

2022

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

**ANIMAL MANAGEMENT AND WELFARE LEGISLATION AMENDMENT BILL
2022**

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Chris Steel MLA
Minister for Transport and City Services**

ANIMAL MANAGEMENT AND WELFARE LEGISLATION AMENDMENT BILL 2022

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 Animal Management and Welfare Legislation Amendment Bill 2022 (the Bill) is to make minor updates to the Territory's animal management and welfare legislation, specifically the *Domestic Animals Act 2000*, *Animal Welfare Act 1992*, and Animal Welfare Regulation 2001. These amendments make technical amendments, enhance administrative process, make minor reflections of best practice welfare, bring further consistency between dog and cat management, and make the legislation consistent with existing policies and practices.

Domestic Animals Act 2000

Minor amendments are proposed relating to multiple dog and cat licences, illegal breeding and desexing, advertising dogs and cats, and assistance animal accreditation.

The most significant amendments are those relating to multiple dog and cat licences. The majority of the amendments do not impact on existing policies or operations and bring the legislation up to date with operational and administrative practices already underway.

In summary, these amendments relate to:

- Multiple dog and cat licences, otherwise known as licences to keep four or more dogs or cats, specifically:
 - Replacing the annual licence duration of multiple dog licences with a two-year duration, and also applying a two-year duration to multiple cat licences, which currently do not have a set duration,
 - Aligning multiple cat licence requirements with those for dogs (where relevant to cats), particularly the requirement for registration numbers and the name and address to be provided, and
 - Exempting foster carers from the requirements to provide registration numbers;
- Removing the female-specific wording from an illegal breeding offence to make it consistent with a similar illegal breeding offence, as existing policy and accepted practice is that both keepers of male and female dogs or cats must not breed their dogs or cats without a breeding licence;

- Clarifying that registered assistance animal trainers must also be registered as assessors to test and accredit assistance animals, which is in line with current practice;
- A technical amendment to the requirements for advertising dogs and cats to align with the original policy intent of the legislation and with current practice, which alters the scope of the offence by no longer requiring both the rehoming identifier and microchip number to be displayed; instead, the offence at section 72K(3) will now only require either the rehoming identifier or the microchip number to be displayed on an advertisement;
- Clarifying the definition of ‘desex’ so that it reflects newer methods of surgical sterilisation, which does not change the scope of any offences related to desexing as the definition is ‘inclusive’ rather than ‘exhaustive’, meaning it serves an explanatory purpose only without constricting how related offences apply; and
- Technical updates to headings and definitions in line with standard drafting practice.

Animal Welfare Act 1992 and Animal Welfare Regulation 2001

Technical updates to headings and notes linking to definitions in the *Legislation Act 2001* are made to the *Animal Welfare Act 1992* and the *Animal Welfare Regulation 2001* in line with current standard drafting practice.

CONSULTATION ON THE PROPOSED APPROACH

The internal business units engaged in the identification and development of the amendments included Domestic Animal Services (DAS), Territory and Business Services and TCCS Boards and Committees.

External stakeholders engaged during the drafting process included the ACT Animal Welfare Advisory Committee (AWAC) and the ACT Veterinary Practitioners Board. These stakeholders represent expert views and a significant proportion of animal welfare and industry groups in the ACT.

The amendment relating to assistance animal accreditations is in line with the views expressed in targeted consultation with experts that took place in 2020. The legislation for the assistance animal accreditation framework was established in 2019 prior to the development of the policy and standards. Feedback gathered from consultation following passage of the legislation made it clear that a higher standard should be expected of registered assessors than registered trainers, as assessors have the higher responsibility of testing and accreditation. This is reflected in current internal policy where only registered assessors may test and accredit assistance animals, while registered trainers may work with assistance animals to prepare them for testing.

These internal and external stakeholders provided information on operational, administrative and policy matters to ensure the legislation accurately reflects on-the-ground service delivery and best-practice animal management and welfare.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the HR Act), noting the Bill is not a Significant Bill and does not engage human rights to a significant extent.

