



New South Wales

Companion Animals Act 1998 No 87

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New South Wales

Companion Animals Act 1998 No 87

Act No 87, 1998

An Act to provide for the identification and registration of companion animals and for the duties and responsibilities of their owners; and for other purposes. [Assented to 14 July 1998]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Companion Animals Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Application of Act to working dogs

- (1) The following provisions of this Act do not apply to or in respect of a working dog:
 - (a) Part 2,
 - (b) section 12,
 - (c) Parts 6 and 8.
- (2) In this section, ***working dog*** means a dog used primarily for the purpose of droving, tending, working or protecting stock, and includes a dog being trained as a working dog.

4 Policy regarding animal welfare

It is declared that the protection of native birds and animals is an objective of animal welfare policy in the State.

5 Definitions

- (1) In this Act:

assistance animal means an animal referred to in section 9 (Disability discrimination—guide dogs, hearing assistance dogs and trained animals) of the *Disability Discrimination Act 1992* of the Commonwealth.

Note. That section refers to a guide dog, a dog trained to assist a person in activities where hearing is required and any other animal trained to assist a person to alleviate the effect of a disability.

authorised officer means:

- (a) an employee of a local authority authorised by the local authority for the purposes of this Act, or
- (b) a police officer.

Board means the Companion Animals Advisory Board established by this Act.

cat means an animal of the species *Felis catus*, whether or not domesticated.

companion animal means each of the following:

- (a) a dog,
- (b) a cat,
- (c) any other animal that is prescribed by the regulations as a companion animal.

Note. The fact that an animal is not strictly a “companion” does not prevent it being a companion animal for the purposes of this Act. All dogs are treated as companion animals, even working dogs on rural properties, guard dogs and police dogs.

compulsory identification means the identification of a companion animal for the purposes of section 8 (Identification required from 12 weeks of age and before sale).

Note. Identification by microchip implantation is an example of what may be required.

council means:

- (a) the council of an area under the *Local Government Act 1993*, or
- (b) the Lord Howe Island Board in relation to Lord Howe Island (the Lord Howe Island Board’s *area* for the purposes of this Act), or
- (c) the Western Lands Commissioner in relation to the Western Division of the State (the Western Lands Commissioner’s *area* for the purposes of this Act).

council pound means:

- (a) a public or private pound established by a council under the *Impounding Act 1993*, or
- (b) any other place approved by a council or the Board as a place for the holding of animals seized under this Act.

dangerous dog means a dog for the time being the subject of a declaration by a council or a court under this Act that the dog is dangerous.

desexed means rendered permanently incapable of reproduction.

Director-General means the Director-General of the Department of Local Government.

disability has the same meaning as in the *Disability Discrimination Act 1992* of the Commonwealth.

dog means an animal (of either sex, or desexed) of the species *Canis familiaris*, whether or not domesticated.

exercise a function includes perform a duty.

function includes a power, authority and duty.

Fund means the Companion Animals Fund established by this Act.

identification information means the information prescribed by the regulations as the identification information for a companion animal.

local authority is defined in section 6.

owner is defined in section 7.

police dog means a dog that is being used by a police officer on official duty.

Note. This Act contains special exemptions for police dogs. Because this definition requires that the dog is being used by a police officer on official duty, the exemptions apply only when the dog is "on duty".

pound operator, in relation to a council pound referred to in paragraph (b) of the definition of that term, means the person or body that manages or has control of the pound.

property means land or premises.

public place means:

- (a) any pathway, road, bridge, jetty, wharf, road-ferry, reserve, park, beach or garden, and
- (b) any other place,

that the public are entitled to use.

Register means the Register of Companion Animals provided for by this Act.

registered means registered under this Act.

registered owner of a companion animal means the person shown in the registration information entered on the Register as the registered owner of the animal (and in the case of joint registered owners means each of those joint registered owners).

registration information means the information prescribed by the regulations as the registration information for a companion animal.

registration tag means a registration tag provided for an animal by the Director-General.

restricted dog is defined in section 55.

sell includes transfer ownership of the property in an animal by any means, including by gift.

- (2) A reference in Part 7 to a council is, in relation to a council pound referred to in paragraph (b) of the definition of that term, a reference to the pound operator.
- (3) Notes in the text of this Act do not form part of this Act.

6 Meaning of “local authority”

- (1) The **local authority** for a place is the council in the area of which the place is located.
- (2) The regulations may provide that the functions of the local authority for a place are to be exercised for the purposes of this Act or specified provisions of this Act by a specified person or the holder of a specified office (instead of by the council provided for by subsection (1)). That person or the holder of that office is then the local authority for that place for the purposes of this Act or the relevant provisions of this Act.

7 Meaning of “owner”

- (1) Each of the following persons is the **owner** of a companion animal for the purposes of this Act:
 - (a) the owner of the dog (in the sense of being the owner of the dog as personal property),
 - (b) the person by whom the animal is ordinarily kept (whether or not the animal is registered).
 - (c) the registered owner of the animal.

- (2) A reference in this Act to *the owner* of a companion animal is a reference to each and all owners of the animal.

Note. A provision of this Act that makes the owner of a companion animal guilty of an offence makes each owner guilty of the offence. This section goes on to provide for ways in which some owners can establish circumstances whereby they are taken not to be the owner of the animal.

- (3) For the purposes of any criminal or civil proceedings under this Act, a person who would otherwise be an owner of an animal as a result of being the occupier of property where the animal is for the time being ordinarily kept is taken not to be an owner of the animal if the person satisfies the court that the animal was at the relevant time ordinarily kept by some other person of or above the age of 18 years.
- (4) For the purposes of any criminal or civil proceedings under this Act, a person who would otherwise be the owner of an animal is taken not to be an owner of the animal if the person satisfies the court that some other person was in charge of the animal at the relevant time and was at least 18 years of age at that time. The relevant time is the time of the incident that is alleged to give rise to the criminal or civil liability with which the proceedings are concerned.
- (5) When a companion animal is ordinarily kept by an employee on behalf of his or her employer, the animal is for the purposes of this Act taken to be ordinarily kept by the employer and not the employee. This subsection does not prevent an employee being the registered owner of an animal and does not prevent the employee being an owner if the employee is the registered owner.
- (6) In any prosecution of the owner of a companion animal for an offence against this Act it is a defence if the defendant establishes that:
- (a) another owner of the animal has been convicted of an offence arising out of the same circumstances, or the commission by another owner of the animal of an offence arising out of the same circumstances has been proved but a court has made an order under section 556A of the *Crimes Act 1900* in respect of the offence, or
 - (b) another owner of the animal has paid the amount of the penalty prescribed under section 92 (Penalty notices) for an alleged offence arising out of the same circumstances.

Part 2 Compulsory identification and Registration of companion animals

8 Identification required from 12 weeks of age and before sale

- (1) A companion animal must be identified as required by the regulations from the time the animal is 12 weeks old.
- (2) A companion animal must not be sold unless it has been identified as required by the regulations (even if it is less than 12 weeks old when it is sold).
- (3) The owner of an animal is guilty of an offence if it is not identified in accordance with subsection (1).

Maximum penalty:

- (a) 5 penalty units except in the case of a dangerous or restricted dog, or
 - (b) 20 penalty units in the case of a dangerous or restricted dog.
- (4) A person who sells an animal in contravention of subsection (2) is guilty of an offence.

Maximum penalty:

- (a) 5 penalty units except in the case of a dangerous or restricted dog, or
 - (b) 20 penalty units in the case of a dangerous or restricted dog.
- (5) The regulations may change the age from which a companion animal is required to be identified under subsection (1) from 12 weeks to any other age (either generally for all companion animals or for a particular kind or class of companion animal).

Note. The term “sell” extends to the transfer of ownership by any means, including by gift. This section requires an animal to be identified before it is sold no matter what the age of the animal when it is sold.

9 Registration required from age 6 months

- (1) A companion animal must be registered under this Act from the time the animal is 6 months old. The owner of the animal is guilty of an offence if it is not registered.

Maximum penalty:

- (a) 5 penalty units except in the case of a dangerous or restricted dog, or
- (b) 20 penalty units in the case of a dangerous or restricted dog.

Note. The regulations may provide for exceptions to this section. An owner does not have to wait until an animal is 6 months old to register it. An animal of any age can be registered.

- (2) The regulations may change the age from which a companion animal is required to be registered under this section from 6 months to any other age, either generally for all companion animals or for a particular kind or class of companion animal.

10 Regulations may require registration

The regulations may require a particular class or description of companion animals (not otherwise required to be registered) to be registered. The owner of such an animal is guilty of an offence if it is not registered.

Maximum penalty:

- (a) 5 penalty units except in the case of a dangerous or restricted dog, or
- (b) 20 penalty units in the case of a dangerous or restricted dog.

Note. For example, the regulations could require that a companion animal be registered if it has been seized under this Act (for example, because it was found at large outside the property of its owner). The animal would then have to be registered even though it might be less than 6 months old.

11 Owner required to notify certain changes and events

- (1) The owner of a registered companion animal must notify the Director-General when any of the following happens:
 - (a) any change occurs in the registration information or identification information for the animal (notification must be given within 14 days after the change occurs),

- (b) the making or revocation of a declaration by a court under Part 5 that the animal (being a dog) is dangerous (notification must be given within 7 days after the declaration is made or revoked),
- (c) the animal dies (notification must be given within 28 days after the animal dies),
- (d) the animal has been missing for more than 72 hours (notification must be given within 96 hours after the animal went missing),
- (e) any other event prescribed as a notifiable event by the regulations.

Maximum penalty:

- (a) 5 penalty units except in the case of a dangerous or restricted dog, or
 - (b) 20 penalty units in the case of a dangerous or restricted dog.
- (2) The regulations may provide for the manner in which a notification under this section is to be given to the Director-General. Notification is not considered to have been given unless it is given in compliance with any such applicable provisions of the regulations.
- (3) When the Director-General is notified of a change in registration information, the Director-General is to provide the registered owner of the animal with a certificate of registration free of charge showing the registration information as changed. If the change is a change of ownership, the certificate of registration is to be provided to the new owner.
- (4) A person who in any notification given for the purposes of this section makes a statement or gives information that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 5 penalty units.

