



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legal and Constitutional Affairs Committee

**Report of Ministerial
Correspondence on Subordinate
Legislation and Publications**

August 2022 – July 2023

July 2023

Contents

Contents	3
Chair’s Preface	4
Committee Members	5
Committee Secretariat	6
Terms of Reference	7
1 Introduction	9
2 Disallowance of Subordinate Legislation	11
Protective Disallowance Notices	11
3 Ministerial Correspondence on Subordinate Legislation	12
Greyhound Racing Amendment Rules 2022 (No. 5 of 2022)	12
Animal Protection Regulations 2022 (No. 14 of 2022)	18
Supreme Court Amendment (Appeals) Rules 2022 (No. 22 of 2022)	26
Motor Vehicles Legislation Amendment Regulations 2022 (No. 24 of 2022)	29
Nhulunbuy (Animal Control) Amendment By-Laws 2022 (No. 27 of 2022)	33
Territory Parks and Wildlife Conservation Amendment By-Laws 2023 (No. 3 of 2023)	38
Appendix A: List of Ministerial Correspondence on Subordinate Legislation	41
Appendix B: Subordinate Legislation commented on in 14th Assembly	42

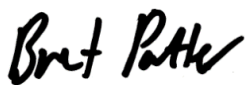
Chair's Preface

As rules, regulations and by-laws affect people in their day to day lives, it is important that the Assembly maintains a sufficient level of scrutiny of subordinate legislation to ensure that they keep within the purpose of the laws under which they are made and do not unduly affect people's rights. As part of that scrutiny, the Committee obtains advice from its independent legal counsel, Professor Ned Aughterson, and writes to responsible Ministers regarding any questions or concerns the Committee has with a regulation. Ministers reply with clarification about the intended operation of the regulations or undertakings to correct any errors. This report places those letters on the public record and allows interested persons to see those clarifications or undertakings.

During the reporting period, the Committee considered 44 pieces of subordinate legislation. As detailed in this report, the Committee's legal counsel identified concerns regarding six of these.

The Committee is also responsible for monitoring compliance with statutory reporting requirements. For example, all Northern Territory government departments and a range of other organisations are required to provide annual reports on their activities to the Speaker or relevant Minister for tabling in the Assembly. It is pleasing to note that during the current reporting period the majority of agencies, independent officers, statutory authorities and government owned corporations met their relevant reporting obligations within the required timeframe.

I thank my fellow Committee members for their bipartisan approach in seeking to ensure a high standard of rules, regulations and by-laws in the Northern Territory. On behalf of the Committee, I would also like to thank Ministers for their responses to the Committee's queries. The Committee also acknowledges the significant contribution made by Professor Aughterson, and thanks him for his diligence in advising the Committee.



Mr Brent Potter MLA
Chair

Committee Members

	Mr Brent Potter MLA: Member for Fannie Bay	
	Party	Territory Labor
	Parliamentary Position	Acting Deputy Speaker
	Committee Membership	
	Standing	Legal and Constitutional Affairs (Chair) Public Accounts (Deputy Chair) Standing Committee on the ICAC (Deputy Chair)
	Mr Dheran Young MLA: Member for Daly	
	Party	Territory Labor
	Parliamentary Position	Deputy Speaker
	Committee Membership	
	Standing	House (Deputy Chair) Legal and Constitutional Affairs (Deputy Chair) Public Accounts Committee
	Mr Joel Bowden MLA: Member for Johnston	
	Party	Territory Labor
	Parliamentary Position	Government Whip
	Committee Membership	
	Standing	Legal and Constitutional Affairs Public Accounts (Chair)
	Ms Marie-Claire Boothby MLA: Member for Brennan	
	Party	Country Liberals
	Committee Membership	
	Standing	Legal and Constitutional Affairs Standing Committee on the ICAC
		Mr Steve Edgington MLA: Member for Barkly
Party		Country Liberals
Committee Membership		
Standing		Legal and Constitutional Affairs
<p>On 5 August 2022 Member for Fong Lim, Hon Mark Monaghan MLA, was discharged from the Committee and Member for Arafura, Mr Lawrence Costa MLA, was appointed. Following the passing of the former Member for Arafura, on 10 February 2023 Member for Fannie Bay, Mr Brent Potter MLA, was appointed to the Committee.</p>		

Committee Secretariat

Committee Secretary: Julia Knight

Administration / Research Officer Caelan Ikin

Administration Officer: Kim Cowcher

Contact Details: GPO Box 3721 DARWIN NT 0801

Tel: +61 08 8946 1485

Email: LA.Committees@nt.gov.au

Terms of Reference

Standing Order 178

Legal and Constitutional Affairs Committee

- (1) A Legal and Constitutional Affairs Committee will be appointed at the commencement of each Assembly to inquire into and report on such constitutional and legal matters as may be referred to it by:
 - (a) the Attorney-General, or
 - (b) a resolution of the Assembly.
- (2) The Committee will consist of 5 members.

Sessional Order 10

Subordinate Legislation and Publications Committee Duties Assigned to Legal and Constitutional Affairs Committee

The Assembly suspends the requirement to appoint a separate Subordinate Legislation and Publications Committee as required under Standing Order 176 and assigns all of the duties under that Standing Order to be undertaken by the Legal and Constitutional Affairs Committee as established under Standing Order 178.

Standing Order 176

Subordinate Legislation and Publications Committee

- (1) A Subordinate Legislation and Publications Committee must be appointed at the commencement of each Assembly to examine and report upon all instruments of a legislative or administrative character and other papers which are required by statute to be laid upon the Table.
- (2) The Committee must consist of five Members.
- (3) The Committee will, with respect to any instrument of a legislative or administrative character which the Legislative Assembly may disallow or disapprove, consider:
 - (a) whether the instrument is in accordance with the general objects of the law pursuant to which it is made,
 - (b) whether the instrument trespasses unduly on personal rights or liberties,
 - (c) whether the instrument unduly makes rights and liberties of citizens dependent upon administrative and not upon judicial decisions,
 - (d) whether the instrument contains matter which in the opinion of the Committee should properly be dealt with in an Act,
 - (e) whether the instrument appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made,
 - (f) whether there appears to have been unjustifiable delay in the publication or laying of the instrument before the Assembly, and
 - (g) whether for any special reason the form or purport of the instrument calls for elucidation.

- (4) The Committee, if it is of the opinion that an instrument should be disallowed or disapproved:
 - (a) will report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly, and
 - (b) if the Assembly is not meeting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.
- (5) The Committee, if it is of the opinion that any matter relating to any paper which is laid upon the Table of the Assembly should be brought to the notice of the Assembly, may report that opinion and matter to the Assembly.
- (6) The Committee will inquire into and report, from time to time, on the printing, publication and distribution of publications or such matters as are referred to it by the Speaker or the Assembly.
- (7) For the purposes of this Standing Order, 'instrument of a legislative or administrative character' has the same meaning as that defined in the *Interpretation Act*.