All rights engaged by the Bill relate to amendments to the *Domestic Animals Act 2000*. All references to sections in the following analysis other than to the HR Act should be taken as referring to the *Domestic Animals Act 2000*.

Rights engaged

The Bill may promote the right to equality and non-discrimination under section 8 of the HR Act and may limit the right to privacy under section 12, the right to be presumed innocent until proven guilty under section 22(1), and the right to recognition and equality before the law under section 8 of the HR Act.

Rights promoted

The right to recognition and equality before the law under section 8 of the HR Act, specifically equality and non-discrimination, may be positively impacted through reduced renewal fees for multiple dog licence holders. For members of the community who own four or more dogs and are required to be licensed and renew this licence annually, the changes under the Bill reduce renewals from annual to two-yearly, while maintaining the fee amount. This halves the renewal fee over each two-year period, making these licences more accessible to persons who may be facing financial hardship.

Rights Limited

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

Right to privacy

The right to privacy and reputation under section 12 of the HR Act may be limited by amendments that align multiple cat licences with that for dogs. Specifically, the right to communication and informational privacy is engaged through the introduction of name and address requirements for each applicant and the registration number for each cat.

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. Strict liability offences contain no fault elements for all, or some, of the

physical elements of an offence. Strict liability offences are only made in a context where the person knows, or ought to know, their legal obligations. Expanding the scope of the existing strict liability offence at section 72(1) by removing the word 'female', thus applying the offence to keepers or carers of male or female dogs or cats, engages and limits the right to be presumed innocent until proven guilty.

Right to equality and non-discrimination

The human right to recognition as a person before the law and equality and non-discrimination is set out at section 8 of the HR Act. This includes the right to protection from indirect discrimination, which may arise where a law may disproportionately affect certain groups, including groups which may be more likely to be financially disadvantaged or experience financial hardship.

The Bill proposes to introduce a two-year duration for multiple cat licences, which currently do not have a set duration. As there is already a renewal fee established under the Domestic Animals (Fees) Determination 2022, this amendment will apply the existing renewal fee to multiple cat licence holders every two years, which may limit the right to equality and non-discrimination as these fees may have a greater impact on vulnerable members of the ACT community.

2. *Legitimate purpose (s 28(2)(b))*

Right to privacy

The collection of specific information about a multiple cat licensing framework application is necessary to achieve the legitimate purpose of protecting animal welfare and upholding responsible cat ownership. The current framework does not explicitly call for the name of the applicant, the address where the cats are to be kept, or the registration numbers of each cat. This makes it difficult in administrative application of the licences, as DAS relies on these details being provided voluntarily and would not be in a position to reasonably approve licences where these details were not known at least to some extent.

The purpose of the applicant disclosing this information for a multiple cat licence overlaps with the overarching purpose of annual cat registration, which seeks to promote responsible cat ownership for the purposes of reducing animal nuisance, promoting cat welfare and management, and promoting the welfare and protection of wildlife.

Right to be presumed innocent until proven guilty

The legitimate purpose of removing the female-specific element to the offence at section 72(1) is to promote responsible dog and cat ownership and management,

specifically responsible breeding of dogs and cats, and support strong animal welfare outcomes in the Territory.

There are significant animal welfare implications associated with illegal breeding of dogs or cats, which are widely recognised across industries and jurisdictions, such as if animals are being bred in unsuitable conditions or in a way which compromises their health and wellbeing. A breeding standard exists under the *Animal Welfare Act 1992*, and it is expected that all licensed breeders adhere to this standard unless they obtain written approval from a veterinarian for their specific circumstances. This is to uphold animal welfare and management principles by prioritising the welfare of animals used for breeding purposes, reducing instances of genetic abnormalities, such as breathing difficulties in some 'designer' dogs, reducing the number of unwanted dogs and cats, and reducing the risk of puppy or kitten farms from emerging in the ACT and surrounding region.