Part 3 Responsibilities of owners of dogs

Division 1 General responsibilities

12 Dog to wear collar and tags

- (1) A dog must have a collar around its neck and there must be attached to the collar:
 - (a) a name tag that shows the name of the dog and the address or telephone number of the owner of the dog, and
 - (b) (once the dog is registered) the current registration tag for the dog.
- (2) The owner of the dog is guilty of an offence if this section is not complied with.

Maximum penalty:

- (a) 5 penalty units except in the case of a dangerous or restricted dog, or
 - (b) 20 penalty units in the case of a dangerous or restricted dog.
- (3) The regulations may impose requirements in respect of the size, colour and material of a tag for use for the purposes of this section. The regulations may provide that a registration tag can show the information required to be shown on a name tag and for that to be sufficient compliance with the requirement to have a name tag attached to a dog's collar.
 - (4) This section does not apply to a dog while it is on property of which the owner of the dog is the occupier.

13 Owner's responsibilities while dog in a public place

- (1) A dog that is in a public place must be under the effective control of some competent person by means of an adequate chain, cord or leash.
- (2) If this section is contravened, the owner of the dog is guilty of an offence.

Maximum penalty:

- (a) 5 penalty units except in the case of a dangerous or restricted dog, or
 - (b) 20 penalty units in the case of a dangerous or restricted dog.
- (3) Any person (including an authorised officer) can seize a dog that the person finds in a public place in contravention of this section. If the owner of the dog is present, the dog cannot be seized except by an authorised officer and only then if the contravention continues after the owner has been told of the contravention.
- Note.** Putting the dog on a leash prevents the dog being seized but it does not excuse the contravention and does not stop action being taken for the contravention.
- (4) A dog is not considered to be, under the effective control of a person if the person has more than 4 dogs under his or her control.
- (5) This section does not apply to:
- (a) a dog accompanied by some competent person in an area declared to be an off-leash area by a declaration under this section (but only if the total number of dogs that the person is accompanied by or has control of does not exceed 4), or
 - (b) a dog engaged in the droving, tending or working of stock, or
 - (c) a dog being exhibited for show purposes, or
 - (d) a dog participating in an obedience class, trial or exhibition, or
 - (e) a police dog, or
 - (f) a dog secured in a cage or vehicle or tethered to a fixed object or structure.
- (6) A local authority can by order declare a public place to be an off-leash area. Such a declaration can be limited so as to apply during a particular period or periods of the day or to different periods of different days. However, there must at all times be at least one public place in the area of a local authority that is an off-leash area.

14 Dogs prohibited in some public places

- (1) Dogs are prohibited in the following places (whether or not they are leashed or otherwise controlled):
 - (a) ***Children's play areas*** (meaning any public place, or part of a public place, that is within 10 metres of any playing apparatus provided in that public place or part for the use of children).
 - (b) ***Food preparation/consumption areas*** (meaning any public place, or part of a public place, that is within 10 metres of any apparatus provided in that public place or part for the preparation of food for human consumption or for the consumption of food by humans).
 - (c) ***Recreation areas where dogs are prohibited*** (meaning any public place, or part of a public place, provided or set apart by a local authority for public recreation or the playing of organised games and in which the local authority has ordered that dogs are prohibited and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that dogs are prohibited in or on that public place or part).
 - (d) ***Public bathing areas where dogs are prohibited*** (meaning any public place or any part of a public place that is used for or in conjunction with public bathing or public recreation (including a beach), in which the local authority has ordered that dogs are prohibited and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that dogs are prohibited in or on that public place).
 - (e) ***School grounds*** (meaning any property occupied or used for a purpose connected with the conduct of a government school or non-government school under the *Education Act 1990*, other than any property used for a residence or the curtilage of a residence).
 - (f) ***Child care centres*** (meaning any property occupied or used for a purpose connected with the conduct of a child care service as defined in the *Children (Care and Protection) Act 1987*, other than any property used for a residence or the curtilage of a residence).

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- (g) ***Shopping areas where dogs are prohibited*** (meaning a shopping arcade or shopping complex, including any part of it that is used by the public for parking or access to shops, in which or part of which the local authority has ordered that dogs are prohibited and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that dogs are prohibited there). This paragraph does not apply to any shop or part of a shop.
- (h) ***Wildlife protection areas*** (meaning any public place or any part of a public place set apart by the local authority for the protection of wildlife and in which the local authority has ordered that dogs are prohibited for the purposes of the protection of wildlife and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that dogs are prohibited in or on that public place).
- (2) If a dog is found in a place in which dogs are prohibited under this section, the owner of the dog is guilty of an offence.
- Maximum penalty:
- (a) 5 penalty units except in the case of a dangerous or restricted dog, or
- (b) 20 penalty units in the case of a dangerous or restricted dog.
- (3) Any person (including an authorised officer) can seize a dog that the person finds in a place in which dogs are prohibited under this section. If the owner of the dog is present, the dog cannot be seized except by an authorised officer and only then if the owner fails to remove the dog from the place when the officer directs the owner to do so.
- Note.** Removing the dog prevents the dog being impounded but it does not excuse the contravention and does not stop action being taken for the contravention. Section 62 requires that a dog seized under this section be returned to its owner or taken to a council pound.
- (4) A dog is not prohibited under this section in a place that is a food preparation/consumption area if the place is a public thoroughfare (such as a road, footpath or pathway).

- (5) A dog is not prohibited under this section in a school ground or child care centre if it is there with the permission of the person controlling the school ground or child care centre.
- (6) A dog is not prohibited under this section in a place within a shopping area if it is there:
 - (a) in a vehicle that is secured in such a way as to prevent the dog from escaping from it, or
 - (b) with the permission of the person controlling the place, or
 - (c) for the purpose of being taken to or from a pet shop, the premises of a veterinary surgeon or a similar establishment.
- (7) A local authority is authorised to make the orders contemplated by this section.
- (8) This section does not apply to the following dogs:
 - (a) a police dog,
 - (b) a dog that is an assistance animal being used bona fide by a person with a disability to assist the person.

15 Greyhounds and other breeds to be muzzled

- (1) A greyhound and any other dog to which this section applies must at all times have a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal, except when the dog is:
 - (a) in or on any property or vehicle of which the owner of the dog is an occupier or where the dog is ordinarily kept, or
 - (b) under the effective control of some competent person and being exhibited for show purposes or participating in an obedience trial, or
 - (c) exempted from this section by the regulations.
- (2) If this section is contravened, the owner of the greyhound or other dog is guilty of an offence.
Maximum penalty: 5 penalty units.
- (3) The regulations may prescribe any breed or kind of dog as a breed or kind to which this section applies and a dog of that breed or kind is then a dog to which this section applies.

16 Owner liable if dog attacks a person or animal

- (1) If a dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not any injury is caused to the person or animal, the owner of the dog is guilty of an offence.

Maximum penalty:

- (a) 10 penalty units except in the case of a dangerous or restricted dog, or
 - (b) 100 penalty units in the case of a dangerous or restricted dog.
- (2) It is not an offence under this section if the incident occurred:
- (a) as a result of the dog being teased, mistreated, attacked or otherwise provoked, or
 - (b) as a result of the person or animal trespassing on the property on which the dog was being kept, or
 - (c) as a result of the dog acting in reasonable defence of a person or property, or
 - (d) in the course of lawful hunting, or
 - (e) in the course of the working of stock by the dog or the training of the dog in the working of stock.
- (3) This section does not apply to a police dog.

17 Dog must not be encouraged to attack

- (1) A person who sets on or urges a dog to attack, bite, harass or chase any person or animal (other than vermin) is guilty of an offence, whether or not actual injury is caused.

Maximum penalty:

- (a) 20 penalty units except in the case of a dangerous or restricted dog, or
- (b) in the case of a dangerous or restricted dog, 100 penalty units or 6 months imprisonment, or both.

Note. If the dog is a dangerous dog or a restricted dog, conviction for an offence under this section results in permanent disqualification from owning a dog. See section 23.

- (2) This section does not apply to something done by a person:
- (a) in the reasonable defence of a person or property,
 - (b) in the proper performance of the person's duties as a police officer,
 - (c) in the course of the use of a dog for the working of stock or the training of a dog in the working of stock,
 - (d) in the course of lawful hunting.

18 Dog that has attacked or bitten may be secured or seized

- (1) If a dog attacks or bites any person or animal (other than vermin) otherwise than in the circumstances referred to in section 16 (2), an authorised officer may, at any time within 4 hours after the attack or bite:
- (a) secure the dog in accordance with this section, or
 - (b) seize the dog.
- (2) Any other person may seize the dog if the dog is on property owned or occupied by the person.
- (3) However, a dog is not to be seized under this section if the dog:
- (a) is adequately secured on land occupied by the dog's owner, or
 - (b) is under the effective control of its owner (unless the owner set on or urged the dog to attack or bite the person or animal concerned).
- (4) If an authorised officer has reason to believe that the dog is on land occupied by the dog's owner, the authorised officer may seize the dog only if the authorised officer is unable to secure the dog on that land.
- (5) An authorised officer may enter any land (but not premises) for the purpose of exercising the authorised officer's powers under this section.
- (6) This section applies whether or not any injury is caused to a person or animal by the dog's attack or bite.

19 Procedure concerning securing or seizure of dog that has attacked or bitten

- (1) A person who seizes a dog under the authority of section 18 (2) is not required to comply with section 62 (Seized animals to be returned to owner or taken to council pound) if the person delivers the dog to its owner or to an authorised officer.
- (2) An authorised officer who secures or seizes a dog on land that the authorised officer has reason to believe is land occupied by the dog's owner must, before leaving that land, prepare a notice setting out:
 - (a) the reasons why the dog has been secured or seized, and
 - (b) the method by which the dog has been secured, or the place to which it has been taken, as the case may be.
- (3) The notice must be left:
 - (a) in a conspicuous place on the land, or
 - (b) with a person (being a person apparently above the age of 16 years) who appears to be an occupier of the land.

20 Dogs defecating in public place

- (1) The owner of a dog that defecates in a public place must immediately remove the dog's faeces and properly dispose of them.

Maximum penalty: 5 penalty units.

