



New South Wales

Companion Animals Amendment Act 2005 No 101

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New South Wales

Companion Animals Amendment Act 2005 No 101

Act No 101, 2005

An Act to amend the *Companion Animals Act 1998* to make further provision with respect to dangerous and restricted dogs and the duties and responsibilities of their owners; to increase penalties for certain offences under the Act and to consolidate enforcement powers under the Act; and for other purposes. [Assented to 28 November 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Companion Animals Amendment Act 2005*.

2 Commencement

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

3 Amendment of Companion Animals Act 1998 No 87

The *Companion Animals Act 1998* is amended as set out in Schedule 1.

4 Amendment of Prevention of Cruelty to Animals Act 1979 No 200

Section 31A (Sale of certain animals by charitable organisations) of the *Prevention of Cruelty to Animals Act 1979* is amended by inserting the following subsection at the end of the section:

- (5) Nothing in this section authorises a charitable organisation to sell or rehouse a dog that is a restricted dog within the meaning of the *Companion Animals Act 1998*.

5 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 (Search warrants under other Acts) to the *Law Enforcement (Powers and Responsibilities) Act 2002* is amended by inserting the following matter in alphabetical order:

Companion Animals Act 1998, section 69D

Schedule 1 **Amendment of Companion Animals Act 1998**

(Section 3)

[1] Section 3A

Insert after section 3:

3A Principal object of Act

The principal object of this Act is to provide for the effective and responsible care and management of companion animals.

[2] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

approved animal welfare organisation means any of the following:

- (a) the Royal Society for the Prevention of Cruelty to Animals, New South Wales,
- (b) the Animal Welfare League NSW,
- (c) the Cat Protection Society of NSW,
- (d) any other organisation approved by the Director-General by order published in the Gazette.

approved breed assessor means a person or body approved for the time being by the Director-General to carry out breed identification assessments in relation to dogs for the purposes of Division 6 of Part 5.

approved form means:

- (a) the form (if any) approved by the Director-General for the purposes of the provision in relation to which the expression is used, or
- (b) if no such form is approved by the Director-General, the form approved by the local authority for the purposes of the provision in relation to which the expression is used.

approved temperament assessor means a person or body approved for the time being by the Director-General to carry out temperament assessments in relation to dogs for the purposes of Division 6 of Part 5.

[3] Section 5 (1), definition of "Board"

Omit the definition.

[4] Section 5 (1), definition of “council pound”

Omit “or the Board” from paragraph (b).

[5] Section 5 (1), definition of “council pound”

Omit “seized under” from paragraph (b). Insert instead “for the purposes of”.

[6] Section 5 (1), definition of “property”

Omit the definition. Insert instead:

property means land or premises and includes, for the purposes of Part 7A, a building or structure of any description (such as a shed) or a vehicle or vessel.

[7] Section 5 (2)

Omit the subsection.

[8] Section 6A

Insert after section 6:

6A General duties of councils

- (1) A council is required:
 - (a) to promote awareness within its area of the requirements of this Act with respect to the ownership of companion animals, and
 - (b) to take such steps as are appropriate to ensure that it is notified or otherwise made aware of the existence of all dangerous and restricted dogs (including dogs that might reasonably be considered to be the subject of a declaration by the council under Division 6 of Part 5) that are ordinarily kept within its area.
- (2) Subsection (1) does not limit the other functions that may be conferred or imposed on a council by or under this Act.

[9] Section 7 Meaning of “owner”

Omit “(whether or not the animal is registered)” from section 7 (1) (b).

[10] Section 8 Identification required from 12 weeks of age and before sale

Omit the penalty to section 8 (3). Insert instead:

Maximum penalty:

- (a) 8 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.

[11] Section 8 (4)

Omit the penalty. Insert instead:

Maximum penalty:

- (a) 8 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.

[12] Section 9 Registration required from age 6 months

Omit the penalty to section 9 (1). Insert instead:

Maximum penalty:

- (a) 8 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.

[13] Section 10 Regulations may require registration

Omit the penalty. Insert instead:

Maximum penalty:

- (a) 8 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.

[14] Section 10A Unregistered companion animal

Omit the penalty. Insert instead:

Maximum penalty:

- (a) 3 penalty units except in the case of a dangerous or restricted dog, or
- (b) 13 penalty units in the case of a dangerous or restricted dog.

[15] Section 10B Notice requiring companion animal to be registered

Omit “form approved by the Director-General” from section 10B (1).

Insert instead “approved form”.

[16] Section 10B (2)

Omit the penalty. Insert instead:

Maximum penalty:

- (a) 3 penalty units except in the case of a dangerous or restricted dog, or
- (b) 13 penalty units in the case of a dangerous or restricted dog.

[17] Section 11 Owner required to notify certain changes and events

Insert after section 11 (1) (d):

- (d1) the animal has been found after having been reported missing (notification must be given within 72 hours after the animal is found),

[18] Section 11 (1)

Omit the penalty. Insert instead:

Maximum penalty:

- (a) 8 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.

[19] Section 11 (4)

Omit “5 penalty units”. Insert instead “8 penalty units”.

[20] Section 11A

Insert after section 11:

11A Duties of councils in relation to companion animals killed by traffic

A council is required:

- (a) to take such steps as are reasonable to ascertain the ownership of any companion animal found in its area that appears to have been killed as the result of being hit by a vehicle, and
- (b) if the animal that has been killed was an identified companion animal—to notify the Director-General and the owner of the animal (if the owner can be identified) that the animal has been killed.