Adopted 21 October 2020

1 Introduction

- 1.1 Pursuant to Sessional Order 10, the Legal and Constitutional Affairs Committee has been given the duties of the Subordinate Legislation and Publications Committee to examine and report on all instruments of a legislative or administrative character that the Assembly may disallow or disapprove and advise the Assembly whether the instrument has sufficient regard to the rights and liberties of individuals and the institution of Parliament.
- 1.2 Committees to examine subordinate legislation against such terms are common in Westminster style Parliaments. This scrutiny assists the Parliament to ensure other bodies use their delegated power to make laws according to certain principles. Those principles are detailed in Standing Order 176(3) of the Committee's Terms of Reference.
- 1.3 Subordinate legislation is any regulation, rule or by-law made under an Act.¹ Subordinate legislation takes effect from the time it is notified in the *Northern Territory Government Gazette*, or from the time specified in the legislation.² Where any Act confers the power to make or amend statutory rules, regulations and by-laws subject to disallowance under section 63 of the *Interpretation Act 1978*, there is a statutory requirement for all such instruments to be presented to the Assembly within six sitting days of its notification in the *Gazette*.³
- 1.4 However, as provided for in section 63C(1) of the *Interpretation Act*, a failure to table subordinate legislation in the Assembly does not affect the validity of the subordinate legislation, but may be the subject of a referral by the Assembly to the committee responsible for the examination of instruments of a legislative character or another committee of the Assembly.
- 1.5 The Committee obtains independent legal advice on whether an instrument raises any issues. It will then refer issues raised to the relevant Minister for response. If issues arise warranting the Assembly's immediate attention, the Committee reports that subordinate legislation to the Assembly. It also provides periodic reports such as this to the Assembly of its correspondence with Ministers to account to the Assembly for the work it has done and place on the public record the issues noted and the explanations given.
- 1.6 In addition to its scrutiny of subordinate legislation, the Committee is responsible for monitoring compliance with the statutory reporting requirements of Government entities. For example, under section 28 of the *Public Sector Employment and Management Act 1993* and section 12 of the *Financial Management Act 1995*, all Northern Territory government departments are required to present annual reports and audited financial statements to the appropriate Minister for tabling in the Assembly.

¹ *Interpretation Act 1978* (NT), ss 17, 63 & 63A

² *Interpretation Act 1978* (NT), s 63(B)

³ *Interpretation Act 1978* (NT), ss 63(b) & 63A (2)(b)

- 1.7 Independent Officers, such as the Auditor-General, Ombudsman and Independent Commissioner Against Corruption; statutory authorities; government owned corporations; and a number of other regulatory bodies are also required to submit annual reports, audited financial statements, and inquiry reports to the Speaker or relevant Minister for tabling pursuant to their respective enabling legislation. It is pleasing to note that in the current reporting period the majority of agencies, independent officer, statutory authorities, and government owned corporations met their relevant reporting obligations within the required timeframe.

2 Disallowance of Subordinate Legislation

- 2.1 Pursuant to section 63C(3) of the *Interpretation Act*, the Assembly may disallow subordinate legislation by motion; notice of which must be given within 12 sitting days of the tabling of the subordinate legislation. Where subordinate legislation has not been tabled in accordance with section 63(b) or 63A(2)(b), notice of disallowance must be given within 12 sitting days after the last sitting day the subordinate legislation was required to be tabled. This disallowance power enables the Assembly to supervise how other bodies such as the Administrator uses the Assembly's law-making power that has been delegated to them.
- 2.2 As indicated previously, if the Committee identifies issues of concern, it will first seek to resolve the matter with the responsible Minister. However, if the Committee cannot otherwise resolve the matter and is of the opinion that subordinate legislation, or a provision of subordinate legislation, ought to be disallowed, Standing Order 176(4) stipulates that the Committee:
- (a) will report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly and
 - (b) if the Assembly is not meeting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.
- 2.3 Following consideration of the Committee's report, the Assembly may pass a resolution disallowing subordinate legislation which has the effect of repealing the legislation. In the case of subordinate legislation amending or repealing other legislation, the disallowance restores the other legislation from the date of the disallowance.
- 2.4 Where the Assembly passes a resolution of disallowance, section 64 of the Act places restrictions on the making of subordinate legislation that is the same in substance or has the same effect as the disallowed legislation within six months of the disallowance, unless the Assembly rescinds its resolution. Subordinate legislation made in contravention of this provision is of no effect.

Protective Disallowance Notices

- 2.5 Given the Committee's role in relation to subordinate legislation, it is vital that it concludes its consideration of an instrument before the end of the disallowance period to meet the requirements of the Committee's terms of reference, and to enable the Assembly to give effect to any recommendations to disallow the instrument.
- 2.6 If it appears the 12 sitting day disallowance period for an instrument will expire before the Committee can resolve any concerns, it may ask the Chair to give the Assembly a notice of motion to disallow the regulation in order to extend the disallowance period. The effect of this is to extend the disallowance period until the notice of motion is finally dealt with.

3 Ministerial Correspondence on Subordinate Legislation

Greyhound Racing Amendment Rules 2022 (No. 5 of 2022)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.71

Hon Chanston Paech MLA
Minister for Racing, Gaming and Licensing
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Greyhound Racing Amendment Rules 2022 (No. 5 of 2022)

The Legal and Constitutional Affairs Committee is considering the Greyhound Racing Amendment Rules 2022 (No. 5 of 2022) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the rules from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the rules before the end of their disallowance period, the Committee requests this advice by 23 September 2022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Costa'.

Mr Lawrence Costa MLA
Chair
30 August 2022

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Greyhound Racing Amendment Rules 2022 (No. 5 of 2022)

Rules 212, 212E and 212K deal with the 'use' of live animals, animal carcasses or parts, or anything containing animal material as 'bait, quarry or lure in connection with greyhound-racing or training for greyhound-racing'.

Those rules appear uncontentious. However, there appear to be difficulties with some of the other rules, including those dealing with possession of live animals, animal carcasses or parts, or anything containing animal material.

Rules 212A, 212F, 212L and 212Q:¹ broadly, the first three of these rules deal with possessing live animals, or carcasses/parts of animals, or anything containing animal material that is or could be used as bait or lures for greyhounds – rule 212A relates to the possession of live animals; rule 212F relates to the possession of carcasses/parts of animals; while rule 212L relates to the possession of anything containing animal material. Other than the separate subject matter of these three categories of proscribed behaviour, the provisions within each category are much the same.

Rule 212Q also places obligations on persons witnessing a breach of those and other of the rules.

There are some difficulties with these rules:

- 1 The rules place obligations on 'a person', so that any person could be in breach, whether having any association with greyhound racing or not. This includes the obligation under rule 212Q on any person who witnesses a breach, whether 'in person or by video, either live or recorded', to 'report the conduct to the Commission as soon as reasonably practicable'. For example, if a person who has no relationship with or interest in greyhound racing sees an apparent breach of the rules on a social media posting, they would have a reporting obligation, breach of which carries a significant maximum penalty of 100 penalty units. There is also a question of whether such a broad application of the rules was intended under s 57 the Act. It is noted that under s 57(2)(n) of the Act, the Commission may:

impose a penalty on a person licensed by it or on an owner of a greyhound for breaches of the *Greyhound Racing Rules 1981*;

While that is an inclusive power, it is a long stretch from that to allow the imposition of a penalty on any person for a failure to notify under rule 212Q.

In any event, it seems that such an outcome was not intended when drafting the rules. That is apparent because for each of the potential breaches there is also a mandatory disqualification period: see rules 212D, 212J, 212P and 212R. That seems to presuppose that anyone in breach will be registered, for example as a trainer or owner, or will be someone who could potentially register: see, for example, rule 212R(1)(b), which provides that where a person is not registered, they are not eligible to apply for registration within the prohibited period.