- (2) Proper disposal includes disposal in a rubbish receptacle designated for the purpose by the local authority. It is the duty of a local authority for a place that is commonly used for exercising dogs (including an off-leash area) to provide sufficient rubbish receptacles for the proper disposal of the faeces of dogs that defecate in the place.
- (3) This section does not apply when the dog is an assistance animal being used bona fide by a person with a disability to assist the person and the person's disability makes compliance by the person with this section not reasonably practicable.

21 Nuisance dogs

- (1) For the purposes of this section, a dog is a nuisance if the dog:
- (a) is habitually at large, or
 - (b) makes a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises, or
 - (c) repeatedly defecates on property (other than a public place) outside the property on which it is ordinarily kept, or
 - (d) repeatedly runs at or chases any person, animal (other than vermin and, in relation to an animal, otherwise than in the course of droving, tending, working or protecting stock) or vehicle, or
 - (e) endangers the health of any person or animal (other than vermin and, in relation to an animal, otherwise than in the course of droving, tending, working or protecting stock), or
 - (f) repeatedly causes substantial damage to anything outside the property on which it is ordinarily kept.
- (2) If an authorised officer of a council is satisfied that a dog is a nuisance, the officer can issue an order to the owner of the dog requiring the owner to prevent the behaviour that is alleged to constitute the nuisance. The order is to be in a form approved from time to time by the Director-General.
- (3) The order must specify the behaviour of the dog that is required to be prevented. The order can specify more than one kind of behaviour.
- (4) An order remains in force for 6 months after it is issued.
- (5) The owner of a dog must comply with an order issued to the owner under this section and must continue to comply with it while it is in force.
- Maximum penalty: 5 penalty units for a first offence or 10 penalty units for a second or subsequent offence.
- (6) A council whose authorised officer issues an order under this section must notify the Director-General within 7 days after the order is issued.

22 Action to protect persons and property against dogs

- (1) Any person may lawfully seize a dog if that action is reasonable and necessary for the prevention of damage to property.
- (2) Any person may lawfully seize, injure or destroy a dog if that action is reasonable and necessary for the protection of any person or animal (other than vermin) from injury or death.
- (3) However, subsection (2) does not authorise the seizure of, injury to or destruction of a dog that is engaged in the droving, tending, working or protection of stock unless the action is reasonable and necessary for the protection of a person from injury or death.
- (4) A person who seizes a dog under the authority of this section is not required to comply with section 62 (Seized animals to be returned to owner or taken to council pound) if the person delivers the dog to its owner or an authorised officer.
- (5) If a dog that is not under the effective control of some competent person enters any inclosed lands within the meaning of the *Inclosed Lands Protection Act 1901* and approaches any animal being farmed on the land, the occupier of the land or any person authorised by the occupier can lawfully injure or destroy the dog if he or she reasonably believes that the dog will molest, attack or cause injury to any of those animals.
- (6) An authorised officer who finds a dog attacking or harassing an animal (other than vermin) within a wildlife protection area (as defined in section 14 (1) (h)) can lawfully injure or destroy the dog if there is no other reasonably practicable way of protecting the animal.
- (7) A person who takes action under the authority of this section that results in the injury to or death of a dog must:
 - (a) take reasonable steps to ensure that an injured dog receives any necessary treatment, and
 - (b) report the matter to an authorised officer (unless the person is an authorised officer) and comply with such reasonable directions as the authorised officer may give for the purpose of causing the dog to be returned to its owner or taken to a council pound, and
 - (c) take reasonable steps to inform the owner of the dog.

- (8) An authorised officer is not to give a direction under this section for the purpose of causing a dog to be taken to a council pound unless the authorised officer is satisfied that the owner of the dog cannot be identified.
- (9) Nothing in this section authorises a contravention of the *Prevention of Cruelty to Animals Act 1979*.
- (10) The authority conferred by this section to destroy a dog extends only to authorising the destruction of the dog in a manner that causes it to die quickly and without unnecessary suffering.

23 Disqualification from owning dog

- (1) A person who is convicted of either of the following offences is permanently disqualified from owning a dog:
 - (a) an offence under section 17 (Dog must not be encouraged to attack) where the dog concerned was a dangerous or restricted dog at the time of the offence.
 - (b) an offence under section 35A (Maliciously cause a dog to inflict grievous bodily harm or actual bodily harm) of the *Crimes Act 1900*.
- (2) A court that convicts a person of an offence under any of the following provisions of this Act can order that the person is disqualified from owning a dog for a specified period:
 - (a) section 15 (Greyhounds and other breeds to be muzzled),
 - (b) section 16 (Owner liable if dog attacks a person or animal),
 - (c) section 17 (Dog must not be encouraged to attack), except where the dog concerned was a dangerous or restricted dog at the time of the offence,
 - (d) section 36 (Obligations of owner when notified of proposed dangerous dog declaration),
 - (e) section 49 (Failure to comply with destruction or control order),
 - (f) section 51 (Owner of dangerous dog must comply with control requirements).

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- (g) section 56 (Owner of restricted dog must comply with control requirements),
 - (h) any other provision prescribed by the regulations as a provision to which this subsection applies.
- (3) A court that convicts a person of more than one offence under any of the following provisions of this Act during any 5 year period can, on the second or subsequent conviction during that period, order that the person is disqualified from owning a dog for a specified period:
- (a) section 21 (Nuisance dogs),
 - (b) any other provision prescribed by the regulations as a provision to which this subsection applies.
- (4) The maximum period of disqualification that a court can order under this section is 5 years. An order under this section is in addition to any penalty that the court can impose for an offence.
- (5) The making of an order by a court under section 556A of the *Crimes Act 1900* in respect of a person charged with an offence is to be treated for the purposes of this section as a conviction of the person for the offence.
- (6) A person who is the owner of a dog in contravention of a disqualification or order under this section is guilty of an offence.
- Maximum penalty:
- (a) 10 penalty units except in the case of a dangerous or restricted dog, or
 - (b) 50 penalty units in the case of a dangerous or restricted dog.

24 Appeal against disqualification from owning dog

- (1) A person against whom an order disqualifying the person from owning a dog is made under section 23 may appeal to the District Court, in accordance with the rules of that Court, against the order.
- (2) An appeal may be made only within 28 days after the date on which the order is made.

- (3) An appeal that is duly lodged operates to stay the order of disqualification pending the determination of the appeal.
- (4) The District Court has jurisdiction to hear and determine an appeal made under this section.

Division 2 Liability for injury or death caused by dog

25 Liability for injury to a person or damage to clothing

- (1) The owner of a dog is liable in damages in respect of:
 - (a) bodily injury to a person caused by the dog wounding or attacking that person, and
 - (b) damage to the clothing of a person caused by the dog in the course of attacking that person.
- (2) This section does not apply in respect of:
 - (a) an attack by a dog occurring on any property or vehicle of which the owner of the dog is an occupier or on which the dog is ordinarily kept, but only if the person attacked was not lawfully on the property or vehicle and the dog was not a dangerous dog at the time of the attack, or
 - (b) an attack by a dog that is in immediate response to, and is wholly induced by, intentional provocation of the dog by a person other than the owner of the dog or the owner's employees or agents.
- (3) This section does not apply in respect of a police dog.
- (4) This section does not affect the liability apart from this section of any person for damage caused by a dog.

26 Continuation of liability when person dies from dog attack

Where the death of a person is caused by a dog wounding or attacking the person and the person would (had death not ensued) have been entitled under section 25 to recover damages from the owner of the dog in respect of bodily injury caused by the wounding or attack, the wounding or attack is, for the purposes of the *Compensation to Relatives Act 1897*, taken to be a wrongful act such as would (had death not ensued) have entitled the injured person to maintain an action against, and recover damages from, the owner of the dog in respect of that act.

27 Liability for injury to animal

- (1) The owner of a dog is liable in damages in respect of injury (whether or not fatal) to another animal (whether or not a dog, but other than vermin) caused by the dog attacking or chasing it.
- (2) This section does not apply in respect of:
 - (a) a dog attacking or chasing another animal on any property or vehicle of which the owner of the dog is an occupier or on which the dog is ordinarily kept, but only if the dog is not a dangerous dog under this Act at the time of the incident, or
 - (b) a dog attacking or chasing another animal in the course of droving, tending, working or protecting stock, or
 - (c) a dog attacking or chasing another animal where the attacking or chasing is in immediate response to, and is wholly induced by, intentional provocation of the dog by a person other than the owner of the dog or the owner's employees or agents, or
 - (d) a dog attacking or causing injury to another animal, where its doing so is in immediate response to, and is wholly induced by, an attack on the dog made by the other animal.
- (3) This section does not affect the liability apart from this section of any person for damage caused by a dog.

28 Contributory negligence

- (1) When damage suffered by a person that gives rise to a liability on the part of the owner of a dog to pay damages under this Division is the result partly of contributory negligence on the part of the person who suffers the damage, the damage is, for the purposes of Part 3 of the *Law Reform (Miscellaneous Provisions) Act 1965*, taken to have been suffered as the result partly of the fault of the owner of the dog and partly of the fault of the person suffering the damage.
- (2) This section does not affect the operation of Part 3 of the *Law Reform (Miscellaneous Provisions) Act 1965* in respect of any liability for damage caused by a dog that arises otherwise than under this Division.

Part 4 Responsibilities of owners of cats

29 Cat to wear form of identification

- (1) A cat must wear a form of identification that enables a local authority to ascertain the following information:
 - (a) the name of the cat and the address or telephone number of the owner of the cat,
 - (b) (once the cat is registered) the information contained on the current registration tag for the cat.
- (2) The identification may take any of the following forms:
 - (a) a collar worn around the cat's neck with a tag or tags attached,
 - (b) a microchip,
 - (c) any other form of identification prescribed by the regulations.
- (3) The owner of the cat is guilty of an offence if this section is not complied with.

Maximum penalty: 5 penalty units.
- (4) This section does not affect the operation of section 8.
- (5) This section does not apply to:
 - (a) a cat on property of which the owner of the cat is the occupier, or
 - (b) a cat being exhibited for show purposes or proceeding immediately to or from a place at which it will be, or has been, exhibited for show purposes.

30 Cats prohibited in some public places

- (1) Cats are prohibited in the following places:
 - (a) ***Food preparation/consumption areas*** (meaning any public place, or part of a public place, that is within 10 metres of any apparatus provided in that public place or part for the preparation of food for human consumption or for the consumption of food by humans).