[21] Section 12 Dog must have collar and tag

Omit the penalty to section 12 (2). Insert instead:

Maximum penalty:

- (a) 8 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.

[22] Section 13 Responsibilities while dog in public place

Insert “that is attached to the dog and that is being held by (or secured to) the person” after “leash” in section 13 (1).

[23] Section 13 (2)

Omit the penalty. Insert instead:

Maximum penalty:

- (a) 8 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] Section 13 (3)

Omit “the person finds”. Insert instead “is”.

[25] Section 13 (5)

Insert at the end of the subsection:

Note. Just because a dog is not on a lead in an off-leash area, or is secured in a cage or vehicle or is tethered to a fixed object or structure, does not mean that an offence under section 16 is not committed if the dog rushes at, attacks, bites, harasses or chases any person or animal, whether or not any injury is caused.

[26] Section 14 Dogs prohibited in some public places

Omit “found” from section 14 (2).

[27] Section 14 (2)

Omit the penalty. Insert instead:

Maximum penalty:

- (a) 8 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.

[28] Section 14 (3)

Omit “the person finds”. Insert instead “is”.

[29] Section 14 (3), note

Omit “Section 62 requires that a dog seized under this section be returned to its owner or taken to a council pound.”.

[30] Section 15 Greyhounds and other breeds to be muzzled

Omit “5 penalty units” from section 15 (2). Insert instead “8 penalty units”.

[31] Section 15 (3)

Omit “or kind” wherever occurring. Insert instead “, kind or description”.

[32] Section 16 Offences where dog attacks person or animal

Omit the penalty to section 16 (1). Insert instead:

Maximum penalty:

- (a) 50 penalty units except in the case of a dangerous or restricted dog, or
- (b) 300 penalty units in the case of a dangerous or restricted dog.

[33] Section 16 (1A)

Omit the subsection. Insert instead:

(1A) The owner of a dangerous dog or a restricted dog is guilty of an offence if:

- (a) the dog attacks or bites any person (whether or not any injury is caused to the person), and
- (b) the incident occurs as a result of the owner’s failure to comply with any one or more of the requirements of section 51 or 56 (as the case requires) in relation to the dog.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

Note. Conviction for an offence under this subsection results in permanent disqualification from owning a dog or from being in charge of a dog in a public place. See section 23.

[34] Section 17 Dog must not be encouraged to attack

Insert “or from being in charge of a dog in a public place” after “owning a dog” in the note to section 17 (1).

[35] Section 18

Omit the section. Insert instead:

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

- (1) If a dog attacks or bites any person or animal (except vermin) otherwise than in the circumstances referred to in section 16 (2), an authorised officer may, at any time within 72 hours after the attack or bite:
 - (a) secure the dog on property that the officer has reason to believe is occupied by the dog's owner, 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) If the dog is on property that an authorised officer has reason to believe is occupied by the dog's owner, the officer may seize the dog only if the officer is satisfied that:
 - (a) the dog cannot be kept adequately secured on that property, or
 - (b) the dog cannot be kept under the effective control of some competent person while it is on that property, or
 - (c) the owner of the dog has repeatedly failed to keep the dog secured on that property or under the effective control of a competent person while it is on that property (regardless of whether the dog is secured or under effective control at the relevant time).
- (4) An authorised officer who, under this section, secures or seizes a dog on property that the officer has reason to believe is property occupied by the dog's owner must, before leaving that property, 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.
- (5) The notice must be left:
 - (a) in a conspicuous place on the property, or
 - (b) with a person (being a person apparently above the age of 16 years) who appears to be an occupier of the property.
- (6) This section applies whether or not any injury is caused to a person or animal by the dog's attack or bite.

[36] Section 19 Procedure concerning securing or seizure of dog that has attacked or bitten

Omit the section.

[37] Section 20 Dogs defecating in public place

Omit “5 penalty units” from section 20 (1). Insert instead “8 penalty units”.

[38] Section 21 Nuisance dogs

Omit section 21 (2). Insert instead:

- (2) If an authorised officer of a council is satisfied that a dog is a nuisance, the officer may, after complying with section 21A, issue an order in the approved form to the owner of the dog requiring the owner to prevent the behaviour that is alleged to constitute the nuisance.

[39] Section 21 (5)

Omit the penalty. Insert instead:

Maximum penalty: 8 penalty units for a first offence or 15 penalty units for a second or subsequent offence.

[40] Section 21 (7)

Insert after section 21 (6):

- (7) An order under this section is final and is not subject to any appeal or review.

[41] Section 21A

Insert after section 21:

21A Procedure for issuing nuisance dog order

- (1) Before an authorised officer of a council issues an order under section 21, the officer must give notice to the owner of the dog to which the proposed order relates of the officer’s intention to issue the order.
- (2) The notice must set out:
 - (a) the requirements with which the owner will be required to comply if the order is issued, and
 - (b) the owner’s right to object to the proposed order in writing to the authorised officer within 7 days after the date the notice is given.

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- (3) The owner has 7 days after the date the notice is given in which to object to the proposed order.
 - (4) If the owner does not object within that time, the authorised officer may proceed to issue the order after the 7 days have passed.
 - (5) If the owner does object within that time, the authorised officer must consider the objection before deciding whether or not to issue the order.

[42] Section 22 Action to protect persons and property against dogs

Omit section 22 (4).