This issue is addressed under, for example, the Queensland and Australasian Greyhound Racing Rules. Under those Rules, there is a definition of 'person' (in each case at rule 9), which considerably narrows the range of people who are bound by the rules – in those definitions: '*person* means any person or body corporate whether or not registered by a Controlling Body, who by their position

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(a), (b), (e) and (g)

or conduct is connected in some way to greyhound racing'. There is no equivalent provision under the NT Rules. Such a definition (limiting the obligations to those associated with greyhound racing) would also seem to be consistent with the underlying intention of the rules, as noted above. Presumably, it remains, for example, that a person who is not a trainer or owner who brings proscribed materials onto a racecourse to be used as bait would 'by their conduct' be relevantly connected with racing.

Rule 212A is very wide and perhaps goes further than intended. That rule provides:

212A Possessing live animals for use as bait

- (1) A person commits a breach of these Rules if:
- (a) the person possesses, attempts to possess or brings onto greyhound premises a live animal; and
 - (b) the live animal is:
 - (i) possessed, or attempted to be possessed or brought onto the greyhound premises for the purpose of being used as bait, quarry or lure in connection with greyhound-racing or training for greyhound-racing; or
 - (ii) capable, or reasonably likely to be capable, of being used as bait, quarry or lure in connection with greyhound racing or training for greyhound-racing.

Maximum penalty: 100 penalty units.

- (2) Subrule (1) does not apply if:
- (a) the person keeps the animal on or at the greyhound premises as a domesticated pet or for rural or agricultural purposes; and
 - (b) the animal is not used, reasonably likely to be used or intended to be used in a way that would breach subrule (1); and
 - (c) the person gives the Commission prior notice of keeping the animal on or at the premises, in the manner and form required by the Commission; and
 - (d) the Commission approves the keeping of the animal on or at the greyhound premises

Because the conduct is expressed in the alternative, it becomes extremely broad in its application. That is evidenced by reading in isolation the passages underlined above. Leaving to one side the present broad application of the rule to any person, even if it were confined to trainers and owners it would, for example, prevent them from keeping a pet animal on domestic premises that are removed from any course or training facility. The difficulty is even more stark with rules rule 212F (possessing part of an animal) and rule 212L (possessing anything containing animal material) – they are expressed in the same terms and would prevent a person from keeping meat products on their domestic premises or from purchasing and possessing any such products.

That this outcome was not intended is indicated by 212A(2), set out above, which allows the Commission to give permission to keep an animal 'on or at the greyhound premises' (the term 'greyhound premises' is defined in rule 3). That the obtaining of permission is confined to greyhound premises and does not extend to a domestic residence suggests that 212A(1) was intended to apply to the former only.

It appears that the issue is the use of the word 'or' in s 212A(1)(a), rather than 'and'. The same applies to rules 212F and 212L.

- 3 Following on from point 2, above, it is noted that the Commission can give permission only in relation to the keeping of a live animal on or at greyhound premises. There is no equivalent provision relating to possessing parts of animals (rule 212F) or possessing anything containing animal material (rule 212L). It is to be imagined that this could be a problem because rules 212F and 212L are expressed as broadly as rule 212A, set out above. For example, a breach of rule 212F could arise where a person possesses part of an animal which is capable of being used as bait etc, even where that part of an animal is to be used as food for the greyhounds.

Rule 212B:² Rule 212B provides:

212B Greyhound pursuing or attacking live animal

A person commits a breach of these Rules if the person:

- (a) causes or allows a greyhound to pursue or attack a live animal; or
- (b) fails to take all reasonable steps to prevent a greyhound pursuing or attacking a live animal.

Maximum penalty: 100 penalty units.

This rule is very broad and yet the penalty includes disqualification for life. A breach could arise wherever the attack arises and regardless of the circumstances of the attack or the type of animal attacked. For example, it could be in defence of domestic premises where the animal attacked is a pest.

While an analogous provision appears in the Australasian Rules at rule 159(1)(c), rule 159 is headed 'Offences relating to luring and baiting'. Rule 159(1)(c) would be read in that context: see, under the NT *Interpretation Act*, s 55(2): 'A heading to a section of an Act is part of the Act' (see also s 4 of the *Interpretation Act* in relation to statutory instruments). Accordingly, it would seem that the Australasian provision is confined to circumstances relating to luring and baiting. The heading to the NT rule 212B is not so confined. Rather, the heading is: 'Greyhound pursuing or attacking live animal'.

The same issue arises in relation to rules 212G and 212M. However, it is not clear how or why a greyhound would attack a product containing animal material, unless it related to use of the product as bait or as a lure, as seems to be envisaged by the Australasian Rules.

² Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g)



MINISTER FOR RACING, GAMING AND LICENSING

Parliament House
State Square
Darwin NT 0800
minister.paech@nt.gov.au

GPO Box 3146
Darwin NT 0801
Telephone: 08 8936 5688

Mr Lawrence Costa MLA
Chair
Legal and Constitutional Affairs Committee

Email: LA.Committees@nt.gov.au

Dear Mr Costa *Lawrence,*

I refer to your correspondence of 30 August 2022 in which, on behalf of the Legal and Constitutional Affairs Committee (the Committee), you sought advice on a number of issues, raised by the Committee's legal counsel, pertaining to the Greyhound Racing Amendment Rules 2022 (No.5 of 2022) (the Rules).

The practice of live baiting is abhorrent, and the industry has, at a national level since 2015, made great strides in eliminating it. Penalties associated with the practice now include a mandatory life disqualification and have been implemented by all jurisdictions following work with Greyhounds Australasia (GA) – the peak representative industry body.

The local industry is regulated via the Greyhound Racing Rules 1981, which is subordinate legislation to the *Racing and Betting Act 1983*. The industry also acknowledges the Greyhound Australasia Rules, established by GA. The NT industry could best be described as semi-amateur, where participants are all familiar to one another, and prize money, compared to interstate industries, is minor.

Having said that, it was recognised by the former Minister for Racing, Gaming and Licensing, that the penalties contained in the Rules needed updating to reflect the seriousness of the practice, and agreed to increase the penalties to where they stand today.

While it was not the intention for the amendments to be as wide ranging as Professor Aughterson has identified, I am supportive of the fact that it is very clear that live baiting, and the use of other animal products, is clearly the most serious of offences, and, in this case, is preferable that they go *'too far'*, rather than *'not far enough'*.

Following discussions with the Office of the Parliamentary Counsel, the Rules will be amended to include a definition of *'person'* (for this part of the Rules only), as well as the removal of the need to have the Commission grant approval as currently captured by rule 212A(2)(d). We feel these changes will address the concerns raised, while also ensuring participants recognise the gravity in which these offences are viewed.

- 2 -

It should be noted that, despite the concerns raised by the Committee, it is the view of the Racing Commission, the Department, and Stewards, that the risk of an offence against these specific rules is unlikely, especially when viewed from a '*risk versus reward*' perspective. I am advised that work has already commenced on making these amendments.

Yours sincerely



CHANSEY PAECH

20 SEP 2022

Animal Protection Regulations 2022 (No. 14 of 2022)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.82

Hon Paul Kirby MLA
Minister for Agribusiness and Fisheries
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Animal Protection Regulations 2022 (No. 14 of 2022)

The Legal and Constitutional Affairs Committee is considering the Animal Protection Regulations (No. 14 of 2022) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 10 March 2023.

Thank you for your assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Brent Potter', written over a blue horizontal line.