(b) **Wildlifeprotection areas** (meaning any public place or any part of a public place set apart by the local authority for the protection of wildlife and in which the local authority ordered that cats are prohibited for the purposes of the protection of wildlife and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that cats are prohibited in or on that public place).

(2) If a cat is found in a place in which cats are prohibited under this section, the owner of the cat is guilty of an offence.

Maximum penalty: 5 penalty units.

(3) Any person (including an authorised officer) who finds a cat that is in a place in which cats are prohibited under this section may seize the cat for the cat's own protection.

(4) If the owner of the cat is present, an authorised officer (but no other person) may seize the cat (whether or not for the cat's own protection), but only if the owner fails to remove the cat from the place when the officer directs the owner to do so.

Note. Removing the cat prevents the cat being impounded but it does not excuse the contravention and does not stop action being taken for the contravention. Section 62 requires that a cat seized under this section be returned to its owner or taken to a council pound.

(5) A cat is not prohibited under this section in a place that is a food preparation/consumption area if the place is a public thoroughfare (such as a road, footpath or pathway).

(6) A local authority is authorised to make the orders contemplated by this section.

31 Nuisance cats

- (1) For the purposes of this section, a cat is a nuisance if the cat:
- (a) makes a noise that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises, or
 - (b) repeatedly damages anything outside the property on which it is ordinarily kept.

- (2) If an authorised officer of a council is satisfied that a cat is a nuisance, the officer can issue an order to the owner of the cat requiring the owner to prevent the behaviour that is alleged to constitute the nuisance. The order is to be in a form approved from time to time by the Director-General.
- (3) The order must specify the behaviour of the cat that is required to be prevented. The order can specify more than one kind of behaviour.
- (4) An order remains in force for 6 months after it is issued.
- (5) The owner of a cat must comply with an order issued to the owner under this section and must continue to comply with it while it is in force.

Maximum penalty: 2 penalty units for a first offence or 5 penalty units for a second or subsequent offence.

- (6) A council whose authorised officer issues an order under this section must notify the Director-General within 7 days after the order is issued.

32 Action to protect persons against cats

- (1) Any person may lawfully seize a cat if that action is reasonable and necessary for the protection of any person or animal (other than vermin) from injury or death.
- (2) A person who seizes a cat under the authority of this section is not required to comply with section 62 (Seized animals to be returned to owner or taken to council pound) if the person delivers the cat to its owner or an authorised officer.
- (3) If a cat that is not under the effective control of some competent person enters any inclosed lands within the meaning of the *Inclosed Lands Protection Act 1901* and approaches any animal being farmed on the land, the occupier of the land or any person authorised by the occupier can lawfully injure or destroy the cat if he or she reasonably believes that the cat will molest, attack or cause injury to any of those animals.

- (4) An authorised officer who finds a cat attacking or harassing an animal (other than vermin) within a wildlife protection area (as defined in section 30 (1) (b)) can lawfully injure or destroy the cat if there is no other reasonably practicable way of protecting the animal.
- (5) A person who takes action under the authority of this section that results in the injury to or death of a cat must:
- (a) take reasonable steps to ensure that an injured cat receives any necessary treatment, and
 - (b) report the matter to an authorised officer (unless the person is an authorised officer) and comply with such reasonable directions as the authorised officer may give for the purpose of causing the cat to be returned to its owner or taken to a council pound, and
 - (c) take reasonable steps to inform the owner of the cat.
- (6) An authorised officer is not to give a direction under this section for the purpose of causing a cat to be taken to a council pound unless the authorised officer is satisfied that the owner of the cat cannot be identified.
- (7) Nothing in this section authorises a contravention of the *Prevention of Cruelty to Animals Act 1979*.
- (8) The authority conferred by this section to destroy a cat extends only to authorising the destruction of the cat in a manner that causes it to die quickly and without unnecessary suffering.

Part 5 Dangerous dogs

Division 1 Power of councils to declare dogs dangerous

33 Meaning of “dangerous”

For the purposes of this Division, a dog is *dangerous* if it has, without provocation:

- (a) attacked or killed a person or animal (other than vermin),
or
- (b) repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin).

34 Council can declare dog to be dangerous

- (1) A council can declare a dog to be dangerous if the dog is ordinarily kept in the council’s area and the council is satisfied that the dog is dangerous.
- (2) A declaration can be made on the council’s own initiative or on the written application of a police officer or any other person.
- (3) A declaration has effect throughout the State. It is not limited in its operation to the area of the council.

Note. This Part also gives a Local Court the power to declare a dog to be dangerous in certain circumstances.

35 Owner to be notified of proposed declaration

- (1) A council must give notice to the owner of a dog of the council’s intention to declare the dog to be dangerous.
- (2) The notice must set out:
 - (a) the requirements with which the owner will be required to comply if the declaration is made, and
 - (b) the owner’s right to object to the proposed declaration in writing to the council within 7 days after the date the notice is given.

36 Obligations of owner when notified of proposed dangerous dog declaration

- (1) When a council gives notice to the owner of a dog of the council’s intention to declare the dog to be dangerous, the owner

must ensure that at all times when the dog is away from the property where it is ordinarily kept (and despite any other provision of this Act):

- (a) it is under the effective control of some competent person by means of an adequate chain, cord or leash, and
- (b) it has a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal.

Maximum penalty: 20 penalty units.

- (2) This section applies in respect of a dog for 28 days after the council gives the dog's owner the notice concerned or until the council notifies the owner that the council has made the proposed declaration or has decided not to make it, whichever happens first.
- (3) While this section applies in respect of a dog, an authorised officer can seize the dog if of the opinion that the dog is not confined, tethered or restrained in such a way as to prevent the dog attacking or chasing a person lawfully at the property where the dog is ordinarily kept.
- (4) An authorised officer can enter any land (but not premises) for the purpose of exercising the authorised officer's powers under subsection (3).
- (5) Part 7 (Procedures for dealing with seized animals) applies in respect of the dog with the following modifications:
 - (a) a claim for the dog cannot be made under section 64 (Unclaimed animals can be sold or destroyed) unless an authorised officer is satisfied that the dog is reasonably capable of being confined, tethered or restrained in such a way as to prevent the dog attacking or chasing a person lawfully at the property where the dog is ordinarily kept,
 - (b) the dog cannot be sold or destroyed under section 64 until at least 28 days after this section ceases to apply in respect of the dog.

37 Council must consider dog owner's objections

- (1) The owner has 7 days after the date the notice is given in which to object to the proposed declaration.

- (2) If the owner does not object within that time, the council can proceed to make the declaration after the 7 days have passed.
- (3) If the owner does object within that time, the council must first consider the objection before proceeding to make the declaration.

38 Council to notify dog owner of decision and consequences

- (1) A council must give notice to the owner of a dog when it declares the dog to be dangerous or decides not to declare the dog to be dangerous. The notice must be given within 7 days after the declaration or decision is made.
- (2) A notice that a dog has been declared dangerous must set out:
 - (a) the requirements imposed on the owner by this Part and the date or dates by which the owner must comply with those requirements, and
 - (b) the owner's right to appeal against the declaration.
- (3) A declaration has effect from the date specified in the notice or the date on which notice is given, whichever is the later.

39 Council can revoke its declaration of a dog as dangerous

- (1) The owner of a dog that has been declared dangerous under this Part can apply to the council of the area in which the dog is ordinarily kept (whether or not it is the council that made the declaration) for the declaration to be revoked.
- (2) The council to which the application is made can revoke the declaration but only if satisfied that it is appropriate to do so.
- (3) The council must, as soon as practicable, give notice to the owner of the dog that the declaration has been revoked or that the council has refused to revoke the declaration.

40 Council to notify Director-General of making or revocation of declaration

A council that makes or revokes a declaration under this Division must give notice to the Director-General within 7 days.

41 Appeal against decision of council

- (1) The owner of a dog can appeal to a Local Court constituted by a Magistrate sitting alone:
 - (a) against the declaration by the council that the dog is dangerous, or
 - (b) against a refusal by the council to revoke its declaration that the dog is dangerous.
- (2) An appeal can only be made within 28 days after the date the owner of the dog is given notice by the council that it has made the declaration or that it has refused to revoke the declaration.
- (3) The fact that an appeal is pending does not affect the dog's status as a dangerous dog and does not affect the appellant's obligations under this Act as the owner of a dangerous dog, unless the Court otherwise orders.

42 Determination of appeals by Local Court

A Local Court may determine an appeal by confirming the decision of the council or by revoking the declaration.

Note. A Local Court has power under Division 3 to make other orders to control a dog on an appeal from a decision of a council concerning a declaration (for example, the Court can order that the owner of a dog take such action as the Court thinks necessary to prevent the dog attacking persons or other animals).

43 How notice is to be given under this Division

- (1) A notice required by this Division to be given to the owner of a dog is to be given in writing either personally or by post.
- (2) For the purposes of section 76 of the *Interpretation Act 1987*, a notice served by post on the owner of a dog for the purposes of this Division is to be treated as being properly addressed if it is addressed to the last address of the owner known to the council.

Division 2 Power of Local Court to declare dogs dangerous**44 Local Court has power to declare a dog to be dangerous**

- (1) In any proceedings under this Act before a Local Court (other than an appeal against a declaration by a council that a dog is dangerous or against a refusal by a council to revoke such a declaration), the Court may declare a dog to be dangerous.

- (2) A declaration by a Local Court has effect throughout the State.

Note. Section 11 requires the owner of a dog to notify the Director-General when a dangerous dog declaration is made or revoked by a Local Court.

45 When a Local Court can declare a dog to be dangerous

A Local Court can declare a dog to be dangerous only if the Court is satisfied that:

- (a) the dog has, without provocation, attacked or killed a person or an animal (other than vermin), or
- (b) the dog has, without provocation, repeatedly chased or repeatedly threatened to attack a person or an animal (other than vermin), or
- (c) a declaration that the dog is dangerous made by a council is in force.

46 Revocation of Local Court declaration

A Local Court can revoke a declaration made by a Court under this Division on the application of the owner of the dog concerned if the Court is satisfied that it is appropriate to do so in the circumstances.