[43] Section 23 Disqualification from owning or being in charge of dog

Insert “or from being in charge of a dog in a public place” after “a dog” in section 23 (1).

[44] Section 23 (2) and (3)

Insert “, or from being in charge of a dog in a public place,” after “owning a dog” wherever occurring.

[45] Section 23 (6)

Insert “, or who is in charge of a dog,” after “owner of a dog”.

[46] Section 24 Appeal against disqualification from owning or being in charge of dog

Insert “or being in charge of” after “owning” in section 24 (1).

[47] Section 25 Liability for injury to a person or damage to personal property

Omit “clothing of a person” from section 25 (1) (b).

Insert instead “personal property of a person (including clothing)”.

[48] Section 29 Cats must have form of identification

Omit section 29 (1). Insert instead:

- (1) A cat must be identified by a form of identification that enables a local authority to ascertain the name of the cat and the address or telephone number of the owner of the cat.

[49] Section 29 (3)

Omit “5 penalty units”. Insert instead “8 penalty units”.

[50] Section 30 Cats prohibited in some public places

Omit “found” from section 30 (2).

[51] Section 30 (2)

Omit “5 penalty units”. Insert instead “8 penalty units”.

[52] Section 30 (3)

Omit “who finds a cat that is in a place in which cats are prohibited under this section may seize the cat”.

Insert instead “may seize a cat that is in a place in which cats are prohibited under this section”.

[53] Section 30 (4), note

Omit “Section 62 requires that a cat seized under this section be returned to its owner or taken to a council pound.”.

[54] Section 31 Nuisance cats

Omit section 31 (2). Insert instead:

- (2) If an authorised officer of a council is satisfied that a cat is a nuisance, the officer may, after complying with section 31A, issue an order in the approved form to the owner of the cat requiring the owner to prevent the behaviour that is alleged to constitute the nuisance.

[55] Section 31 (5)

Omit the penalty. Insert instead:

Maximum penalty: 3 penalty units for a first offence or 8 penalty units for a second or subsequent offence.

[56] Section 31 (7)

Insert after section 31 (6):

- (7) An order under this section is final and is not subject to any appeal or review.

[57] Section 31A

Insert after section 31:

31A Procedure for issuing nuisance cat order

- (1) Before an authorised officer of a council issues an order under section 31, the officer must give notice to the owner of the cat to

which the proposed order relates of the officer's intention to issue the order.

- (2) The notice must set out:
 - (a) the requirements with which the owner will be required to comply if the order is issued, and
 - (b) the owner's right to object to the proposed order in writing to the authorised officer within 7 days after the date the notice is given.
- (3) The owner has 7 days after the date the notice is given in which to object to the proposed order.
- (4) If the owner does not object within that time, the authorised officer may proceed to issue the order after the 7 days have passed.
- (5) If the owner does object within that time, the authorised officer must consider the objection before deciding whether or not to issue the order.

[58] Section 32 Action to protect persons and animals against cats

Omit section 32 (2).

[59] Section 34 Council may declare dog to be dangerous

Omit section 34 (1). Insert instead:

- (1) A council may, if satisfied that a dog is dangerous, declare it to be a dangerous dog. It does not matter if the dog is ordinarily kept in another council's area.

[60] Section 36 Obligations of owner when notified of proposed dangerous dog declaration

Omit "20 penalty units" from section 36 (1). Insert instead "50 penalty units".

[61] Section 36 (1A)

Insert after section 36 (1):

- (1A) For the purposes of subsection (1) (a), a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the dog the subject of the proposed declaration) under his or her control at the one time.

[62] Section 36 (4)

Omit the subsection.

- [63] Section 36 (5)**
Omit “(Procedures for dealing with seized animals)” and “(Unclaimed animals can be sold or destroyed)”.
- [64] Section 43 How notice is to be given under this Division**
Omit the section.
- [65] Section 47 Control orders**
Omit “or 51” from section 47 (2) (a). Insert instead “51 or 56”.
- [66] Section 47 (3)**
Insert “(without limiting any of the requirements that apply in relation to the dog under section 51 or 56)” after “includes”.
- [67] Section 48 Destruction orders**
Omit “or 51” from section 48 (2) (a). Insert instead “, 51 or 56”.
- [68] Section 51 Owner of dangerous dog must comply with control requirements**
Omit “the following requirements are” from section 51 (1).
Insert instead “each of the following requirements is”.
- [69] Section 51 (1) (b)**
Insert “the” after “in”.
- [70] Section 51 (1) (c) and (c1)**
Omit section 51 (1) (c). Insert instead:
- (c) **Enclosure requirements**
While the dog is on property on which the dog is ordinarily kept, the dog must be kept in an enclosure that complies with the requirements prescribed by the regulations. The owner has 3 months from the date on which the dog is declared dangerous to comply. In the case of an existing dangerous dog, the owner has 6 months from the relevant date to comply.
 - (c1) Until such time as the requirement under paragraph (c) is complied with, the dog must, while on property on which it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

[71] **Section 51 (1) (d1)**

Insert after section 51 (1) (d):

(d1) **Distinctive collar must be worn**

The dog must at all times wear a collar of the kind prescribed by the regulations.

[72] **Section 51 (1) (e)**

Omit the paragraph. Insert instead:

(e) **Dog must be kept on lead and be muzzled**

Whenever the dog is outside its enclosure, the dog:

- (i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
- (ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the dangerous dog) under his or her control at the one time.

[73] **Section 51 (1) (f)**

Omit the paragraph.