Mr Brent Potter MLA
Chair

14 February 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Animal Protection Regulations 2022 (No. 14 of 2022)

Reg 6:¹ s 24 of the Act creates the offence of cruelty to an animal, with specified conduct constituting 'cruelty'. In addition, by s 24(5)(b) other conduct may be prescribed by regulation to constitute 'cruelty'. Pursuant to that provision, regulation 6 provides:

Cruelty – other conduct

- (1) For section 24(5)(b) of the Act, the following conduct is prescribed as constituting cruelty:
 - (a) conduct of a sexual nature;
 - (b) conduct involving feeding or applying a foul or noxious substance.
- (2) Subregulation (1) does not include conduct in the normal course of veterinary or agricultural practice.

Examples for subregulation (2)

- 1 *Recognised breeding practices and artificial reproduction techniques.*
- 2 *Oral or topical treatments for worms or lice*

It is not clear what is meant by the term 'conduct of a sexual nature'. It is not defined in the Act or Regulations. Where that term is used in relation to humans (for example, provisions dealing with sexual harassment), it can include making comments with sexual connotations. Presumably that is not intended here. Some clarity would assist to facilitate a consistent understanding and application of the regulation.

Further, reg 6(2) excludes conduct in the normal course of 'veterinary' practice and the given examples are '*Recognised breeding practices and artificial reproduction techniques*' and '*Oral or topical treatments for worms or lice*'. Does 'in the normal course of veterinary practice' mean that it must be carried out by a veterinarian? If that is so, a non-veterinarian undertaking the conduct at examples 1 and 2 would be engaging in 'cruelty'. 2.

Reg 7:² broadly, s 28 of the Act prohibits the laying of a poison that might or does kill an animal. Section 28(7) allows for exclusions from the offence by regulation.

Pursuant to that provision, reg 7 excludes the laying of 'rat poison' within residential premises by the occupier. Use within commercial premises is not excluded. It is a question of whether it was intended to require, for example, a small one person business with perhaps one room to employ a person allowed to lay poisons under reg 7(a) to undertake that task. Also, there is a question of how that would impact farmers generally, including, for example, the laying of poisons in sheds etc.

Reg 9 and Sched 2:³ s 30 of the Act creates an offence of intentionally using an 'electrical device' on an animal. The definition of 'electrical device' at s 30 allows for regulations to prescribe 'excluded devices'; that is, to prescribe devices that do not fall within the definition and hence do not give rise to an offence.

'Excluded devices' are prescribed by reg 9 and Sched 2 of the regulations. Sched 2 specifies the type of electrical device that is excluded but then, in columns 2 to 4, sets out limitations on how those excluded devices may be used: the purpose for which

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

² Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

³ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)

they may be used (column 2), the type of animal on which they may be used (column 3), and any conditions placed on their use (column 4).

Presently for column 4, in relation to several of the devices the entry 'none' appears. In fact, there is an important condition in regulation 5, which establishes the offence of 'cruelty' where an excluded device is used against the face, udders or genitals of an animal or where it is used contrary to the restrictions in Schedule 2. As a matter of emphasis, and to enhance understanding of the limitations placed on the use of 'excluded devices' (that is, devices that may be used), reference might be made in column 4 to regulation 5.

Reg 13:⁴ reg 13(1)(a) provides that a person ceases to be a member of the Advisory Committee if the person resigns by 'giving notice'. Reg 13(3) further provides that any such resignation must be in writing. A vacancy then arises. It is not clear what happens if the person fails to give written notice of their resignation. In that event, is there a vacancy that can be filled? Any such failure is not one of the grounds on which the Minister can terminate an appointment.

⁴ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g)



MINISTER FOR AGRIBUSINESS AND FISHERIES

Parliament House
State Square
Darwin NT 0800
minister.kirby@nt.gov.au

GPO Box 3146
Darwin NT 0801
Telephone: 08 8936 5680

Mr Brent Potter MLA
Chair
Legal and Constitutional Affairs Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DAWIN NT 0801
Email: LA.Committees@nt.gov.au

Dear Mr Potter

Thank you for your letter of 14 February 2023, seeking a response to comments on the Animal Protection Regulation 2022 (the Regulations) received from the Legal and Constitutional Affairs Committee's independent legal counsel, Professor Ned Aughterson.

The response at **Attachment A** has been prepared for each of the comments, providing the policy intent, rationale and practical operation for the relevant regulations.

Professor Aughterson indicated that regulation 6(1)(a) of the Regulations do not adequately define the term 'conduct of a sexual nature' constituting cruelty, and regulation 9 Schedule 2, is deficient in providing a reference to regulation 5 which established an offence for cruelty where the 'excluded electrical device' is used against the face, genitals and udders of the animal.

My department has already commenced a review of both the *Animal Protection Act 2018* and the Regulations, which is due to conclude in early November 2023, being the first anniversary of the new animal welfare legislative framework becoming fully operational. The concerns raised by Professor Aughterson will be included and progressed as part of the review process. In the interim, I have instructed my department to update its current awareness and guidance documents to enhance animal protection and welfare outcomes for all animals and the prevention of cruelty.

If the Committee has any further queries on this matter, please contact Mrs Lorraine Corowa, Senior Executive Director, Biosecurity and Animal Welfare, on telephone 8999 2390 and via email at lorraine.corowa@nt.gov.au

I thank the Committee for its interest in animal protection matters.

Yours sincerely

A handwritten signature in blue ink that reads "Paul Kirby".

PAUL KIRBY

10 MAR 2023

Response to concerns raised by the independent legal counsel to the Legal and Constitutional Affairs Committee in relation to the Animal Protection Regulations 2022

Regulation	Concern	Response
6	<p>Section 24 of the <i>Animal Protection Act 2018</i> (the 'Act') creates the offence of cruelty to an animal, with specified conduct constituting 'cruelty'. In addition, by section 24(5)(b) of the Act other conduct may be prescribed by regulation to constitute 'cruelty'. Pursuant to that provision, regulation 6 provides:</p> <p>Cruelty – other conduct</p> <p>(1) For section 24(5)(b) of the Act, the following conduct is prescribed as constituting cruelty:</p> <p>(a) conduct of a sexual nature;</p> <p>(b) conduct involving feeding or applying a foul or noxious substance.</p> <p>(2) Subregulation (1) does not include conduct in the normal course of veterinary or agriculture practice.</p> <p><i>Examples for subregulation (2)</i></p> <ol style="list-style-type: none"> 1. <i>Recognised breeding practices and artificial reproduction techniques.</i> 2. <i>Oral or topical treatments for worms or lice.</i> <p>Concern 1 (6(1)(a)) – it is not clear what is meant by the term 'conduct of a sexual nature'. It is not defined in the Act or Regulations. Where that term is used in relation to humans (for example, provisions dealing with sexual harassment), it can include making comments with sexual connotations. Presumably that is not intended here.</p> <p>Some clarity would assist to facilitate a consistent understanding and application of the regulation.</p> <p>Concern 2 (6(2)) – further, regulation 6(2) excludes conduct in the normal course of 'veterinary' practice and the given examples are '<i>Recognised breeding practices and artificial reproduction techniques</i>' and '<i>Oral or topical treatments for worms or lice</i>'. Does 'in the normal course of veterinary practice' mean that it must be carried out by a veterinarian? If that is so, a non-veterinarian undertaking the conduct at examples 1 and 2 would be engaging in 'cruelty'.</p>	<p>Response 1 (6(1)(a)) – as noted by the independent legal counsel, the term 'conduct of a sexual nature' constituting cruelty is not defined in either the Act or Regulations. The intention and policy rationale of including this term was to try capture acts performed upon an animal by a person, targeting the genital area or anus of an animal, that would not otherwise be captured under the offence of bestiality (section 138 of the <i>Criminal Code Act 1983</i> (Criminal Code)). For example, touching the penis or vagina of an animal in a sexual way, or the inserting of digits or foreign objects (amongst other things), into such areas for no justifiable breeding or reproductive purposes. Section 138 of the Criminal Code provides:</p> <p>Bestiality</p> <p><i>Any person who inserts, to an extent, the person's penis into the genital passage or anus of an animal or permits an animal to insert its penis into the person's vagina or anus is guilty of an offence and is liable to imprisonment for 3 years.</i></p> <p>As is normal practice during the first year of operation when a new legislative framework becomes fully operational, the department has already commenced a review of both the Act and Regulations and is expected to conclude early November 2023 (first anniversary). As advised by Professor Aughterson, the term 'conduct of a sexual nature' will be amended to provide clarity to facilitate a consistent undertaking and application of the regulation. As an interim measure the department will review and update its education and awareness approaches including updating publicly available guidance and awareness documents.</p> <p>Response 2 (6(2)) – it the department's view that the specific exclusion of conduct 'in the normal course of veterinary practice or agricultural practice' (emphasis added) is clear to ensure that non-veterinarians undertaking the conduct at examples 1 and 2 would therefore not be engaging in 'cruelty'. However, the advice provided by Professor Aughterson will be included and revisited as part of the review of both the Act and Regulation during 2023 for completeness.</p>