Division 3 Powers of Courts to make destruction and control orders

47 Control orders

- (1) A *control order* is an order of a Court that the owner of a dog take such action (other than destroying the dog) within the period specified in the order as the Court thinks necessary to prevent, or reduce the likelihood of, the dog attacking or causing injury to persons or animals.
- (2) A *control order* can be made by a Court in the following circumstances:

- (a) in proceedings for an offence under section 16 (Owner liable if dog attacks a person or animal), 17 (Dog must not be encouraged to attack), 49 (Failure to comply with destruction or control order) or 51 (Owner of dangerous dog must comply with control requirements) of this Act, or under section 35A (Maliciously cause a dog to inflict grievous bodily harm or actual bodily harm) of the *Crimes Act 1900*,
 - (b) on an appeal under this Act against a council's declaration that a dog is dangerous or against a council's refusal to revoke such a declaration,
 - (c) on the Court declaring the dog to be dangerous under Division 2.
- (3) The action that a control order can require the owner of a dog to take includes the following action:
- (a) the desexing of the dog,
 - (b) the behavioural or socialisation training of the dog.
- (4) A control order can be made in addition to any other order made by the Court in the proceedings concerned.

48 Destruction orders

- (1) A ***destruction order*** is an order of a Court that the owner of a dog destroy the dog or cause the dog to be destroyed, or that a dog be destroyed by some person authorised by the Court, within the period specified in the order.
- (2) A destruction order can be made by a Court in the following circumstances:
- (a) on conviction of the owner of the dog of an offence under section 35A (Maliciously cause a dog to inflict grievous bodily harm or actual bodily harm) of the *Crimes Act 1900*, or under section 16 (Owner liable if dog attacks a person or animal), 17 (Dog must not be encouraged to attack), 49 (Failure to comply with destruction or control order) or 51 (Owner of dangerous dog must comply with control requirements) of this Act,
 - (b) on confirming a council's declaration that a dog is dangerous or a council's refusal to revoke such a declaration.

- (3) However, a Court must not make a destruction order unless it is satisfied that the making of a control order, or an order permanently removing the dog from its owner (which the Court is, by this subsection, authorised to make), will not be sufficient to protect the public from any threat posed by the dog.
- (4) If the Court makes an order permanently removing a dog from its owner, the dog is to be dealt with under Part 7 as if it were a seized animal. However, the dog is not to be sold to the owner from whom it was removed by the order.
- (5) The making of an order by a Court under section 556A of the *Crimes Act 1900* in respect of a person charged with an offence is to be treated for the purposes of this section as a conviction of the person for the offence.
- (6) A destruction order can be made in addition to any other order made by the Court in the proceedings concerned.
- (7) A destruction order is sufficient authority for the destruction of a dog. The dog must be destroyed in a manner that causes it to die quickly and without unnecessary suffering.

49 Failure to comply with destruction or control order

The owner of a dog who does not comply with a destruction or control order under this Division is guilty of an offence.

Maximum penalty: 40 penalty units.

50 Ancillary orders to enable destruction order to be carried out

- (1) A Court may, if it makes a destruction order that a dog be destroyed by some person authorised by the Court, require the owner of the dog to take, within such period as is specified in the destruction order, such action as is, in the opinion of the Court, necessary to enable the destruction order to be carried out.
- (2) The Court may also make an order for the payment of any costs incurred in destroying the dog.

- (3) The owner of a dog who does not comply with an order under this section is guilty of an offence.

Maximum penalty: 40 penalty units.

Division 4 Responsibilities of owners of Dangerous dogs

51 Owner of dangerous dog must comply with control requirements

- (1) The owner of a dog that is declared to be dangerous under this Act, and any person who subsequently becomes the owner of such a dangerous dog, must ensure that the following requirements are complied with while the declaration is in force:
- (a) The dog must be desexed (if it is not already desexed) within 28 days after the date the owner of the dog is given notice by the council that it has made the declaration. If the owner appeals against the declaration to a Local Court within that 28 days, the operation of this paragraph is stayed until the appeal is either withdrawn or determined.
 - (b) The dog must not at any time be in sole charge of a person under the age of 18 years.
 - (c) While the dog is on property on which the dog is ordinarily kept, the dog must be kept in a child-proof enclosure.
 - (d) One or more signs must be displayed on that property showing the words “Warning Dangerous Dog” in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.
 - (e) When the dog is away from the property where it is ordinarily kept the dog must, despite any other provision of this Act, be under the effective control of some competent person by means of an adequate chain, cord or leash and have a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal. This paragraph does not apply when paragraph (f) applies.

- (f) If the dog is taken by or on behalf of the owner to any property on which the dog is to be kept temporarily (for example, the premises of a veterinary surgeon or a boarding kennel), the owner must ensure that while the dog is on that property:
 - (i) the dog is under the effective control of some competent person by means of an adequate chain, cord or leash, or
 - (ii) the dog is otherwise under effective control so as to prevent it from attacking any person or animal and one or more signs are displayed on that property as provided by paragraph (d).
- (g) On or before a change of ownership of the dog, the person transferring ownership must inform the person to whom ownership is transferred that the declaration is in force and of the requirements of this section.
- (h) The dog must not be sold to a person under the age of 18 years.
- (i) The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:
 - (i) that the dog (with or without provocation) has attacked or injured a person or an animal (other than vermin)—notice to be given within 24 hours after the attack or injury,
 - (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed,
 - (iii) that the dog has died—notice to be given as soon as practicable after the death,
 - (iv) that the ownership of the dog has changed—notice to be given within 24 hours after the change of ownership,
 - (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location.

(vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location.

- (i) If the owner intends to keep the dog in the area of a council that is not the area in which the dog was ordinarily kept when the declaration was made, the owner must notify the council of the area in which the dog is intended to be ordinarily kept of his or her intention to do so.

Note. Section 9 also requires the owner of a dog to notify the Director-General within 7 days after a Court declares the dog a dangerous dog or revokes the declaration. If the order is made or revoked by a council, the council is required to notify the Director-General (see section 40).

- (2) An owner of a dog who does not comply with any of the requirements of this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) A person who becomes the owner of a dog while a declaration in respect of the dog is in force is not guilty of an offence under this section if, before or when the person became the owner of the dog, the person was not informed both that:
- (a) the declaration was in force, and
- (b) the person was required to comply with this section.
- (4) The requirements imposed under this section on the owner of a dangerous dog are additional to the other requirements of this Act imposed on the owner of a dog.

52 Dangerous dog can be seized if owner cannot comply with control requirements

- (1) An authorised officer can seize a dangerous dog if of the opinion that the requirements of section 51 are not reasonably capable of being complied with at the property where the dog is ordinarily kept.
- (2) An authorised officer can enter any land (but not premises) for the purpose of exercising the authorised officer's powers under this section.

- (3) Part 7 (Procedures for dealing with seized animals) then applies in respect of the dog, except that a claim for the dog cannot be made under section 64 (Unclaimed animals can be sold or destroyed) unless an authorised officer is satisfied that the requirements of section 51 are reasonably capable of being complied with at the property where the dog is ordinarily kept.

Note. The result of this section is that a dangerous dog that is seized can be destroyed under Part 7 after the waiting period (usually 14 days) provided for in that Part after the dog is seized unless the ability to comply with section 51 can be demonstrated within that time.

53 Inconsistency with agreements

In the event of an inconsistency between this Division and the provisions of any agreement, covenant or instrument, this Division is to prevail, but to the extent only of the inconsistency.

Note. For example, the requirement under this Division that the owner of a dangerous dog display a warning sign on premises would override a provision in a lease prohibiting the fixing of any sign to a building.

54 Civil liability of owner of dangerous dog

The mere fact that a dog has at any time been declared to be dangerous under this Act does not affect the civil liability of the owner of the dog in any proceedings (other than proceedings under this Act).

Division 5 Special restrictions for other dogs

55 Restricted dogs

The following dogs are restricted dogs for the purposes of this Act:

- (a) pit bull terriers.
- (b) American pit bull terriers.
- (c) Japanese tosas,
- (d) Argentinian fighting dogs (*dogo Argentino*),
- (e) Brazilian fighting dogs (*fila Brasileiro*),

- (f) any other dog of a breed, kind or description prescribed by the regulations as restricted for the purposes of this Division.

Note. For example, dogs used as guard dogs by security personnel could be prescribed as restricted dogs.

56 Owner of restricted dog must comply with control requirements

- (1) The owner of a restricted dog must ensure that the following requirements are complied with:
- (a) While the dog is on property on which the dog is ordinarily kept, the dog must be kept in a child-proof enclosure.
 - (b) The dog must not at any time be in the sole charge of a person under the age of 18 years.
 - (c) One or more signs must be displayed on that property showing the words “Warning Dangerous Dog” in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.
 - (d) When the dog is away from the property where it is ordinarily kept the dog must, despite any other provision of this Act, be under the effective control of some competent person by means of an adequate chain, cord or leash and have a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal. This paragraph does not apply when paragraph (e) applies.
 - (e) If the dog is taken by or on behalf of the owner to any property on which the dog is to be kept temporarily (for example, the premises of a veterinary surgeon or a boarding kennel), the owner must ensure that while the dog is on that property:
 - (i) the dog is under the effective control of some competent person by means of an adequate chain, cord or leash, or

- (ii) the dog is otherwise under effective control so as to prevent it from attacking any person or animal and one or more signs are displayed on that property as provided by paragraph (c).
 - (f) The dog must not be sold to a person under the age of 18 years.
 - (g) The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:
 - (i) that the dog (with or without provocation) has attacked or injured a person or animal (other than vermin)—notice to be given within 24 hours after the attack or injury,
 - (ii) that the dog cannot be found—notice to be given within 24 hours after the dog’s absence is first noticed.
 - (iii) that the dog has died—notice to be given as soon as practicable after the death,
 - (iv) that the ownership of the dog has changed—notice to be given within 24 hours after the change of ownership,
 - (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location,
 - (vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location.
- (2) An owner of a dog who does not comply with any of the requirements of this section is guilty of an offence.
- Maximum penalty: 50 penalty units.
- (3) The requirements imposed under this section on the owner of a restricted dog are additional to the other requirements of this Act imposed on the owner of a dog.