[74] **Section 51 (2)**

Omit “50 penalty units”. Insert instead “150 penalty units”.

[75] **Section 51 (5)**

Insert after section 51 (4):

(5) In subsection (1) (c):

existing dangerous dog means a dog that is the subject of a declaration by a council or court under this Part and in force immediately before the relevant date.

relevant date means the date on which this subsection (as inserted by the *Companion Animals Amendment Act 2005*) commences.

[76] Section 52

Omit the section. Insert instead:

52 Dangerous dog may be seized if control requirements not complied with

- (1) An authorised officer may seize a dangerous dog if the officer is satisfied that any of the requirements of section 51 have not been complied with in relation to the dog.
- (2) If a dog is seized under subsection (1), Part 7 applies in relation to the dog.
- (3) However, a claim for the dog may be made under section 64 only if an authorised officer of the council of the area in which the dog is ordinarily kept is satisfied that each of the requirements of section 51 is capable of being complied with in relation to the dog.

[77] Section 55

Omit the section. Insert instead:

55 Interpretation

- (1) The following dogs are *restricted dogs* for the purposes of this Act:
 - (a) American pit bull terrier or pit bull terrier,
 - (b) Japanese tosa,
 - (c) dogo Argentino,
 - (d) fila Brasileiro,
 - (e) any dog declared by a council under Division 6 of this Part to be a restricted dog,
 - (f) any other dog of a breed, kind or description prescribed by the regulations for the purposes of this section.
- (2) In this Division:

Note. The importation into Australia of dogs referred to in paragraphs (a)–(d) is prohibited under the *Customs (Prohibited Imports) Regulations 1956* of the Commonwealth.

existing restricted dog means a dog that is a restricted dog as at the relevant date.

proposed restricted dog means a dog that is the subject of a proposed declaration by a council under section 58C.

relevant date means the date on which Division 6 of this Part (as inserted by the *Companion Animals Amendment Act 2005*) commences.

transition period means the period beginning on the relevant date and ending 12 months after that date.

[78] Section 56 Owner of restricted dog must comply with control requirements

Omit “the following requirements are” from section 56 (1).

Insert instead “each of the following requirements is”.

[79] Section 56 (1) (a)–(a2)

Omit section 56 (1) (a). Insert instead:

(a) **Desexing**

In the case of an existing restricted dog, the dog must be desexed within 28 days after the relevant date.

In the case of a dog declared by a council under Division 6 of this Part to be a restricted dog, the dog must be desexed within 28 days after it is declared to be a restricted dog.

In the case of any other restricted dog born after the relevant date, the dog must be desexed within 3 months of being born.

(a1) **Enclosure requirements**

While the dog is on property on which the dog is ordinarily kept, the dog must be kept in an enclosure that complies with the requirements prescribed by the regulations.

In the case of an existing restricted dog, or a restricted dog born within 3 months after the relevant date, the owner has 6 months from the relevant date to comply with this paragraph.

Otherwise, the owner has 3 months from the date on which the restricted dog is born or 3 months from the date on which the dog is declared to be a restricted dog under Division 6 of this Part (as the case requires) to comply with this paragraph.

(a2) Until such time as the requirement under paragraph (a1) is complied with in relation to the dog, the dog must, while on property on which it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

[80] Section 56 (1) (c1)

Insert after section 56 (1) (c):

(c1) **Distinctive collar must be worn**

The dog must at all times wear a collar of the kind prescribed by the regulations.

[81] Section 56 (1) (d)

Omit the paragraph. Insert instead:

(d) **Dog must be kept on lead and be muzzled**

Whenever the dog is outside its enclosure, the dog:

- (i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
- (ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the restricted dog) under his or her control at the one time.

[82] Section 56 (1) (e) and (f)

Omit the paragraphs.

[83] Section 56 (1) (g) (iv)

Omit the subparagraph.

[84] Section 56 (1) (h)

Omit the paragraph. Insert instead:

(h) **Registration of dog**

In the case of a dog declared by a council under Division 6 of this Part to be a restricted dog, the dog must, regardless of its age, be registered (if not already registered) within 7 days after it is declared to be a restricted dog.

[85] Section 56 (2)

Omit “50 penalty units”. Insert instead “150 penalty units”.

[86] Section 57

Omit the section (and the note to the section). Insert instead:

57 Restricted dog may be seized if control requirements not complied with

(1) Seizure during transition period

An authorised officer may, during the transition period, seize a restricted dog if the officer is satisfied that any of the requirements of section 56 have not been complied with in relation to the dog.

(2) If a dog is seized under subsection (1), Part 7 applies in relation to the dog.

(3) However, a claim for the dog may be made under section 64 only if an authorised officer of the council of the area in which the dog is ordinarily kept is satisfied that each of the requirements of section 56 is capable of being complied with in relation to the dog.

(4) Seizure after transition period

If, after the transition period, an authorised officer of a council is satisfied that any of the requirements of section 56 have not been complied with in relation to a restricted dog, the authorised officer may seize the dog.

(5) If a dog is seized under subsection (4):

- (a) the dog is to be delivered as soon as possible to a council pound, and
- (b) the council or the pound operator, as the case requires, may destroy the dog.

(6) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under subsection (4).

[87] Sections 57A–57D

Insert after section 57:

57A Prohibition on selling restricted dog or proposed restricted dog

(1) A person who sells, or advertises the sale of, a restricted dog or proposed restricted dog is guilty of an offence.

Maximum penalty: 150 penalty units.