Response to concerns raised by the independent legal counsel to the Legal and Constitutional Affairs Committee in relation to the Animal Protection Regulations 2022

<p>7</p>	<p>Broadly, section 28 of the Act prohibits the laying of a poison that might or does kill an animal. Section 28(7) allows for exclusions from the offence by regulation.</p> <p>Pursuant to the provision, regulation 7(b) excludes the laying of 'rat poison' within residential premises by the occupier. Use within commercial premises is not excluded. It is a question of whether it was intended to require, for example, a small one person business with perhaps one room to employ a person allowed to lay poisons under regulation 7(a) to undertake the task. Also, there is a question of how that would impact farmers generally, including for example, the laying of poisons in sheds etc.</p>	<p>Section 28(1) of the Act makes it an offence to intentionally lay a substance that is a poison with the intention of killing or causing suffering to an animal. The maximum fine for an offence is 100 penalty units or 12 month imprisonment. Where a person is reckless as to whether or not the laying of the substance results in an animal being killed or suffering harm, the maximum fine that applies is 50 penalty units or 6 months imprisonment.</p> <p>Section 28(4) makes it an offence if a person lays a substance that is a poison and there is a reasonable likelihood that the poison will kill or cause suffering to an animal. The maximum fine for this offence is 20 penalty units and is one of strict liability. However, a defence is provided at section 28(6) if the defendant took all reasonable steps to avoid killing or causing suffering to animals.</p> <p>Section 28(7) allows for exemptions by regulations. Regulation 7(a) excludes an activity or circumstances by a person authorised to use or lay a poison under the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 2004</i>, or the <i>Medicines, Poisons and Therapeutic Goods Act 2012</i>.</p> <p>Regulation 7(b) is deliberately prescriptive and applies to the laying of rat poison in a residential context with the exemption confined to the laying of rat poison within (inside) the residential premises by the occupier. The policy rationale and intention of regulation 7(b) was to exclude the behaviour of a person or neighbour who may deliberately lay rat poison around the outside of a residential premises and along the fence line to deliberately harm or kill neighbouring animals.</p> <p>In response to the independent legal counsel's concern, the intent of regulation 7(b) is to not apply to commercial or farming premises for the reason that rat poison is classified as a Schedule 5 or 6 poison under the <i>Medicines, Poisons and Therapeutic Goods Act 2012</i>. Schedule 5 and 6 poisons can be brought over the counter with the user required to follow directions provided on the package (including exposure that could harm humans and animals). The Committee may wish to note that poisons used by farmers require permits under the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 2004</i>.</p>
----------	---	--

Response to concerns raised by the independent legal counsel to the Legal and Constitutional Affairs Committee in relation to the Animal Protection Regulations 2022

<p>9 (Schedule 2)</p>	<p>Section 30 of the Act creates an offence of intentionally using an 'electric device' on an animal. The definition of 'electrical device' at section 30 allows for regulations to prescribe 'excluded devices'; that is, to prescribe devices that do not fall within the definition and hence do not give rise to an offence.</p> <p>'Excluded devices' are prescribed by regulation 9 and Schedule 2 of the Regulations. Schedule 2 specifies the type of electrical device that is excluded but then, in columns 2 to 4 sets out limitations on how those excluded devices may be used: the purpose for which they may be used (column 2), the type of animal on which they may be used (column 3), and any conditions placed on their use (column 4).</p> <p>Presently for column 4, in relation to several of the devices the entry 'none' appears. In fact there is an important condition in regulation 5, which establishes the offence of 'cruelty' where an excluded device is used against the face, utters or genitals of an animal or where it is used contrary to the restrictions in Schedule 2. As a matter of emphasis, and to enhance understanding of the limitations placed on the use of 'excluded devices' (that is, devices that may be used), reference might be made in column 4 to regulation 5.</p>	<p>The department accepts independent legal counsel's concerns with regards to clarifying the prescribed exclusions provided under regulation 9 and the clarity of limitation placed in Schedule 2 (columns 2 to 4) as to how those 'excluded devices' are to be used and for what purpose.</p> <p>The department accepts that where the entry of 'none' limitations appear in Schedule 2, column 4 (Items 1, 2, and 4), the conditions of use of these 'excluded devices' (and in general) should not be against the face of the animal, utters or genitals (in accordance with the requirements in regulation 5 which establishes an offence for 'cruelty').</p>
<p>13</p>	<p>Regulation 13(1)(a) provides that a person ceases to be a member of the Advisory Committee if the persons resigns by 'giving notice'. Regulation 13(3) further provides that any such notice must be in writing. A vacancy then arises. It is not clear what happens if the person fails to give written notice of their resignation. In that event, is there a vacancy that can be filled? Any such failure is not one of the grounds on which the Minister can terminate.</p>	<p>As noted above, the department has already commenced a review of both the Act and Regulations which is due to conclude in early November 2023 (the first anniversary of the legislative framework becoming fully operational). Amendments to regulation 9 (Schedule 2) to update the Schedule to ensure it references and works in conjunction with regulation 5 has already been added to scope of proposed amendments to be progressed. The department thanks Professor Aughterson for his advice.</p> <p>As an interim measure, the department will update its current education and awareness guidance documents to ensure that excluded 'electric devices' are used in accordance with limitations and conditions of use expressed in Schedule 2 of the Regulations and not to be used against the face of the animal or applied to the genitals and utters of the animal (regulation 5).</p>
		<p>In response to the independent legal counsel's concern about whether an Animal Welfare Advisory Committee vacancy arises that can be filled where a person does not give written notice, and whether this provides grounds on which the Minister can terminate the appointment, the department is satisfied that Part 3, Division 1 of the Regulations has been drafted in accordance with normal legislative drafting practices with regards to establishing boards and committees.</p> <p>In legislation, it is not uncommon for a vacancy of a statutory appointed office to occur in the following ways:</p>