- (4) In the event of an inconsistency between this section and the provisions of any agreement, covenant or instrument, this section is to prevail, but to the extent only of the inconsistency.

57 Restricted dog can be seized if owner cannot comply with control requirements

- (1) An authorised officer can seize a restricted dog if of the opinion that the requirements of section 56 are not reasonably capable of being complied with at the property where the dog is ordinarily kept.
- (2) An authorised officer can enter any land (but not premises) for the purpose of exercising the authorised officer's powers under this section.
- (3) Part 7 (Procedures for dealing with seized animals) then applies in respect of the dog, except that a claim for the dog cannot be made under section 64 (Unclaimed animals can be sold or destroyed) unless an authorised officer is satisfied that the requirements of section 56 are reasonably capable of being complied with at the property where the dog is ordinarily kept.

Note. The result of this section is that a restricted dog that is seized can be destroyed under Part 7 after the waiting period (usually 14 days) provided for in that Part after the dog is seized unless the ability to comply with section 56 can be demonstrated within that time.

58 Civil liability of owner of restricted dog

The mere fact that a dog is a restricted dog does not affect the civil liability of the owner of the dog in any proceedings (other than proceedings under this Act).

Part 6 Assistance animals

59 Person with a disability entitled to be accompanied by assistance animal

- (1) A person with a disability is entitled to be accompanied by an assistance animal being used bona fide by the person to assist the person, into or onto any building or place open to or used by the public or on any public transport.
- (2) The person is not guilty of an offence merely because the person takes the animal into or onto or permits the animal to enter or be in or on any such building or place or any public transport while the person is using the animal bona fide to assist the person.
- (3) This section applies despite the provisions of any other Act or instrument made under an Act.

60 Assistance animal not to be denied entry

- (1) An occupier or person in charge or control of a building or place open to or used by the public or a person in charge or control of any public transport must not, without reasonable cause, refuse to permit a person to take an assistance animal into or onto, or while accompanied by an assistance animal to enter or be in or on, that building or place or public transport if the person has a disability and is using the animal bona fide to assist him or her.
Maximum penalty: 5 penalty units.
- (2) A person prosecuted for a contravention of this section is not entitled to any defence to that prosecution that relies for its efficacy on the presence of the animal concerned.

61 Unlawful to impose charge for entry of assistance animal

- (1) An occupier or person in charge or control of a building or place open to or used by the public or a person in charge or control of any public transport must not impose a charge on or in respect of a person with a disability who is accompanied by an assistance animal used bona fide by the person to assist him or her and who is taking the animal into or onto, or is entering or is in or on, that building or place or public transport, unless the charge would have been imposed on or in respect of that person if the person had not been accompanied by the animal.
Maximum penalty: 5 penalty units.

- (2) A person (*the defendant*) does not contravene subsection (1) by imposing a charge in respect of an animal accompanying a person if the defendant proves that:
- (a) in the circumstances it was reasonably necessary for the defendant to supply accommodation for the animal additional to that supplied for the person, that the charge was imposed for that additional accommodation, and that the charge was a reasonable charge in the circumstances, or
 - (b) the defendant reasonably incurred additional expense because of the presence of the animal, that the charge imposed was to recompense the defendant for that additional expense, and that the charge was a reasonable charge in the circumstances.
- (3) When a person is convicted of an offence under this section in respect of a charge imposed on another person, the court may, upon application made by that other person, order the convicted person to refund the amount of that charge.
- (4) The court's order operates as an order for the payment of money under the *Local Courts (Civil Claims) Act 1970* and is enforceable as such an order under that Act. The order can for the purpose of enforcing it be entered in the records of the court exercising jurisdiction under the *Local Courts (Civil Claims) Act 1970* at the place where the order was made, in such manner as may be prescribed by rules made under that Act.

Part 7 Procedures for dealing with seized animals

62 Seized animals to be returned to owner or taken to council pound

- (1) A person who seizes an animal under the authority of this Act (referred to in this Part as a *seized animal*) must cause it to be delivered as soon as possible to its owner if the owner can be identified or otherwise to any duly authorised employee or agent of the council of the area in which the animal was seized at a council pound.
- (2) A person who seizes an animal and does not comply with the requirements of this section is guilty of an offence.

Maximum penalty: 20 penalty units.

63 Owner of animal to be notified

- (1) When a seized animal is delivered to a council pound, the person in charge of the pound is to give notice of the seizure of the animal to the person who appears (from the best endeavours of the person in charge to establish who the owner is) to be the owner of the animal. Notice of seizure need not be given if those best endeavours fail to establish the name and address of the owner of the animal.
- (2) Without limiting the requirement that the person in charge of a pound use his or her best endeavours to establish who the owner of an animal is, the person must make the following inquiries:
 - (a) inquiries to determine whether the animal is registered or identified as required by this Act and, if so, a search of the Register to find the name and address of the owner of the animal.
 - (b) inquiries based on any form of identification worn by the animal.
 - (c) such other inquiries as the regulations may require be made.

- (3) The notice required by this section is to be in writing and is to be given:
 - (a) by being served personally on the person to whom it is required to be given, or
 - (b) by sending it by post to the person to whom it is required to be given at that person's address, being the address shown in the Register as the address of the owner or at such other address as appears to the person who gives the notice to be the owner's address, or
 - (c) by leaving it with some other person for the person to whom it is required to be given at that person's address.
- (4) The regulations may impose requirements on the form and contents of the notice required by this section and may provide for other ways in which the notice can be served.

64 Unclaimed animals can be sold or destroyed

- (1) A council can sell or destroy a seized animal if it has not been claimed within 14 days after the required notice of seizure is given or, when such a notice is not required to be given, within 7 days after the animal is delivered to the pound.
- (2) However, it is the duty of the council to consider whether there is an alternative action to that of destroying a seized animal and (if practicable) to adopt any such alternative.
- (3) An animal is *claimed* when:
 - (a) a person who appears to the person in charge of the pound to be the owner of the animal or acting on the owner's behalf claims the animal, and
 - (b) the fees for the release of the animal (being fees determined by the council under this Part) are paid to the council, and
 - (c) the charges for the animal's maintenance while it was detained by the council (being charges determined by the council under this Part) are paid to the council.
- (4) An unregistered animal that is required to be registered cannot be claimed until an application for registration of the animal has been properly made (and any registration fee that is payable has been paid). The regulations may create exceptions to this subsection.

65 Fees and charges payable when animal detained

- (1) A council can determine the following fees and charges for the purposes of this Part:
 - (a) release fees, being fees to be paid for the release of an animal detained under this Part, and
 - (b) maintenance charges, being charges to be paid for the maintenance of an animal while it is detained by the council under this Part.
- (2) Different fees and charges can be determined by a council in respect of different breeds, kinds or classes of animals.
- (3) The Minister can issue guidelines to councils from time to time with respect to the fixing of fees and charges under this section and councils are to comply with those guidelines.
- (4) The regulations may set maximum amounts for the fees and charges that can be determined by councils under this section.

66 Owner not entitled to compensation for sale of animal

- (1) A council that sells an animal under this Part may transfer the proceeds of sale to such of its funds as it considers appropriate. The money then becomes the property of the council.
- (2) A person who claims to be the owner of an animal sold by a council under this Part is not entitled to any compensation for the sale.
- (3) If the proceeds of sale of an animal are less than the release fees and maintenance charges determined by the council under this Part (together with any expenses reasonably incurred by the council in selling the animal), the council is entitled to recover from the person who was the owner of the animal at the time it was seized the whole or part of the difference between the proceeds of the sale and the amount of those fees, charges and expenses.

67 Recovery of fees and charges when animal destroyed

If a seized animal is destroyed by the council under this Part, the council is entitled to recover the following amounts from a person who was the owner of the animal at the time it was seized:

- (a) the release fees and maintenance charges determined by the council under this Part,
- (b) if the council so resolves, the whole or part of any expenses reasonably incurred by the council in destroying the animal.

68 Offence of rescuing seized animal

- (1) A person who rescues or attempts to rescue an animal seized under the authority of this Act or an animal lawfully detained after seizure under the authority of this Act is guilty of an offence.

Maximum penalty: 5 penalty units.

- (2) A person convicted of an offence under this section of rescuing an animal lawfully detained by a council is, in addition to any penalty imposed, liable to pay the charges for the maintenance of the animal while it was detained by the council (being charges determined by the council under this Part).
- (3) If 2 or more persons are convicted in respect of the one offence under this section, any charges payable under this section are, if the court so orders, payable in full by one of those persons or payable by any or all of those persons in such proportions as the court orders.

69 Protection of council and council officers

- (1) A person who destroys an animal under a power conferred by this Act is not liable in damages for any loss that the owner of the animal or any other person has sustained as a result of that action and nor is a council that authorised the person, unless it is established that the person or council did not act in good faith.
- (2) When an animal is sold under a power conferred by this Act:
 - (a) the buyer obtains the ownership of the animal freed and discharged from any right, interest, trust or obligation to which it was subject immediately before sale, and

- (b) the person who was the owner of the animal immediately before its sale ceases to have any claim in respect of the animal or any right of action in respect of the sale except as specifically provided by this Act.
- (3) A person is not prevented from recovering damages from a council in respect of the sale of an animal if the person establishes that the council, or the person who effected the sale, did not act in good faith or acted without reasonable care.

Part 8 Identification and registration procedures

78 Identification

- (1) The regulations may provide for the compulsory identification of companion animals (that is, the identification required by section 8 (Identification required from 12 weeks of age and before sale)).
- (2) In particular the regulations may provide for the following:
 - (a) the manner in which companion animals are required to be identified,
 - (b) the procedures to be followed in connection with the compulsory identification of companion animals,
 - (c) the accreditation of persons to carry out compulsory identification of companion animals and the duties of those persons in connection with compulsory identification.
- (3) The regulations are to specify the information that is to be the identification information for companion animals for the purposes of this Act. The identification information for a companion animal is to be entered on the Register but entry of that information does not of itself constitute registration of the animal.

Note. The purpose of entering identification information is to ensure that any available identification details for a companion animal are kept on the Register even before the animal has to be registered, so that the information can be used to trace the owner of the animal.