Note. The term “sell” extends to the transfer of owner by any means, including by gift.

Abandoning an animal is also an offence—see section 11 of the *Prevention of Cruelty to Animals Act 1979*.

- (2) A person does not commit an offence under this section by reason only of surrendering a dog to a council pound or an approved animal welfare organisation.

Note. A restricted dog that is surrendered to a council pound or an approved animal welfare organisation cannot be sold.

57B Prohibition on accepting ownership of restricted dog or proposed restricted dog

- (1) A person who accepts ownership of a restricted dog or proposed restricted dog is guilty of an offence.

Maximum penalty: 150 penalty units.

- (2) A person does not commit an offence under this section by reason only of taking delivery of, or detaining, a dog under Part 7 or as the consequence of a dog being surrendered to a council pound or an approved animal welfare organisation.

57C Prohibition on breeding restricted dog or proposed restricted dog

A person:

- (a) who causes or permits a restricted dog or proposed restricted dog to breed with any other dog, or
(b) who advertises that a restricted dog or proposed restricted dog is available for breeding,

is guilty of an offence.

Maximum penalty: 150 penalty units.

57D Council-declared restricted dogs may be seized and destroyed after transition period

- (1) This section applies to any dog that becomes, any time after the transition period, a restricted dog because of a declaration by a council under Division 6 of this Part.

- (2) However, this section does not apply to any such dog if:

- (a) the dog was, before the relevant date, registered under this Act (or a corresponding Act of another State or Territory) otherwise than as a breed or kind of dog referred to in section 55 (1) (a)–(d) or as a cross-breed of any such breed or kind of dog, and

- (b) no person has been convicted, whether before or after the relevant date, of an offence under section 16 (1) (or a similar offence under a corresponding Act of another State

or Territory) as a result of the dog rushing at, attacking, biting, harassing or chasing any person or animal.

- (3) An authorised officer may seize a dog to which this section applies. The officer may do so regardless of whether the requirements of section 56 have been, or are capable of being, complied with in relation to the dog.
- (4) If a dog is seized under subsection (3):
 - (a) the dog is to be delivered as soon as possible to a council pound, and
 - (b) the council or the pound operator, as the case requires, may destroy the dog.
- (5) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under subsection (3).

[88] Part 5, Division 6

Insert after Division 5:

Division 6 Declaration by councils of dogs as restricted dogs

58A Notice of intention to declare dog to be restricted dog

- (1) If a council is of the opinion that a dog:
 - (a) is of a breed or kind of dog referred to in section 55 (1) (a)–(d), or
 - (b) is a cross-breed of any such breed or kind of dog,the council may give notice to the owner of the dog of the council's intention to declare the dog to be a restricted dog.
- (2) The notice is to be in the approved form and must set out:
 - (a) the requirements that the owner of the dog will be required to comply with if the declaration is made, and
 - (b) the procedures associated with obtaining a breed or temperament assessment (as referred to in section 58C) in relation to the dog.
- (3) Without limiting the grounds on which a council may decide to give a notice of intention to declare a dog to be a restricted dog, any such notice may be given at the request of the owner of the dog concerned.

58B Obligations of owner when notified of proposed restricted dog declaration

- (1) If a notice is given under section 58A to the owner of a dog of a council's intention to declare the dog to be a restricted dog, the owner must ensure that at all times while the dog is away from the property where it is ordinarily kept:
 - (a) it is under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, 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: 50 penalty units.
- (2) For the purposes of subsection (1) (a), a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the dog the subject of the proposed declaration) under his or her control at the one time.
- (3) This section applies in respect of a dog:
 - (a) for 28 days after the notice is given to the dog's owner, or
 - (b) until the council notifies the owner that the council has made the proposed declaration or has decided not to make it,whichever happens first.
- (4) While this section applies in respect of a dog, an authorised officer may seize the dog if the officer is satisfied that:
 - (a) the requirements of subsection (1) have not been complied with in relation to the dog, or
 - (b) 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.
- (5) If a dog is seized under subsection (4), Part 7 applies in respect of the dog with the following modifications:
 - (a) a claim for the dog may be made under section 64 only if an authorised officer is satisfied that the requirements of subsection (1) are capable of being complied with in relation to the dog and 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,

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- (b) if the dog is declared to be a restricted dog by the council, the dog may not be destroyed under section 64 until 7 days after notice is given to the owner of the dog under section 58D.

58C Council may declare dog to be restricted dog

(1) Declaration by council

If a notice of intention to declare a dog to be a restricted dog is given under section 58A to the owner of the dog, the council that gave the notice may, after the period of 28 days following the giving of the notice, declare the dog to be a restricted dog. It does not matter if the dog is ordinarily kept in another council's area.