Response to concerns raised by the independent legal counsel to the Legal and Constitutional Affairs Committee in relation to the Animal Protection Regulations 2022

<ul style="list-style-type: none"> • The person resigns by giving notice to the Minister or body appointing the person. • The person's term of office comes to an end and the person is not re-appointed. • The person's appointment is terminated by the Minister for inability, inefficiency, misbehaviour or physical or mental incapacity (among other matters including bankruptcy). 	<p>Part 3, Division 1 provides alternative avenues to terminate a member of the Advisory Committee who has resigned under regulation 13 but has not provided his or her resignation in writing to the Minister (or body) as required under regulation 13(3). This includes:</p> <ul style="list-style-type: none"> • The person's term of office coming to an end (regulation 12). • The Minister being provided with sufficient alternative reasons to terminate a member of the Advisory Committee, including on grounds of inability or incapacity, ineffectiveness or misbehaviour in performing the functions of membership (regulation 14(1)). • Alternatively, the Minister can terminate the member's appointment for being absent from 3 consecutive meetings of the Advisory Committee without the leave of the Committee (regulation 14(2)). <p>As provided above, the advice provided by Professor Aughterson will be included and revisited as part of the review of both the Act and Regulation during 2023 for completeness.</p>
--	--

Supreme Court Amendment (Appeals) Rules 2022 (No. 22 of 2022)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.86

Hon Chanston Paech MLA
Attorney-General and Minister for Justice
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Attorney-General

Re: Supreme Court Amendment (Appeals) Rules 2022 (No. 22 of 2022)

The Legal and Constitutional Affairs Committee is considering the Supreme Court Amendment (Appeals) Rules 2022 (No. 22 of 2022) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the rules from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the rules before the end of their disallowance period, the Committee requests this advice by 21 April 2023.

Thank you for your assistance.

Yours sincerely



Mr Brent Potter MLA
Chair

21 March 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Supreme Court Amendment (Appeals) Rules 2022 (No. 22 of 2022)

Rule 82.07(3)(b):¹ Where an appeal is dismissed as incompetent, the sub-rule provides:

the Court may order that the respondent pay the appellant's costs of the appeal proving useless or unnecessary.

It is noted that, for clarity, the Uniform Civil Procedure Rules (as with earlier state and federal cost rules) incorporates the word 'any'; that is, those costs that prove useless or unnecessary. Rule 50.16A(2)(b) provides:

the court may order the defendant to pay the plaintiff any costs of the appeal proving useless or unnecessary.

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).



ATTORNEY-GENERAL
MINISTER FOR JUSTICE

Parliament House
State Square
Darwin NT 0800
minister.paech@nt.gov.au

GPO Box 3146
Darwin NT 0801
Telephone: (08) 8936 5688

Mr Brent Potter MLA
Chair
Legal and Constitutional Affairs Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Via email: LA.Committees@nt.gov.au

Dear Mr Potter *Brent,*

Thank you for your letter dated 21 March 2023 regarding the *Supreme Court Amendment (Appeals) Rules 2022* (No. 22 of 2022).

The Uniform Civil Procedures Rules do not apply in the Northern Territory. As such, I do not consider any amendment to rule 82.07(3)(b) of the *Supreme Court Amendment (Appeals) Rules 2022* (No. 22 of 2022) to be necessary; nor do I consider that the rule needs to be clarified.

Thank you for drawing this matter to my attention.

Yours sincerely


CHANSEY PAECH

17 APR 2023

Motor Vehicles Legislation Amendment Regulations 2022 (No. 24 of 2022)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.87

Hon Eva Lawler MLA
Minister for Infrastructure, Planning and Logistics
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Motor Vehicles Legislation Amendment Regulations 2022 (No. 24 of 2022)

The Legal and Constitutional Affairs Committee is considering the Motor Vehicles Legislation Amendment Regulations 2022 (No. 24 of 2022) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 21 April 2023.

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brent Potter', written over a horizontal line.

Mr Brent Potter MLA
Chair

21 March 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Motor Vehicles Legislation Amendment Regulations 2022 (No. 24 of 2022)

Part 11:¹ Part 11 of the regulations is designed to ensure that LPG-powered, hydrogen-powered and electric-powered vehicles can be identified by labels, generally placed on the number plate. The regulations specify details required of the labels, including as to colour. For example, for electric-powered vehicles, the label has a blue surface, with the characters 'EV' in white capital letters: see reg. 154L(1)(c) and (d). Generally, the labels are fixed to the number plate: reg. 154L(1)(e). However, where the label would obscure a character in the number plate, it may be affixed to the vehicle within 100mm of the edge of the number plate: see regs. 154J(2)(b) and 154L(2)(d).

Where the label does need to be affixed to the vehicle rather than the number plate it seems that a difficulty arises because of reg 154B(iii). That requires the colour of the label to be distinguishable from the colour of the part of the vehicle to which it is affixed. Taking the example of the required blue label for electric-powered vehicles, it is not apparent what happens where the vehicle is blue.

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).



MINISTER FOR INFRASTRUCTURE, PLANNING AND LOGISTICS

Parliament House
State Square
Darwin NT 0800
minister.lawler@nt.gov.au

GPO Box 3146
Darwin NT 0801
Telephone: 08 8936 5566
Facsimile: 08 8936 5609

Mr Brent Potter MLA
Chair - Legal and Constitutional Affairs Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Cc email: LA.Committees@nt.gov.au

Dear Mr ^{Brent}Potter

Thank you for your correspondence of 21 March 2023 on behalf of the Legal and Constitutional Affairs Committee (the Committee) on issues identified in relation to the *Motor Vehicles Legislation Amendment Regulation 2022 (No. 24 of 2022)* (the Regulations).

The issue raised by the Committee concerns how the Regulations deal with the circumstance of a blue coloured electric vehicle (EV) with a number plate that does not have enough space on it to accommodate the affixing of a blue EV label without obscuring a character on the number plate.

I acknowledge that the amended rules do not explicitly deal with the circumstance raised, specifically the likely visibility of the blue label affixed to a blue car, however by way of explanation I provide the following:

1. Rule 154J(2)(b) of Schedule 6 of the *Motor Vehicles (Standards) Regulations 2003* is designed to deal with any number plate that does not have enough space on it to accommodate the affixing of an EV label. However, the only current number plate type identified that would have this problem, is a personalised slimline number plate with seven characters of a particular type and combination. The use of this number plate is rare.
2. There is a very small likelihood of the circumstance occurring that an EV, that is blue, is fitted with the type of number plate referred to in rule 154J(2)(b) of Schedule 6 of the *Motor Vehicles (Standards) Regulations 2003*. If this does occur in the future, it is likely to be a one-off or in extremely small numbers and there are sufficient alternatives to deal with these vehicles, see below.



- 2 -

3. The affixing requirements under rule 154L(2) of Schedule 6 of the *Motor Vehicles (Standards) Regulations 2003*, while not specific to blue vehicles, already provide for the affixing of an EV label to a part that is attached to a vehicle. Using the example raised, this provides for affixing an EV label to a part that is not blue and that is attached to a blue vehicle, in order for the label to be distinguishable and visible.

The Department of Infrastructure, Planning and Logistics (the Department) has implemented communications and an operational process to deal with the circumstance of an EV (of any colour) with a number plate referred to in rule 154J(2)(b) of Schedule 6 of the *Motor Vehicles (Standards) Regulations 2003*.