Likewise, the amendment will align the offence closely with the broader policy intent of the similar generic illegal breeding offence at section 72K(1) and with broader efforts to address illegal breeding. While obtaining evidence of illegal breeding involving female dogs and cats may be simpler than for males, instances of clear evidence of illegal breeding of male dogs or cats are known and there is no policy justification for maintaining the female-specific component of the offence in light of these broader efforts and in line with the similar offence at section 72K(1).

Right to equality and non-discrimination

The amendments to provide a two-yearly duration for multiple cat licences aim to encourage high levels of responsible cat ownership. Upholding high standards of responsible cat ownership will in turn provide animal welfare and management, biodiversity and wellbeing benefits for the broader ACT community.

Bringing consistency between the licensing frameworks for dogs and cats is relevant in light of broader efforts to bring responsible cat ownership forward for environmental and animal welfare principles. This requires transparency, predictability and fairness in administrative process for multiple cat licence holders in understanding when they must pay for renewal and how much they will need to pay.

The purpose of a renewal fee to processing renewals ensures administrative costs are offset, which is currently being addressed through internal policy by setting an expiry date and relying on officers to proactively manage licences that expire and may require renewal.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

Right to privacy

There is a clear connection between the limitation and the legitimate purposes as requiring the applicant's name, address and relevant cats' details to be recorded on the licence will better support DAS to track the keeping of specific cats and ensure that they are managed responsibly and in accordance with animal welfare standards.

Right to be presumed innocent until proven guilty

The inclusion of strict liability offences is an important component in deterring non-compliance. Illegal breeding may occur for commercial purposes and can be linked to animal welfare abuses. The current offence relates only to the keepers or carers of female dogs or cats that are bred without a licence, despite the fact that keepers or carers of male dogs or cats may also participate in illegal breeding. This may be done for commercial gain by using their dog or cat for stud services without securing a breeding licence. The limitation posed by the amendment on the right to presumption of innocence is rationally connected to the legitimate purpose as it will allow for effective deterrence of illegal breeding and in doing so encourage responsible pet ownership and ensure strong animal welfare standards are upheld.

Right to equality and non-discrimination

The legitimate objective is achieved by providing clarity to licence holders on the length of their licence and when they must pay for renewal and how much they will need to pay. Multiple cat licences are currently open-ended compared to multiple dog licences, with the open duration causing ambiguity on whether the licensee still requires the licence or not. This makes administration of licences difficult, with a highly manual process required to coordinate existing and expired licences and many older licences that DAS must proactively investigate to determine if they are no longer required. This ambiguity compromises the overarching purpose and legitimacy of the licensing framework.

DAS have implemented a policy solution to this issue by ensuring multiple cat licences have an expiry date as a condition of the licence, but this creates further inconsistency between the legislative framework and internal practice.

These inconsistencies and ambiguities in the term and renewal of multiple cat licences will be directly addressed by the amendment to introduce a two-yearly duration into the licensing framework. This amendment not only brings consistency between how dogs and cats are managed but will give clarity in how individual licences are issued and where the renewal fee may be applied.

4. Proportionality (s 28(2)(e))

Right to privacy

The impact on the right to privacy by the amendment requiring the name, address and registration numbers for multiple cat licences is considered justified and proportional to the legitimate purpose. There are no less restrictive means of addressing the current issues than by establishing similar licensing requirements to that used for the regulation and management of dogs in the ACT.

The requirements to be applied to multiple cat licences do not exceed the existing information already required under the annual cat registration framework. The name and address details of multiple cat licence holders are also usually known to DAS as part of the current administrative process where DAS must be in contact with the applicant and confirm the suitability of the premises for keeping multiple cats.