(2) Certification in relation to dog's breed or temperament may be provided

A council is not to declare the dog to be a restricted dog if, within the period of 28 days following the giving of the notice under section 58A, the owner of the dog:

- (a) provides the council with a written statement by an approved breed assessor to the effect that the dog:
 - (i) is not of a breed or kind of dog referred to in section 55 (1) (a)–(d), and
 - (ii) is not a cross-breed of any such breed or kind of dog, or
- (b) provides the council with:
 - (i) a written statement by an approved breed assessor to the effect that the dog is not of a breed or kind of dog referred to in section 55 (1) (a)–(d) but is a cross-breed of any such breed or kind of dog, and
 - (ii) a written statement by an approved temperament assessor to the effect that the dog is not a danger to the public and is not likely, without provocation, to attack or bite any person or animal.
- (3) Without limiting the form in which a written statement by an approved breed assessor may be in for the purposes of subsection (2), any such written statement may be in the form of, or comprise, a certificate that is of a kind or description prescribed by the regulations.
- (4) The owner of a dog that is the subject of a proposed declaration under this section:
 - (a) cannot, despite any other provision of this Act, rely on or produce, any evidence with respect to the dog's breed or

temperament (including any information entered on the Register as to the dog's breed) apart from a written statement as referred to in this section, and

- (b) is liable to pay for any costs associated with obtaining a written statement from an approved breed assessor or approved temperament assessor for the purposes of this section.
- (5) A council may, in any particular case, extend the 28-day period referred to in subsection (2) for a further period because of extenuating circumstances.
- (6) Any written statement provided by an approved breed assessor or approved temperament assessor for the purposes of this section may not be challenged, reviewed, quashed or called into question on any grounds before any court or tribunal in any legal proceedings.

58D 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 a restricted dog or decides not to declare the dog to be a restricted dog. The notice must be given within 7 days after the declaration or decision is made.
- (2) A notice that a dog has been declared a restricted dog must set out the requirements and restrictions imposed on the owner under this Part and the date or dates by which the owner must comply with those requirements.
- (3) A declaration by a council under this Division:
 - (a) has effect from the date specified in the notice or the date on which notice is given (whichever is the later), and
 - (b) has effect throughout the State and is not limited in its operation to the area of the council that made the declaration, and
 - (c) may be revoked at any time by the council that made the declaration.
- (4) A declaration or other decision by a council under this Division is final and is not subject to any appeal or review.
- (5) A council that makes or revokes a declaration under this Division must give notice to the Director-General within 7 days.

58E Protection from liability of assessors

An approved breed assessor or approved temperament assessor does not incur any civil or criminal liability in respect of anything done or omitted to be done in good faith by the assessor in connection with carrying out an assessment of a dog's breed or temperament for the purposes of this Division.

58F Persons authorised to provide certain information to councils

- (1) Any person (other than a council) who is authorised by or under this Act to identify or register companion animals may, despite any other Act or law, provide any information (including the person's opinion as to the breed or temperament of a dog) to a council that may result in any action being taken by the council under this Division in relation to a dog.
- (2) A person does not incur any criminal or civil liability (including liability for breaching any duty of confidentiality) for providing any such information to a council if the information is provided in good faith.

[89] Section 60 Assistance animal not to be denied entry

Omit "5 penalty units" from section 60 (1). Insert instead "8 penalty units".

[90] Section 61 Unlawful to impose charge for entry of assistance animal

Omit "5 penalty units" from section 61 (1). Insert instead "8 penalty units".

[91] Part 7, heading

Insert "or surrendered" after "seized".

[92] Part 7, note

Insert before section 62:

Note. This Part generally applies in relation to companion animals that are seized under the authority of this Act or that otherwise end up at council pounds. The requirements and procedures of this Part are not intended to apply to lost or injured animals that are taken by members of the public to animal welfare organisations (such as the RSPCA) or to a vet merely so that they can be treated or reunited with their owners. The Part also does not apply to animals that are surrendered to animal welfare organisations (unless the organisation also operates as a council pound).

If companion animals (other than those seized under the authority of this Act) end up at a council pound (eg by being surrendered or abandoned), they may be dealt with by the pound operator under this Part.

[93] Section 62A

Insert before section 62:

62A Interpretation

(1) In this Part:

approved person means:

- (a) an approved animal welfare organisation, or
- (b) any person authorised by the Director-General under section 75 (7) (a1) to have access to information contained in the Register for the purposes of identifying seized or lost animals.

approved premises means any premises (other than a council pound) operated by an approved person.

seized animal means an animal that is seized under the authority of this Act.

surrendered animal means a companion animal that:

- (a) is surrendered to a council pound, or
- (b) has come into the possession of a council pound otherwise than by being seized under the authority of this Act.

(2) A reference in this Part to a council is, in relation to a council pound referred to in paragraph (b) of the definition of that term in section 5, a reference to the pound operator.

[94] Section 62

Omit the section. Insert instead:

62 Seized animals must be delivered to owner, council pound or approved premises

(1) A person who seizes an animal under the authority of this Act must cause the seized animal to be delivered as soon as possible:

- (a) to its owner, or
- (b) to a council pound, or
- (c) to any approved premises.

Maximum penalty: 30 penalty units.

Note. Animals may be seized under the following provisions of this Act:

- (a) section 13 (3),
- (b) section 14 (3),
- (c) section 18,

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- (d) section 22,
 - (e) section 30,
 - (f) section 32,
 - (g) section 36 (3),
 - (h) section 52,
 - (i) section 57 (1),
 - (j) section 58B.

- (2) In the case of an animal that has been seized by a person who is not an authorised officer, subsection (1) is complied with by the person if the person, as soon as possible after seizing the animal, makes an arrangement with an authorised officer for the animal to be delivered by the officer to its owner, a council pound or approved premises.

[95] Section 63 Owner of seized animal to be notified

Omit “, the person in charge of the pound” from section 63 (1).

Insert instead “or approved premises, the person in charge of the pound or premises”.

[96] Section 63 (2)

Insert “or approved premises” after “pound”.