In the last five months, the Department has supplied at least 4400 labels to owners and dealers across the NT and there has not yet been an electric vehicle identified with a number plate referred to in rule 154J(2)(b). However, should the circumstance present itself, the Department has practical strategies to ensure the label can be affixed to the vehicle and ensure it is distinguishable and visible.

As the Department has reasonable operational processes and there are existing sufficient legislative mechanisms to deal with the rare circumstance described, I believe that further regulation to deal explicitly with the scenario raised by the Committee is not warranted.

Further, it is my view that the amendments contained in *Motor Vehicles Legislation Amendment Regulations 2022* (No. 24 of 2022) are fit for purpose and do not give rise to concern in regard to the considerations of the Committee under Standing Order 176(3).

Yours sincerely



EVA LAWLER

13 APR 2023

Nhulunbuy (Animal Control) Amendment By-Laws 2022 (No. 27 of 2022)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.88

Hon Chanston Paech MLA
Minister for Local Government
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

Re: Nhulunbuy (Animal Control) Amendment By-Laws 2022 (No. 27 of 2022)

The Legal and Constitutional Affairs Committee is considering the Nhulunbuy (Animal Control) Amendment By-Laws 2022 (No. 27 of 2022) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the by-laws from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the by-laws before the end of their disallowance period, the Committee requests this advice by 21 April 2023.

Thank you for your assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brent Potter'.

Mr Brent Potter MLA
Chair

21 March 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Nhulunbuy (Animal Control) Amendment By-Laws 2022 (No. 27 of 2022)

By-laws 11 and 27:¹ By-laws 11(1)(a) and 27(1)(a) provide for the cancellation of a permit (to keep chickens) or registration (of a dog) where the permit or registration was obtained 'improperly'. That term is not defined. It is usual to define such terms – for example, to mean providing information or a document or information that was false or misleading. As presently framed, it might include using the wrong application form.

By-law 12 (see also 30, 32):² these by-laws make it an offence to 'keep' livestock or a dog contrary to the by-laws: see also by-law 9. The term 'keeps' is not defined. Though there are variations, dictionary definitions tend to indicate the idea of more or less permanent ownership or control. In any event, it is not clear what is intended here. Does a person commit an offence if they are looking after livestock or a dog for a limited period? Compare the comprehensive definition of 'owner' in by-law 4AA. While the term 'keeps' is not usually defined in other legislation, the context tends to give meaning; for example, an obligation to keep proper records or to keep specified goods in safe storage. Also, for example, while s 265 of the Queensland *Mental Health Act* provides that a person must not keep a patient in seclusion in an authorised mental health service other than under this Act, the Act prescribes the terms in which a person may be kept in seclusion.

Compare, for example, the ACT *Domestic Animals Act*, which creates the offence of 'keeping unregistered cats'. That provision further provides that the offence does not arise if, among other things, the cat has been kept by the person for less than 28 days, or if the registered owner is unable to care for the cat and the person is caring for the cat on a temporary basis.

By-law 19A:³ by-law 19A(1) requires the owner of an animal to ensure that the animal is not a nuisance to people or other animals. Under by-law 19A(2)(b), one of the ways in which an animal is a 'nuisance' is where the animal 'behaves repeatedly in a manner contrary to the general interest of the community or specific interests of another person' (emphasis added). An offence of strict liability arises if a person fails to comply with by-law 19A(1) – see by-law 39. Another potential consequence of failure to comply is seizure of the animal by an authorised person under by-law 19B. Several comments are made:

- (1) By-law 19B(1)(d) allows for seizing of an animal 'that is a nuisance to people or other animals on more than one occasion' (emphasis added). The difficulty is that 19A(1)(b) provides that a nuisance in the present sense arises only where the animal 'repeatedly' behaves in the specified manner. 'Repeatedly' suggest many times or again and again.
- (2) While 19A(1) provides that the owner must ensure that the animal is not a nuisance to people 'or other animals', by-law 19(2), in setting out when an animal is a nuisance, makes reference to impacts on a person only. There is no reference to impact on other animals.
- (3) Further to point (2) above, 19B(1)(d) allows for seizing of an animal that is a nuisance to other animals, but there is no indication in the by-laws as to the circumstances in which it might be a nuisance to other animals.
- (4) For the purposes of the offence provision under by-law 39, there is no indication as to what constitutes being a nuisance to other animals. It is to be imagined that all manner of things might be a nuisance to other animals,

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).

² Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).

³ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(b) and (g).

but it is not clear how that might be assessed. Would expert evidence be required?

- (5) The term 'contrary to' the 'specific interests of another person' is likely to be contentious. There is a vast range of potential 'specific interests'. For example, would it be sufficient to be a nuisance if a neighbour doesn't like barking dogs or clucking chickens? Taking a relatively extreme example, if a person has a specific interest in keeping animals out of the neighbourhood would the presence of a neighbouring animal offend that specific interest?
- (6) At by-law 19A(2)(a), a nuisance arises if the animal is injurious or dangerous to the health of the community or other person. Again, that could be contentious. If a neighbour has a minor allergy that might be affected by the presence of the animal, would that be sufficient to create a nuisance.

By-law 19F:⁴ by-law 19F deals with diseased dogs that have been impounded. Notification to the owner is provided for in by-law 19F(3). By-law 19F(4) then provides that where a notice is issued the Corporation may require the owner to provide a report prepared by a veterinarian or other person specified in the notice, relating to:

- (a) If the dog is not required to be destroyed – the disease of the dog; and
- (b) In any other case – all other dogs usually kept at the premises where the dog was kept.

Presumably, 'in any other case' refers to a dog that is required to be destroyed. In any event, it is not clear why notification as to other dogs usually kept at the premises is not required in all cases, given the evident objective of identifying all dogs that might be diseased.

By-law 19F(6):⁵ this by-law provides:

A pound supervisor may, without prior notice to the owner of a dog in a pound, destroy the dog if the dog is so diseased or injured that it is humane to destroy it.

It is not clear why this is in different terms to by-law 19C, which provides:

An authorised person may, without prior notice to the owner of an animal, destroy the animal seized under by-law 19B if:

- (a) the animal is diseased, injured, savage or destructive; and
- (b) the authorised person believes on reasonable grounds that it is necessary to destroy the animal.

It is not clear whether there is an intended distinction between 'humane' and 'necessary' and, if so, what that difference is. Also, reasonable grounds is required for 19C, but not 19F.

By-law 19K, 'Emergency destruction of an animal', is in similar terms to by-law 19F(6), though 'immediately' is used before the word 'destroy'.

By-law 28C(h):⁶ this by-law provides that as a condition of registration of a dangerous dog, the registered owner must:

- (h) if the dog attacks, or is alleged to have attacked, a person or animal – notify the Corporation of the attack, or alleged attack, within 24 hours after the earlier of (emphasis added):
 - (i) the attack, or alleged attack; or
 - (ii) the time the registered owner is made aware of the attack, or alleged attack; ...

In those terms, the by-law would require the owner to give notification within 24 hours of an attack or alleged attack, even if unaware or it. If that is so, one option

⁴ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).

⁵ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).

⁶ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).

would be to delete 'the earlier of' and substitute:

- (ii) if the owner did not witness the attack or alleged attack, the time the registered owner is first made aware of the attack or alleged attack;

By-law 50A:⁷ By-law 50A provides that a decision to destroy an animal under by-law 19C is a reviewable decision. By-law 19C provides for destruction of a seized animal without prior notice to the owner, which raises the question of how an opportunity to seek review might arise.