The current multiple cat licensing framework implies these details should be collected but does not explicitly require this information. For example, the current considerations the registrar must make include the number and kind of cats, the suitability of facilities and the security, size and nature of the premises where they are kept, and the potential impacts on neighbours. Any conviction or finding of guilt of the applicant within the last 10 years relevant to animal welfare or to the keeping or control of animals must also be considered. These existing requirements imply that the identity of the applicant and the address where the cats are kept would need to be provided during the application process. As such, the amendments will likely only result in a formal record of information that is already captured through the application process on the licence itself and is unlikely to result in new information being requested.

This amendment will have a low impact on the community as presently there are only five active multiple cat licences in the community.

The Bill also provides an exemption for foster carers to provide registration numbers for both multiple dog and cat licences, which allows for a blanket licence to account for the frequent changes in individual animals passing through the person's care.

Section 84DA has also been drafted to allow for registration numbers to be provided at a later stage when it is known to the person, rather than at the application stage, considering some people may not yet know the registration number of their cat due to securing the licence in advance of acquiring and registering the animal.

Right to be presumed innocent until proven guilty

The amendment to remove the female-specific component of the offence at section 72(1) is considered justified and proportionate to achieve the legitimate purpose of deterring illegal breeding, encouraging responsible pet ownership and upholding positive animal welfare outcomes. There is no less restrictive means available to effectively achieve this purpose.

The female-specific component of the offence at section 72(1) is considered unnecessary and redundant, as the same standards of responsible care and management of dogs and cats apply to the keepers and carers of both female and male dogs and cats, and instances of illegal breeding from owners of male animals are known to DAS.

Expanding the scope of the illegal breeding offence at section 72(1) does not exceed the scope of the existing similar offence at section 72K(1). This means people who breed a male dog or cat without a breeding licence would already be in breach of the legislation, as the offence at section 72K(1) is an umbrella offence to capture any instances where other illegal breeding offences may not apply, such as where a person is not the keeper or carer of the dog or cat but breeds a litter from the animal.

Any breaches of the offence will be primarily managed by DAS using education and awareness methods to ensure the keeper or carer is aware they must secure a breeding licence. DAS will only seek to enforce the if the relevant behaviour continues and there is sufficient evidence to demonstrate the offence took place

A corresponding infringement notice is also available to ensure the strict liability offence is reasonable and proportionate. This notice is an important component of the regulatory framework as it provides a deterrent to non-compliance and an alternative to prosecution.

The penalty for the relevant offence remains unchanged at 50 penalty units. This penalty is within the normal range for strict liability offences under the ACT Guide to Framing Offence, and is proportionate to the seriousness of the conduct.

This amendment will help provide a clear and robust regulatory framework that deters illegal breeding and promotes responsible pet ownership and positive animal welfare outcomes in the Territory.

Right to equality and non-discrimination

The amendment to introduce a two-year duration for multiple cat licences is considered justified and proportionate and will not present significant change for current licence holders, as existing licences have a similar expiry period through current internal policy processes and a fee must already be paid for renewing an expired licence. The amendment formalises the current administrative processes

in place and gives certainty to applicants and licence holders. There are no less restrictive means of achieving the benefits of a set licence duration and improved consistency and certainty.

There has been a renewal fee for multiple cat licences set in the relevant fees instrument in the years prior to this amendment, indicating the original policy intent for multiple cat licences was for renewals to be required and reflecting the fact that renewal fees are already being paid as per internal DAS policy. The expiry dates of existing licences are chosen by DAS in consultation with the applicant to ensure all multiple cat licences have an end date in the absence of a legislated duration.

As multiple dog and cat licences are generally lower risk and sit adjacent to annual registration requirements for cats and dogs, a two-yearly duration has been selected for these licences to reduce administrative burden and to reduce the cost to the applicant, which aligns with the two-yearly duration of breeding licences. This two-yearly duration is considered proportionate to the risk multiple cat ownership poses.