[97] Section 63A

Insert after section 63:

63A Seized animals detained at approved premises

- (1) If a seized animal that is detained at approved premises is not claimed after the period of 72 hours following the delivery of the animal to the approved premises, the person in charge of the premises must cause the animal to be delivered to a council pound.
- (2) For the purposes of this section, an animal is *claimed* when a person who appears to the person in charge of the approved premises to be the owner of the animal or acting on the owner’s behalf claims the animal.

[98] Section 64 Unclaimed seized animal may be sold or destroyed

Insert “(including an animal delivered to a council pound under section 63A)” after “a seized animal” in section 64 (1).

[99] Section 64 (2) and (2A)

Omit section 64 (2). Insert instead:

- (2) However, the council may, in accordance with any policy that has been adopted by the council in relation to the management of feral or infant companion animals, destroy the seized animal concerned before the end of any such period referred to in subsection (1).
- (2A) Any policy adopted by the council for the purposes of subsection (2) must comply with such guidelines as may be issued by the Director-General.

[100] Section 64 (3A)

Insert after section 64 (3):

- (3A) Despite any other provision of this section, if proceedings for an offence under this Act in relation to a seized animal have been commenced but not finally determined:
 - (a) the council may detain the animal at the council pound, and
 - (b) the animal may not be claimed,until such time as those proceedings are finally determined.

[101] Section 64 (5) and (6)

Insert after section 64 (4):

- (5) Before destroying a seized animal as authorised by subsection (1), it is the duty of the council concerned to consider whether there is an alternative action to that of destroying the animal and (if practicable) to adopt any such alternative.
- (6) This section does not authorise a council to sell a restricted dog.

[102] Section 64A

Insert after section 64:

64A Surrendered animals may be sold or destroyed

- (1) A council may sell or destroy a surrendered animal (other than an animal that was surrendered by its owner to the council pound) if:
 - (a) the animal has been held at the council pound for a period of not less than 14 days, and
 - (b) the pound operator has, in accordance with section 63, used his or her best endeavours to find the animal's owner, and

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- (c) within that 14-day period, the owner of the animal has not been found or come forward to claim the animal or has refused to take care of the animal.
- (2) However, the council may, in accordance with any policy that has been adopted for the purposes of section 64 (2), destroy the animal before the end of the period referred to in subsection (1).
- (3) A council may at any time sell or destroy a surrendered animal if the animal was surrendered by its owner to the council pound.
- (4) Before destroying a surrendered animal as authorised by subsection (1) or (3), it is the duty of the council concerned to consider whether there is an alternative action to that of destroying the animal and (if practicable) to adopt any such alternative.
- (5) This section does not authorise a council to sell a restricted dog.

[103] Section 65 Fees and charges payable when animal detained or held

Insert “or held” after “detained” wherever occurring in section 65 (1).

[104] Section 66 Owner not entitled to compensation for sale of animal

Insert “or surrendered” after “seized” in section 66 (3).

[105] Section 67 Recovery of fees and charges when animal destroyed

Insert “or surrendered” after “seized” wherever occurring.

[106] Section 67A

Insert after section 67:

67A Reporting on pound activities

The Director-General may require a council to report to the Director-General on any matter relating to the activities of a council pound operated by the council or the council’s agent.

[107] Part 7A

Insert after Part 7:

Part 7A Enforcement powers

Division 1 Powers of entry

69A Powers of authorised officers to enter property

- (1) An authorised officer may, at any reasonable time, enter any property for any of the following purposes:
 - (a) to seize or secure any companion animal that the officer is authorised to seize or secure under this Act,
 - (b) to determine whether there has been compliance with, or a contravention of, this Act or the regulations.
- (2) Before entering any property under this section, an authorised officer must give the occupier of the property reasonable notice of the intention to enter the property unless:
 - (a) entry is made with the consent of the occupier of the property, or
 - (b) entry is, in the opinion of the authorised officer, required urgently because of the existence or reasonable likelihood of a serious risk to the health or safety of any person or animal, or
 - (c) entry is made for the purposes of seizing or securing a dog under section 18, or
 - (d) the giving of the notice would, in the opinion of the authorised officer, defeat the purpose for which it is intended to enter the property.
- (3) The powers of entry conferred by this section are not exercisable in relation to any part of premises used only for residential purposes except:
 - (a) with the permission of the occupier of the premises, or
 - (b) under the authority conferred by a search warrant under section 69D.

69B Powers of authorised officers to do things on entered property

- (1) An authorised officer may, on any property lawfully entered under section 69A, do anything that in the opinion of the authorised officer is necessary to be done for the purposes

referred to in that section, including (but not limited to) the things specified in subsection (2).

- (2) An authorised officer may do any of the following:
- (a) make such examinations, inquiries and tests as the authorised officer considers necessary (including the scanning of a companion animal to ascertain its identification information),
 - (b) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
 - (c) require records (including certificates of registration in relation to a companion animal) to be produced for inspection,
 - (d) examine, inspect and copy any records,
 - (e) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence under this Act or the regulations,
 - (f) do anything else the authorised officer is empowered to do under this Act.
- (3) The power to seize anything connected with an offence includes a power to seize:
- (a) a thing with respect to which the offence has been committed, and
 - (b) a thing that will afford evidence of the commission of the offence, and
 - (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

69C Use of assistants and reasonable force

The functions of an authorised officer under sections 69A and 69B may be exercised with the aid of assistants and with the use of reasonable force.

69D Search warrants

- (1) A police officer may apply to a relevant person for the issue of a search warrant if the officer believes on reasonable grounds that an offence under this Act or the regulations is being or has been committed on any property.