⁷ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).



MINISTER FOR LOCAL GOVERNMENT

Parliament House
State Square
Darwin NT 0800
minister.paech@nt.gov.au

GPO Box 3146
Darwin NT 0801
Telephone: 08 8936 5688

Mr Brent Potter MLA
Chair
Legal and Constitutional Affairs Committee
GPO Box 3721
DARWIN NT 0801

Dear Mr Potter *Brent,*

Thank you for your letter of 21 March 2023, seeking responses to comments on the *Nhulunbuy (Animal Control) Amendment By-laws 2022 (No. 27 of 2022)* received from the Legal and Constitutional Affairs Committee's independent legal counsel, Professor Ned Aughterson.

I have considered the points made by Professor Aughterson and note that overall, the By-laws are robust and fit-for-purpose. However, the Department of the Chief Minister and Cabinet has noted all the points for consideration when the By-laws are next reviewed.

I acknowledge the importance of good governance and consistent application of By-laws. Therefore, the Department of the Chief Minister and Cabinet will work with Nhulunbuy Corporation Limited to develop a procedural document to maximise consistency in administration of the By-laws. This will also be useful for continued consistency in the event of staffing changes. The Corporation is happy to be involved in the development of such a document.

Thank you for bringing these matters to my attention.

Yours sincerely

[Handwritten signature]
CHANSEY PAECH

13/04/2022



Territory Parks and Wildlife Conservation Amendment By-Laws 2023 (No. 3 of 2023)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14th Assembly

Legal and Constitutional Affairs Committee

REF: COMM2020/00013.95

Hon Nicole Manison MLA
Minister for Parks and Rangers
Legislative Assembly of the Northern Territory
GPO Box 3146
Darwin NT 0801

Dear Minister

**Re: Territory Parks and Wildlife Conservation Amendment By-Laws 2023
(No. 3 of 2023)**

The Legal and Constitutional Affairs Committee is considering the Territory Parks and Wildlife Conservation Amendment By-Laws 2023 (No. 3 of 2023) in accordance with Standing Order 176(3).

The Committee has received the attached comments on the regulations from its independent legal counsel and seeks your advice on the issues raised.

To enable the Committee to complete its consideration of the regulations before the end of their disallowance period, the Committee requests this advice by 7 July 2023.

Thank you for your assistance.

Yours sincerely



Mr Brent Potter MLA
Chair
16 May 2023

Advice from Professor Aughterson to the Legal and Constitutional Affairs Committee

Territory Parks and Wildlife Conservation Amendment By-Laws (No. 3 of 2023)

By-law 6A(2):¹ this by-law provides that a person must obtain a parks pass to access a declared park or reserve unless the person is a resident of the Territory. The term 'resident' is not defined in the by-laws, or the Territory Parks and Wildlife Conservation Act, or the Interpretation Act.

Compare legislation where it is defined; for example: *Motor Accidents (Compensation) Act 1979*, s 10(3)(e), s 60B; *Volatile Substance Abuse Prevention Act 2005*, s 42. It is noted that while the *Firearms Act 1996* does not define the term 'resident' for the purposes of that Act, relevantly s 10(3)(e) provides that the Commissioner must be satisfied that the person 'resides in the Territory or is about to become a resident of the Territory'. In other words, it is an assessment to be made by the Commissioner.

In the present case, given that the by-law imposes an obligation on a person who is not a 'resident', it is suggested that the term 'resident' should be defined.

¹ Legal and Constitutional Affairs Committee, Terms of Reference, Standing Order 176(3)(g).



DEPUTY CHIEF MINISTER
MINISTER FOR PARKS AND RANGERS

Parliament House
State Square
Darwin NT 0800
minister.manison@nt.gov.au

GPO Box 3146
Darwin NT 0801
Telephone: 08 8936 5547

Mr Brent Potter MLA
Chair
Legal and Constitutional Affairs Committee

Email: LA.Committees@nt.gov.au

Dear Mr Potter

I refer to your correspondence dated 16 May 2023, outlining the advice provided to the Legal and Constitutional Affairs Committee by Professor Aughterson in relation to the Territory Parks and Wildlife Conservation Amendment By-Laws 2023 (No. 3 of 2023).

The advice recommends that in relation to By-Law 6A(2), that a definition of the term resident be defined in that By-Law.

The Department of Environment, Parks and Water Security is currently making some amendments to the Territory Parks and Wildlife By-Laws 1984, and will include in the drafting instructions for the Office of the Parliamentary Counsel to incorporate a definition of Northern Territory resident, in accordance with the Committees recommendation.

Please pass on my thanks to the Committee for their consideration of the By-Law amendment.

Yours sincerely



NICOLE MANISON

20 JUN 2023



Appendix A: List of Ministerial Correspondence on Subordinate Legislation

No.	Title of Regulation/By-law	Minister	Letter to Minister	Minister's Response
5 of 2022	Greyhound Racing Amendment Rules	Hon Chanston Paech	30/08/22	20/09/22
14 of 2022	Animal Protection Regulations	Hon Paul Kirby	14/02/23	10/03/23
22 of 2022	Supreme Court Amendment (Appeals) Rules	Hon Chanston Paech	21/03/23	17/04/23
24 of 2022	Motor Vehicles Legislation Amendment Regulations	Hon Eva Lawler	21/03/23	13/04/23
27 of 2022	Nhulunbuy (Animal Control) Amendment By-Laws	Hon Chanston Paech	21/03/23	18/04/23
3 of 2023	Territory Parks and Wildlife Conservation Amendment By-Laws	Hon Nicole Manison	16/05/23	20/06/23

Appendix B: Subordinate Legislation commented on in 14th Assembly

Report	No.	Title of Regulation/By-Law	Minister	Date
Current	3 of 2023	Territory Parks and Wildlife Conservation Amendment By-Laws	Hon Nicole Manison	16/05/23
	27 of 2022	Nhulunbuy (Animal Control) Amendment By-Laws	Hon Chanston Paech	21/03/23
	24 of 2022	Motor Vehicles Legislation Amendment Regulations	Hon Eva Lawler	21/03/23
	22 of 2022	Supreme Court Amendment (Appeals) Rules	Hon Chanston Paech	21/03/23
	14 of 2022	Animal Protection Regulations	Hon Paul Kirby	30/08/23
	5 of 2022	Greyhound Racing Amendment Rules	Hon Chanston Paech	30/08/22
August 2021 – July 2022	23 of 2021	Residential Tenancies Amendment Regulations	Hon Selena Uibo	22/03/22
	11 of 2021	Local Government (Electoral) Regulations	Hon Chanston Paech	21/09/21 04/11/21
	9 of 2021	Local Government (General) Regulations	Hon Chanston Paech	21/09/21 04/11/21
October 2020 – July 2021	3 of 2021	Building Amendment Regulations		11/05/21
	2 of 2021	Liquor Amendment Regulations	Hon Natasha Fyles	11/05/21
	31 of 2020	Petroleum Regulations	Hon Nicole Manison	23/03/21
	N/A	Batchelor Institute of Indigenous Tertiary Education (Gift Fund) By-Laws 2020	Hon Lauren Moss	17/02/21 23/03/21
	18 of 2020	Plant Health Amendment Regulations	Hon Nicole Manison	17/02/21
	6 of 2020	Environment Protection Regulations	Hon Eva Lawler	11/11/20