing in the ACT, the government has made transition support available to people who wish to discontinue their involvement with greyhound racing. Transition support packages will be negotiated to address the individual needs of each applicant, considering their specific circumstances. An agreement in writing between the individual and the Territory will specify any conditions that attach to the provision of transition support. One of the conditions that may attach to the provision of support is an undertaking to discontinue involvement in greyhound racing.

New section 161 stipulates that if a person has received assistance from the Territory on the condition that they exit the industry, they will not be eligible to register a greyhound or apply for a racing greyhound controller licence for the period agreed in writing as part of the conditions attached to the provision of transition support.

New section 162 Transitional regulations

New section 162 provides that that transitional regulations may be made by the Executive to ensure that any other matters arising from the enactment of the Amendment Bill may be addressed. The section includes two different regulation making powers.

Any regulation made under section 162(1) cannot exceed the operation or purpose of the amended Act.

Section 162(2) enables the making of a regulation that modifies the Domestic Animals Act. A regulation under this section may only modify Part 12 of the Domestic Animals Act (including in relation to another Territory law), and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Domestic Animals Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation. This power appropriately enables the Executive to deal quickly with any unforeseen transitional issues that arise as a consequence of provisions within the Amendment Bill.

Section 160(3) gives a regulation under section 162(2) full effect according to its terms. A provision of Part 12 of the Domestic Animals Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other Territory law) as if it were

amended by an Act, and in accordance with established principles of statutory interpretation. The proposed section does not express or intend to limit future enactments of the Legislative Assembly; nor does it restrain the power of the Assembly to make laws. It is understood that this provision could itself in future be amended or repealed by the Assembly at any time like other pieces of legislation and that the Assembly could make another law that overrides this law if necessary.

The capacity to modify an Act through subordinate legislation is referred to as a 'Henry VIII' clause. It is acknowledged that these clauses are generally not preferable. In developing the Amendment Bill, every attempt has been made to foresee issues arising in the transition to end the greyhound racing industry in the ACT. However, this provision is necessary in the Amendment Bill as there is no practical alternative available to ensure that any unforeseen matters that might arise during the transition can be addressed expediently.

As a further limitation on this power to make transitional regulations, new section 160 expires two years after commencement.

As noted above, the ACT greyhound racing industry is inextricably linked with the industry in NSW. NSW is currently undertaking a major reform program within its greyhound racing industry, with the pending implementation of the NSW Greyhound Welfare and Integrity Commission. Given the Amendment Bill does not prohibit breeding or training of dogs that may be raced (many of them in NSW), it is appropriate that the Government has the power to respond quickly to unforeseen issues.

New section 163 Expiry – pt 12

New section 163 provides that Part 12 expires five years after it commences. This will allow sufficient time for any transitional matters associated with the ending of greyhound racing in the ACT to be addressed. A five-year expiry for this part is also in line with the potential agreements that the Government may make with individuals for the provision of transition support to exit the greyhound racing industry.

Clause 32 Dictionary, new definitions

Clause 32 inserts new definitions for the key terms that are included in the new provisions of the Domestic Animals Act that relate to racing greyhounds.

Clause 33 Dictionary, definition of special licence

Clause 32 inserts a definition of special licence that encompasses the new racing greyhound controller licence.

PART 3 DOMESTIC ANIMALS REGULATION 2001

Clause 34 Dog registration information – Act, s 8 New section 5(f) and 5(g)

Clause 34 inserts two new subsections in existing section 5 of the *Domestic Animals Regulation 2001* that will require certain information to be recorded on the register about the status of a greyhound when it is registered under general dog registration provisions.

Clause 35 Information on dog registration certificates – Act s11(2) Section 6(e)

Clause 35 is a minor amendment that inserts the word '*registered*' before '*keeper*' in section 6(e) of the Domestic Animals Regulation to make it clear that the obligation is to supply the name and address of the registered owner of a dog on the registration certificate.

Clause 36 Information on greyhound registration certificates New section 6AA

Clause 36 inserts a new section 6AA into the Domestic Animals Regulation, specifying the information that is required to be included on a racing greyhound registration certificate.

Clause 37 Reviewable decisions Schedule 1, item 8, column 3

Clause 37 makes a minor amendment to the wording in Schedule 1 of the Domestic Animals Regulation, by referring to 'special licences' rather than specifying each of the licence types by name.

Clause 38 Schedule 1, new items 9A to 9C

Clause 38 inserts three new reviewable decisions in Schedule 1 of the Domestic Animals Regulation. An applicant for racing greyhound registration will be able to seek review of a decision to refuse that registration, as will an applicant for a greyhound controller licence with respect to a decision to refuse to issue that licence. An applicant for a greyhound controller licence that is issued with conditions will also be able to seek review of that decision.

Clause 39 Dictionary, note 3

The note in the Dictionary in the Domestic Animals Regulation highlights that certain terms are defined in the Domestic Animals Act. Clause 39 updates this note to include the new terms racing greyhound, racing greyhound controller licence, registered keeper and registered racing greyhound.

SCHEDULE 1 OTHER AMENDMENTS

Part 1.1 Animal Welfare Act 1992

Item 1.1 New section 15B(7)

Item 1.1 of schedule 1 adds a new offence to existing section 15B of the Animal Welfare Act, which relates to intensive breeding of cats or dogs. It will be an offence for a person in charge of a female greyhound to allow the greyhound to breed in a way that contravenes a breeding standard.

Unlike other offences in this section, there is no requirement for the person to have been either reckless as to whether the breeding contravenes a standard, or to have intended to make profit or commercial gain. This is because, as outlined above, the specific animal welfare concerns related to the breeding practices for racing greyhounds as evidenced in the McHugh Report require a stronger regulatory approach to compliance.

Item 1.2 New section 18A

Item 1.2 of schedule 1 expressly prohibits greyhound racing by inserting a new section 18A in the Animal Welfare Act with the introduction of new offences attracting a maximum penalty of 100 penalty units, imprisonment for one year, or both. These offences apply to people who conduct, or facilitate the conduct of, a greyhound race in the ACT, as well as to those who allow a greyhound that they keep to take part in a race in the ACT.

Greyhound racing is defined broadly to include trialling or training races, as well as racing in a test of speed of one or more racing greyhounds.

The maximum penalty for these offences is in line with existing offences in the Animal Welfare Act. For example, the offence in existing section 18 of the Animal Welfare Act makes it an offence to conduct or take part in a rodeo with the same maximum penalty attached.

Part 1.2 Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005

Item 1.3 Schedule 1, part 1.1 table, new items 14A to 14C

Item 2.3 will insert three new items in the table that outlines the penalty units and the associated infringement penalty costs. The new strict liability offences that have been added to this table are keeping an unregistered racing greyhound (new section 39D(1)), having day-to-day control of a racing greyhound without a greyhound racing controller licence (new section 39G(1)) and failing to comply with a controller licence condition (new section 39G(2)). Each of these offences will attract an infringement penalty of \$150.

Item 1.4 **Schedule 1, part 1.1 table, items 29 to 32**

Item 1.4 amends the table in part 1.1 in schedule 1 to remove three items that are no longer required because previous amendments to the Domestic Animals Act removed those offences. This amendment is unrelated to the main business of the Domestic Animals (Racing Greyhound) Amendment Bill 2017, it simply removes redundant references in the existing table.