- (2) The relevant person may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer named in the warrant:
 - (a) to enter the property, and
 - (b) to exercise any of the functions of an authorised officer under section 69B.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

Note. Among other things, Division 4 of Part 5 of that Act provides for the use of reasonable force to enter premises (see section 70) and enables a person to execute a search warrant with the aid of assistants (see section 71).
- (4) In this section:

relevant person means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Division 2 General

69E Power to ascertain identification information of companion animals

- (1) An authorised officer may, at any time while in a public place, take such steps as the officer considers necessary in order to ascertain the identification information of a companion animal (including scanning the animal).
- (2) The authorised officer may do so only:
 - (a) if the officer reasonably suspects that an offence under this Act or the regulations in respect of the companion animal has been committed, or
 - (b) in the case of an authorised officer of a council, for the purposes of exercising the council's functions under Division 6 of Part 5.
- (3) This section does not prevent companion animals that have been lawfully seized, secured or detained by any person (including an authorised officer) under this Act from being scanned after they have been seized, secured or detained.

69F Identification of authorised officers of councils

- (1) Each authorised officer of a council is to be provided by the council with an identification card as an authorised officer.

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- (2) In the course of exercising the functions of an authorised officer under this Part, an authorised officer of a council must, if requested to do so by any person affected by the exercise of any function, produce the officer's identification card to the person.

69G Requirement to state name and address

- (1) An authorised officer who reasonably suspects a person of having committed an offence under 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: 15 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.

69H 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: 15 penalty units.

[108] Section 71 Registration

Omit "5 penalty units" from section 71 (4). Insert instead "8 penalty units".

[109] Section 75 Access to Register

Insert after section 75 (7) (a):

- (a1) any person authorised by the Director-General to have access to information contained in the Register for the purposes of identifying animals that have been seized under this Act or for the purposes of the recovery of lost companion animals,

[110] Section 75 (8)–(10)

Insert after section 75 (7):

- (8) The Director-General may withdraw a person's authorisation under subsection (7) (a1) at any time.

- (9) Before withdrawing a person's authorisation under subsection (7) (a1), the Director-General must:
 - (a) notify the person of the proposed withdrawal of the authorisation, and
 - (b) give the person a reasonable opportunity to make submissions to the Director-General in respect of the proposed withdrawal, and
 - (c) have due regard to any such submissions.
- (10) The Director-General must cause a person whose authorisation is withdrawn to be notified of the withdrawal in writing. Withdrawal of an authorisation takes effect on the day on which the notice is given, or from a later day specified in the notice.

[111] Section 76 Interfering with identification of animal

Omit "10 penalty units" from section 76 (1). Insert instead "15 penalty units".

[112] Part 9 Companion Animals Advisory Board

Omit the Part.

[113] Section 84 Establishment of the Fund

Omit section 84 (1) (c) and (3).

[114] Section 85 Payments from the Fund

Omit section 85 (1). Insert instead:

- (1) There is payable from the Fund:
 - (a) all amounts required to meet expenditure incurred in the administration or execution of this Act, and
 - (b) 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
 - (c) all money directed to be paid from the Fund by or under this or any other Act.
- (1A) Any money paid to a council from the Fund is to be applied by the council only for purposes that relate to the management and control of companion animals in its area.

[115] Section 85 (2) and (3)

Omit the subsections.

[116] Section 85 (4)

Omit “(1) (c)”. Insert instead “(1) (b)”.

[117] Section 88A

Insert after section 88:

88A Advisory committees

- (1) The Director-General may establish advisory committees to assist in the administration of this Act and to advise the Director-General on such matters as the Director-General determines.
- (2) The constitution, functions and procedure of an advisory committee are to be as determined by the Director-General.

[118] Sections 90 and 91

Omit the sections.

[119] Section 93

Omit the section. Insert instead:

93 Proceedings for offences

- (1) Proceedings for an offence under this Act may be dealt with:
 - (a) summarily before a Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

[120] Section 94 Double jeopardy

Omit the note following section 94 (1).

[121] Section 95A

Insert after section 95:

95A How notice is to be given to owners

- (1) This section applies to a notice that is required under any of the following provisions of this Act to be given to the owner of a companion animal:

Companion Animals Amendment Act 2005 No 101

Schedule 1 Amendment of Companion Animals Act 1998

- (a) section 10B,
 - (b) section 21A,
 - (c) section 31A,
 - (d) Division 1 of Part 5,
 - (e) Division 6 of Part 5,
 - (f) any other provision of this Act that is prescribed by the regulations for the purposes of this section.
- (2) A notice to which this section applies is to be given in writing to the owner concerned either personally or by post.
- (3) For the purposes of section 76 of the *Interpretation Act 1987*, a notice to which this section applies that is served by post on the owner of a companion animal is to be treated as being properly addressed if it is addressed to the last address of the owner known to the council that gives the notice (or whose authorised officer gives the notice).

[122] Section 96 Regulations

Insert after section 96 (2) (b):

- (b1) limiting the number of restricted dogs that a person may own,

[123] Section 96 (3)

Omit “10 penalty units”. Insert instead “50 penalty units”.

[124] Schedule 1 (Provisions relating to members of the Board) and Schedule 2 (Provisions relating to procedure of the Board)

Omit the Schedules.

[125] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Companion Animals Amendment Act 2005

[Second reading speech made in—

Legislative Assembly on 15 November 2005

Legislative Council on 16 November 2005]

BY AUTHORITY