In addition to this internal practice, the presence of the existing renewal fee in the fees instrument and the current legislated renewal requirements for multiple dog licences suggests there would be a community expectation for renewals to also be required for cats in the legislative framework.

The current renewal fee for a multiple cat licence is set at \$15.45 from 1 July 2022, which is half the cost for renewal of a multiple dog licence and is considered minimal comparative to overall costs in owning multiple cats. The renewal fee is also four times lower than the main fee for an initial multiple cat licence.

The potential limitation on the right to equality is also safeguarded by existing supports in the relevant fee determination to allow for the DAS Registrar to waive or reduce any fee for persons experiencing financial hardship.

Animal Management and Welfare Legislation Amendment Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Animal Management and Welfare Legislation Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause states that the name of the Act is the *Animal Management and Welfare Legislation Amendment Act 2022*.

Clause 2 Commencement

This clause sets out that the Act commences seven (7) days after its notification day.

Clause 3 Legislation amended

This clause sets out the legislation that is amended by this Act, being the *Animal Welfare Act 1992*, the *Animal Welfare Regulation 2001*, and the *Domestic Animals Act 2000*.

PART 2 ANIMAL WELFARE ACT 1992

Clause 4 Part 4 heading

This clause amends the heading of Part 4 from ‘Research, teaching and breeding’ to ‘Using or breeding animals for research or teaching’. This new heading better reflects the provisions contained in Part 4 of the Act.

Clause 5 Section 25 heading

This clause amends the heading of section 25 from ‘Research, teaching and breeding’ to ‘Using or breeding animals without licence’. This new heading better reflects the contents of this section of the Act.

Clause 6 Dictionary, notes 1 and 2

This clause updates the notes to refer to relevant definitions within the *Legislation Act 2001*, in line with current drafting practice.

PART 3 ANIMAL WELFARE REGULATION 2001

Clause 7 Part 3 heading

This clause is consequential to the amendments to Part 4 of the *Animal Welfare Act 1992*, amending the heading to Part 3 from “Research, teaching and breeding” to “Using or breeding animals for research or teaching”. This new heading better reflects the provisions contained in Part 3 of the Regulation and is consistent with the amendment to the Act.

Clause 8 Dictionary, notes 1 to 3

This clause updates the notes to refer to relevant definitions within the *Legislation Act 2001*, in line with current drafting practice.

PART 4 DOMESTIC ANIMALS ACT 2000

Clause 9 Division 2.4 heading

This clause amends the heading of Division 2.4 from ‘Special dog licences’ to ‘Special licences for dogs’. This new heading better reflects the language used in the division in relation to special licences.

Clause 10 Form of special licences New section 30 (2)

This clause inserts a new subsection to section 30 to exempt the licensee from having to provide the registration number of each dog kept if the dogs are being kept temporarily on the premises on behalf of a rehoming organisation. This will ease the administrative burden for foster carers who are required to hold a licence to keep four or more dogs but may only temporarily keep each dog in their care.

Domestic Animal Services have an established internal process for confirming and recording legitimate foster carers.

Clause 11 Section 31

This clause amends the duration of multiple dog licences in section 31 from 12 months to two years unless the licence has been surrendered or cancelled within the two-year period. The duration for greyhound controller licences and dangerous dog licences remain unchanged as in force for 12 months unless the licence has been surrendered or cancelled within the 12-month period.

Clause 12 Offence—breeding dogs or cats without licence Section 72 (1) (a)

This clause omits the word ‘female’ from the offence in section 72(1) to align with a similar offence at section 72K(1). With this amendment, a person who is the carer or keeper of a dog or cat who breeds a litter from the dog or cat without a breeding licence will commit an offence regardless of whether the dog or cat was female. This differs to the similar offence at section 72K(1), which is a broader offence relating to any person who breeds a dog or cat without a licence, whether or not they are the keeper or carer.