71 Registration

- (1) A companion animal is registered when the registration information for the animal is entered on the Register.

Note. Registration is for life and does not have to be renewed. There are exceptions to this in the case of dogs already registered under the *Dog Act 1966* when the new registration scheme starts (see Schedule 3 Savings and transitional provisions).
- (2) The regulations may provide for the registration of companion animals, and in particular may provide for the following:
 - (a) the information concerning a companion animal that is to be the registration information for the animal,

- (b) the making of an application for registration (including the form of an application, the information and evidence to accompany an application, the persons to whom application can be made),
 - (c) the fee to be paid for registration (including exemptions from the payment of a fee and reductions in fees),
 - (d) pre-conditions to registration (such as compulsory identification),
 - (e) restrictions on who can be the registered owner of a companion animal.
- (3) Two or more persons can be registered as joint registered owners of a companion animal.
- (4) A person who in or in connection with an application for registration makes a statement or gives information that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 5 penalty units.

72 Certificate of registration

- (1) The Director-General is to provide the registered owner of a companion animal with a certificate of registration for the animal, showing the registration information for the animal.
- (2) The certificate of registration is to be provided at the time of registration and is to be provided free of charge.
- (3) The certificate of registration is evidence that the animal is registered and that the registration information shown on the certificate is that entered on the Register. Information entered on the Register is presumed (in the absence of evidence to the contrary) to be correct.
Note. In this way, the certificate of registration can be used as evidence of (for example) the name of the registered owner of an animal and the address at which it is ordinarily kept.
- (4) The Director-General can issue a replacement certificate of registration when a certificate of registration is lost, stolen, damaged or destroyed. and can charge a fee for the issue of the replacement certificate.

73 Registration tag

- (1) The Director-General is to provide the registered owner of a companion animal with a registration tag for the animal. The tag is to carry information sufficient for linking the animal with the registration information for the animal on the Register.
- (2) The tag is to be provided at the time of registration and is to be provided free of charge.
- (3) The Director-General can provide a replacement registration tag when a registration tag is lost, stolen, damaged or destroyed, and can charge a fee for providing a replacement tag.

74 The Register

- (1) There is to be a Register of Companion Animals. The Director-General is responsible for the keeping and administration of the Register.
- (2) The regulations may make provision for the manner and form in which the Register is to be kept, the information that is to be entered on the Register and any other matter concerning the keeping and administration of the Register.
- (3) The Director-General can issue a certificate certifying as to whether or not a particular companion animal is or was registered at a particular time and certifying as to any registration information for the animal entered on the Register at a particular time. The certificate is evidence of the matters certified. Information entered on the Register is presumed (in the absence of evidence to the contrary) to be correct.

Note. Such a certificate can be used as evidence of (for example) the name of the registered owner of an animal and the address at which it is ordinarily kept.

- (4) The Director-General can enter into agreements and other arrangements with a person or body in respect of the exercise of functions of the Director-General under this Act by the person or body on behalf of the Director-General. Such an agreement or other arrangement can make provision for the ownership of information entered on the Register to be vested in the Director-General.

75 Access to the Register

- (1) An authorised person is entitled to access to information contained in the Register. The Director-General is required to provide that access free of charge.
- (2) The regulations may provide for the ways in which access can or must be given.

Note. For example, access could be by telephone, facsimile or electronic access to the Register.

- (3) The regulations may require the Director-General to keep specified records with respect to the access given to the Register under this section and may provide for the persons who are entitled to access to those records.
- (4) The regulations may make provision for privacy with respect to the information on the Register and the Director-General is required to comply with those provisions. The right of access provided for by this section is subject to any such provisions except the right of the Minister.
- (5) The regulations may prohibit or restrict the disclosure of information obtained by a person who is given access to information contained in the Register.
- (6) The Minister and any person acting with the Minister's authority is entitled to full and free access to information contained in the Register at all times.
- (7) The following persons are *authorised persons* for the purposes of this section:
 - (a) authorised officers,
 - (b) the holder of any office prescribed by the regulations for the purposes of this section,
 - (c) a person who is a member of a class of persons prescribed by the regulations as authorised persons for the purposes of this section.

Note. Police officers and certain council officers are authorised officers.

76 Offence of interfering with identification of animal

- (1) A person must not remove, alter or otherwise interfere with any marking on or implant in a companion animal by means of which information about the compulsory identification of the animal is ascertained.

Maximum penalty: 10 penalty units.

- (2) This section does not apply to anything done in connection with the proper veterinary treatment of an animal by or under the immediate supervision of a veterinary surgeon.

77 Offence of interfering with registration tag

A person must not alter the information on, damage, deface or otherwise improperly interfere with an animal's registration tag.

Maximum penalty: 10 penalty units.

Part 9 Companion Animals Advisory Board

78 Constitution of the Board

There is constituted by this Act a Companion Animals Advisory Board.

79 Membership of the Board

- (1) The Board is to consist of no fewer than 5 and no more than 12 members, as follows:
 - (a) as an ex-officio member, the Director-General of the Department of Local Government or an officer of that Department nominated for the time being by the Director-General of that Department,
 - (b) as an ex-officio member, the Director-General of the Department of Agriculture or an officer of that Department nominated for the time being by the Director-General of that Department,
 - (c) a person appointed by the Minister of the Minister's own choosing.
 - (d) no fewer than 2 and no more than 9 persons appointed by the Minister, being persons who have such qualifications or experience in the keeping or management of companion animals as the Minister considers necessary to enable them to contribute to the work of the Board.
- (2) In making appointments to the Board, the Minister is to have regard to the need to appoint persons who have knowledge or expertise in the breeding of companion animals, veterinary medicine, companion animal welfare, and community and consumer interests. The Minister can call for the nomination of persons for appointment to the Board.
- (3) Of the members holding office under subsection (1) (d) from time to time no fewer than the number of members specified in subsection (4) as the minimum animal welfare organisation membership must be members appointed on the nomination of organisations that the Minister considers to be recognised animal welfare organisations. Each such member must be appointed on the nomination of a different organisation, unless subsection (5) applies.

- (4) The minimum animal welfare organisation membership is:
- (a) 1 member, for a membership under subsection (1) (d) of from 2 to 5 members, or
 - (b) 2 members, for a membership under subsection (1) (d) of from 6 to 8 members, or
 - (c) 3 members, for a membership under subsection (1) (d) of 9 members.
- (5) If, for the purposes of subsection (3), a sufficient number of nominations of persons for appointment as members is not duly made within the time and in the manner specified by the Minister in a notice published in the Gazette calling for nominations, the Minister may appoint, in addition to any persons nominated, as many persons (being persons referred to in subsection (1) (d)) as are necessary to cure the deficiency.
- (6) Schedule 1 has effect with respect to the members of the Board.

80 Procedure of Board

Schedule 2 has effect with respect to the procedure of the Board.

81 Functions of the Board

The Board is to provide advice and recommendations to the Minister on the following matters:

- (a) the implementation and administration of this Act and the regulations,
- (b) the effective management of companion animals,
- (c) the keeping and administration of the Register,
- (d) the development of best practice guidelines and the provision of advice and support to councils in respect of the management of companion animals,
- (e) the facilitation and provision of resources for community education in relation to companion animal care, responsible ownership and management,
- (f) the giving of assistance in the development of training programs for persons engaged in the care and management of companion animals,

- (g) the facilitation and provision of resources for research into companion animal care and management,
- (h) any matter referred to the Board by the Minister.

82 Committees of the Board

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Board.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

83 Personal liability

A matter or thing done or omitted to be done by the Board, a member of the Board or any person acting under the direction of the Board does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

Part 10 Companion Animals Fund

84 Establishment of the Fund

- (1) There is established in the Special Deposits Account an account to be called the Companion Animals Fund into which is to be paid:
 - (a) registration fees and all other fees paid under this Act, and
 - (b) such money as may be appropriated by Parliament for payment into the Fund, and
 - (c) such amounts as may be required to be paid into the Fund under this section from the Greyhound Racing Authority (NSW) Fund, and
 - (d) the proceeds of the investment of money in the Fund, and
 - (e) all money required to be paid into the Fund by or under this or any other Act.
- (2) The Director-General has the control and management of the Fund.
- (3) There is to be paid into the Fund out of the Greyhound Racing Authority (NSW) Fund (established under the *Greyhound Racing Authority Act 1985*) such amounts as the regulations under this Act require be paid in respect of greyhounds that are registered by the Greyhound Racing Authority (NSW).

85 Payments from the Fund

- (1) There is payable from the Fund:
 - (a) all amounts required to meet expenditure incurred in the administration or execution of this Act (including expenditure incurred in connection with the implementation of the advice and recommendations of the Board), and
 - (b) all payments made on account of the Board or otherwise required to meet expenditure incurred in relation to the functions of the Board (including the payment of allowances to members of the Board), and

- (c) all payments directed by the regulations to be made to councils or other persons out of amounts collected as registration fees under this Act, and
 - (d) all money directed to be paid from the Fund by or under this or any other Act, and
 - (e) such other amounts as may be prescribed by the regulations for or in connection with any of the matters with respect to which the Board provides advice and recommendations to the Minister.
- (2) The Director-General is to seek the advice of the Board regarding priorities for the allocation of money from the Fund.
- (3) In particular, the Director-General is to seek the advice of the Board regarding priorities for the allocation of money from the Fund with regard to the following:
- (a) ongoing community education programs in relation to the benefits of having companion animals,
 - (b) provision of programs to enable responsible ownership by all members of the community who have companion animals.
- (4) The regulations may provide (for the purposes of subsection (1) (c)) for the payment of amounts to councils and other persons out of amounts collected as registration fees under this Act. The Director-General can make arrangements for the payment of those amounts, including arrangements for the deduction of those amounts at the point of payment as registration fees.

86 Investment of money in Fund

The Director-General may invest money in the Fund:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Director-General to invest the money, in any other manner approved by the Treasurer.

Part 11 General

87 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

88 Delegation by Director-General

The Director-General can delegate any of the Director-General's functions under this Act (other than this power of delegation) or the regulations to any officer of the Department of Local Government.

89 Confidentiality

- (1) A person who acquires information in the exercise of functions under this Act must not directly or indirectly make a record of the information or divulge it to any other person except in the exercise of functions under this Act.