This amendment is made to reflect the existing policy and offence at section 72K(1) where no dog or cat may be bred without a licence to do so. It is already widely accepted in the community that keepers and carers of male dogs or cats used for breeding without a licence are in breach of the legislation. This amendment ensures this is reflected in both offences relating to illegal breeding of dogs and cats.

The offence at section 72(2) relating to illegally breeding female greyhounds remains unchanged, as this offence is associated with industry rather than general responsible dog and cat ownership and so is out of scope.

Clause 13 Offence—breeding, selling and advertising requirements Section 72K (3) (b) (ii)

This clause amends a minor technical error in section 72K(3)(b)(ii) by substituting the word ‘and’ for ‘or’. This was the original intention for the section, where only one identifier is to be provided and not both the person’s rehoming identifier and the unique identifier from the dog or cat’s microchip. The intention of this was to align with similar provisions in New South Wales that require either the breeding licence number, rehoming identifier, or the microchip number to be provided.

Providing only the breeding licence number, rehoming identifier, or microchip number is current practice in the ACT. The technical correction ensures the legislation aligns with this practice and with New South Wales.

Clause 14 Meaning of *de-sex* and *permit* for pt 3 Section 73, definition of *de-sex*

This clause updates the definition of *de-sex* as provided in section 73 from ‘in relation to a dog or cat, includes perform a vasectomy or tubal ligation on the dog or cat’ to ‘in relation to a dog or cat, includes any surgical procedure performed to sterilise the dog or cat’. This amendment reflects newer methods of surgical sterilisation used to *de-sex* dogs and cats without limiting the scope of the definition to a specified procedure.

Both the former and new definition are inclusive in nature, and so provide an explanatory function rather than limiting the scope of any relevant offences.

Clause 15 New sections 84DA and 84DB

This clause inserts sections 84DA and 84DB.

Section 84DA provides the form of a multiple cat licence and mirrors the requirements for multiple dog licences as specified in section 30. Under this new section, a multiple cat licence must state the name of the applicant, the address where the cats will be kept, the registration number of each cat to which the licence relates, and any other licence condition.

To ease administrative burden for foster carers who are required to hold a multiple cat licence but may only temporarily keep a cat in their care, a similar exemption to that set out at clause 10 for multiple dog licences has been created for multiple cat licences. Domestic Animal Services have an established internal process for confirming and recording legitimate foster carers.

Section 84DB provides the duration of multiple cat licences to be two years from licence commencement, unless the licence has been surrendered or cancelled. This is consistent with the amended duration of multiple dog licences set out at clause 11.

Although there was no legislated duration for multiple cat licences previously, Domestic Animal Services has ensured existing licences under the previous framework had an expiry date set as a condition of the licence. This means no transitional arrangements were required to be set out as all existing licences will continue their set course and the new framework and duration will be used for renewal of the licences if required.

Clause 16 Section 96

This clause amends section 96 to remove the potential for registered assistance animal trainers to accredit an assistance animal. Under current internal policy, registered assistance animal trainers who are not also registered as an assessor do not have the ability to accredit assistance animals as conditions of their registration. This internal policy follows the consensus of industry consultation in 2020.

This is a minor amendment to ensure this policy is reflected in the legislation and will be accompanied by minor amendments to relevant subordinate legislation. The intent of this policy position is for appropriate qualifications and experience to be held by those assessing and accrediting assistance animals, which may be of a higher standard than some trainers can meet. This enables assistance animal trainers with lower qualifications and experience to continue to work with assistance animals in their training and eventually gain the experience needed for registration as an assessor to test and accredit, if desired by the trainer.

Clause 17 Dictionary, notes 1 and 2

This clause updates the notes to refer to relevant definitions within the *Legislation Act 2001*, in line with current drafting practice.

Clause 18 Dictionary, definition of *special licence*

This clause updates the definition of *special licence* in line with the amendments to similar headings in the Act and Regulation, where wording was updated from 'Special dog licences' to 'Special licences for dogs' to better reflect how special licences for dogs are referred to throughout the legislation.