Maximum penalty: 10 penalty units.

- (2) It is not an offence under this section if, in legal proceedings, a person:
- (a) discloses information in answer to a question that the person is compellable to answer, or
 - (b) produces a document or other thing that the person is compellable to produce.
- (3) This section does not prevent or otherwise affect the giving of access to the Register, as provided by section 75 (Access to the Register).
- (4) This section does not apply to the divulging of information to, or to the production of any document or other thing to, any of the following:
- (a) the Independent Commission Against Corruption,
 - (b) the National Crime Authority,
 - (c) the New South Wales Crime Commission.
 - (d) the Ombudsman,
 - (e) any other person prescribed for the purposes of this section.

90 Requirement to state name and address

- (1) An authorised officer who reasonably suspects a person of having committed an offence against this Act or the regulations may require the person to state his or her full name and residential address.
- (2) A person must not:
 - (a) fail to comply with a requirement under this section, or
 - (b) in purported compliance with such a requirement, furnish a name that is not his or her name or an address that is not his or her residential address.

Maximum penalty: 10 penalty units.

- (3) A person is not guilty of an offence under this section unless it is established that the authorised officer warned the person that a failure to comply is an offence.

91 Obstructing authorised officer

A person who wilfully obstructs an authorised officer in the exercise of any function under this Act is guilty of an offence.

Maximum penalty: 10 penalty units.

92 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

93 Proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

94 Double jeopardy

- (1) A person is not liable to be convicted of an offence under more than one provision of this Act in respect of essentially the same act or omission.

Note. For example, if a person's dog is found wandering at large in a children's play area, the person is not liable to be convicted both for the offence of being the owner of a dog found at large and the offence of being the owner of a dog found in a children's play area. However, this section does not prevent the owner of an unmuzzled greyhound found at large from being prosecuted both for being the owner of a dog found at large and being the owner of a greyhound that is not muzzled in a public place.

- (2) Payment of a penalty in respect of an alleged offence under section 92 (Penalty notices) is to be treated as a conviction for the offence for the purposes of this section. The making of an order by a court under section 556A of the *Crimes Act 1900* in respect of an offence is to be treated as a conviction for the offence for the purposes of this section.

95 Fees and charges

- (1) Any fee or charge payable under this Act:
- (a) may be paid by such instalments as may be allowed by the person levying the fee or charge, and
 - (b) may be reduced or waived in respect of persons in receipt of a pension, benefit or allowance under the *Social Security Act 1991* of the Commonwealth.
- (2) The regulations may make provision as to the following:
- (a) the minimum number of instalments that may be allowed.
 - (b) the minimum intervals that may be allowed between each instalment.

96 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to any one or more of the following:
- (a) providing for exceptions to specified provisions of this Act (including exceptions for a particular class or description of owner or companion animal, or exceptions based on particular circumstances),
 - (b) exempting a specified class, kind or description of companion animals from all or specified provisions of this Act, either unconditionally or subject to conditions,
 - (c) imposing maximum fees that can be charged for the issue of replacement certificates of registration or replacement identification tags.

- (d) provisions applying (with or without modification) any provision of this Act in respect of an animal prescribed by the regulations as a companion animal for the purposes of this Act,
 - (e) regulating the training of assistance animals and accrediting assistance animals for the purposes of this Act (including by requiring accreditation as a pre-condition for any exemption provided in respect of assistance animals by this Act or the regulations) and provisions of a savings or transitional nature consequent on an animal being prescribed as a companion animal for the purposes of this Act.
- (3) The regulations may create offences punishable by a fine not exceeding 10 penalty units.

97 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

98 Savings and transitional provisions

Schedule 3 has effect.

99 Repeals and consequential amendments

- (1) The following Act and regulation are repealed:
Dog Act 1966 No 2
Dog Regulation 1997.
- (2) The Acts set out in Schedule 4 are amended as set out in that Schedule.
- (3) Different days can be appointed for the commencement of this section for the purpose of repealing or amending different provisions of an Act or regulation on different days.

Schedule 1 Provisions relating to members of the Board

(Section 79)

1 Definitions

In this Schedule:

appointed member means a member of the Board appointed by the Minister.

ex-officio member means a member of the Board other than an appointed member.

2 Chairperson and Deputy Chairperson

- (1) A Chairperson and a Deputy Chairperson of the Board are to be appointed by the Minister from among the appointed members.
- (2) The Minister may at any time remove a member from the office of Chairperson or Deputy Chairperson.
- (3) A person who holds the office of Chairperson or Deputy Chairperson vacates the office if the person:
 - (a) is removed from the office by the Minister, or
 - (b) resigns the office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member of the Board.

3 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.
- (2) An ex-officio member may, from time to time, appoint a person to be the deputy of the member, and the ex-officio member or the Minister may revoke any such appointment.
- (3) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is to be taken to be a member.

- (4) The deputy of a member who is Chairperson or Deputy Chairperson of the Board does not have the member's functions as Chairperson or Deputy Chairperson.
- (5) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

4 Terms of office

Subject to this Schedule, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

5 Allowances

An appointed member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

6 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.

7 Filling of vacancy in office of member

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

Schedule 2 Provisions relating to procedure the Board

(Section 80)

1 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

2 Quorum

The quorum for a meeting of the Board is the number of members sufficient from time to time to constitute a simple majority of the number of members at that time.

3 Presiding member

- (1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson, is to preside at a meeting of the Board.
- (2) In the absence of both the Chairperson or Deputy Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Board.
- (3) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

4 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

5 Attendance by nonmembers

A person authorised by the Board or the Chairperson of the Board may attend a meeting of the Board for the purpose of assisting the Board to exercise its functions.

6 Transaction of business outside meetings or by telephone etc

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of the approval of a resolution under subclause (1), or a meeting held in accordance with subclause (2), the Chairperson and each member have the same voting rights they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

7 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 3 Savings and transitional provisions

(Section 98)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Definition

In this Schedule:

Dog Act means the *Dog Act 1966* as in force immediately before the commencement of this clause.

Part 2 Phasing-in of registration

3 Special provision for dogs registered under the Dog Act

- (1) This clause applies to dogs registered under the Dog Act immediately before the commencement of this clause. This clause ceases to apply to a dog that becomes registered under this Act or that ceases to be registered under the Dog Act.

- (2) The provisions of the Dog Act and the regulations under the Dog Act continue in force (as if they had not been repealed) for the purposes of enabling a dog to which this clause applies to be registered under the Dog Act during the *transition period*.
- (3) The transition period is the period of 3 years that starts on the commencement of this clause. The regulations may change the transition period to any other period not shorter than 1 year and not longer than 5 years, either for all dogs to which this clause applies or for dogs of a particular class or description.
- (4) Section 8 (Identification required from 12 weeks of age and before sale) and section 9 (Registration required from age 6 months) of this Act do not apply during the transition period in respect of a dog while it is registered under the Dog Act as provided by this clause.

Note. This clause does not prevent a dog to which this clause applies being registered under this Act either immediately or at any time during the transition period. A dog to which this clause applies will have to be registered under this Act before it can be sold.

- (5) Dogs registered under the Dog Act immediately before the commencement of this clause continue to be registered under the Dog Act as applying under this clause.
- (6) Section 12 (Dog to wear collar and tags) of this Act applies in respect of a dog registered under the Dog Act during the transition period as if the dog were registered under this Act and as if the registration tag most recently issued under the Dog Act to the owner of the dog were the current registration tag for the dog under this Act.
- (7) The registration fee payable for the registration of a dog under the Dog Act as provided by this clause is the fee as payable under the Dog Act immediately before the commencement of this clause, but the regulations under this Act may prescribe some other fee for that purpose.
- (8) The regulations may create exceptions to this clause, either for all dogs to which this clause applies or for dogs of a particular class or description.

Part 3 General

4 Disqualification from owning dog

A disqualification in force under section 19A (Disqualification from owning a dog) of the Dog Act immediately before the repeal of that section is taken to have been made by order of the court concerned under section 23 of this Act with the period of disqualification specified in the order being the remaining period of disqualification under section 19A at the time of its repeal.

5 Dangerous dog declaration

- (1) A declaration of a council in force under Division 2 (Power of councils to declare dogs dangerous) of Part 2 of the Dog Act immediately before the repeal of that Division is taken to be a declaration of the council under Division 1 of Part 5 of this Act.
- (2) A declaration of a Local Court in force under Division 3 (Power of Local Court to declare dogs dangerous) of Part 2 of the Dog Act immediately before the repeal of that Division is taken to be a declaration of a Local Court under Division 2 of Part 5 of this Act.

6 Continuation of repealed provisions

- (1) A provision of the Dog Act continues in force after its repeal for the purposes of any civil or criminal proceedings (commenced before or after its repeal) in respect of any act, matter or thing occurring before its repeal.
- (2) The regulations under clause 1 may provide for the continuation, in respect of a particular class or description of dogs, of provisions of the Dog Act and the regulations under that Act as if they had not been repealed.

Schedule 4 Consequential amendment of other Acts

(Section 99)

4.1 Fines Act 1996 No 99

[1] Schedule 1 Statutory provisions under which penalty notices issued

Omit “Dog Act 1966, section 22A”.

[2] Schedule 1

Insert in alphabetical order:

Companion Animals Act 1998, section 92

4.2 Greyhound Racing Authority Act 1985 No 119

Section 17 Greyhound Racing Authority (NSW) Fund

Insert at the end of section 17 (3):

, and

- (c) such amounts as may be required to be paid out of the Fund by the *Companion Animals Act 1998* into the Companion Animals Fund under that Act.

4.3 National Parks and Wildlife Act 1974 No 80

Section 163

Omit the section. Insert instead:

163 Application of Companion Animals Act 1998

Part 7 (Procedures for dealing with seized animals) of the *Companion Animals Act 1998* does not apply in respect of an animal seized in a national park, historic site, state recreation area, regional park, nature reserve, state game reserve, karst conservation reserve or Aboriginal area by an officer of the Service unless the officer causes the animal to be delivered as provided by section 62 (Seized animals to be returned to owner or taken to council pound) of that Act.

[Minister's second reading speech made in—
Legislative Assembly on 6 May 1998
Legislative Council on 1 July 1998]