



New South Wales

Companion Animals and Other Legislation Amendment Act 2018 No 27

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Companion Animals and Other Legislation Amendment Act 2018 No 27

Act No 27, 2018

An Act to amend the *Companion Animals Act 1998* and other legislation to make further provision about the welfare of animals and the duties and responsibilities of their owners, including by giving effect to some of the recommendations of the Inquiry into Companion Animal Breeding Practices in New South Wales. [Assented to 15 June 2018]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Companion Animals and Other Legislation Amendment Act 2018*.

2 Commencement

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

3 Amendment of Greyhound Racing Act 2017 No 13

The *Greyhound Racing Act 2017* is amended by omitting Schedule 7.3 [5].

Schedule 1 **Amendment of Companion Animals Act 1998 No 87**

- [1] **Sections 5 (1) (except the definition of “Director-General”), 11 (1)–(3), 11A (b), 31 (6), 32A (6), 40, 44 (note), 51 (1) and (1A) (notes), 58DA, 62A (1), 64 (2A), 67A, 72 (1) and (4), 74 (1), (3) and (4), 75 (1), (3), (4), (7) (a1) and (8)–(10), 84 (2), 85 (4), 86, 88A and 89 (3) (c) and (d) and (4) (c)**

Omit “Director-General” wherever occurring.

Insert instead “Departmental Chief Executive”.

[2] **Section 5 Definitions**

Omit the definition of *Director-General* from section 5 (1). Insert in alphabetical order:

Departmental Chief Executive means the Chief Executive of the Office of Local Government.

permit means a permit issued under Part 2A.

rehoming organisation means:

- (a) a council or any other operator of a council pound, or
- (b) the Animal Welfare League NSW, or
- (c) The Cat Protection Society of NSW Inc, or
- (d) the Royal Society for the Prevention of Cruelty to Animals; New South Wales, or
- (e) any other organisation that is, for the time being, designated as a rehoming organisation by the Departmental Chief Executive under section 88B.

[3] **Section 9 Registration required from age 6 months**

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

Maximum penalty:

- (a) in the case of a dangerous, menacing or restricted dog—60 penalty units for a first offence or 70 penalty units for a second or subsequent offence, or
- (b) in any other case—50 penalty units for a first offence or 60 penalty units for a second or subsequent offence.

[4] **Section 10 Regulations may require registration**

Omit the penalty. Insert instead:

Maximum penalty:

- (a) in the case of a dangerous, menacing or restricted dog—60 penalty units for a first offence or 70 penalty units for a second or subsequent offence, or
- (b) in any other case—50 penalty units for a first offence or 60 penalty units for a second or subsequent offence.

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

Omit the penalty from section 10B (2). Insert instead:

Maximum penalty:

- (a) in the case of a dangerous, menacing or restricted dog—60 penalty units for a first offence or 70 penalty units for a second or subsequent offence, or
- (b) in any other case—50 penalty units for a first offence or 60 penalty units for a second or subsequent offence.

[6] Part 2A

Insert after Part 2:

Part 2A Annual permits for certain companion animals

Division 1 Requirement for permit

11B Annual permit required for cats that are not desexed

- (1) A permit is required to own a cat that is 4 months old or older, unless the cat is desexed.
- (2) The owner of a cat that is not desexed and for which a permit is required is guilty of an offence if a permit is not in force in relation to the cat.
Maximum penalty: 50 penalty units.
- (3) The following grace periods apply to an offence against this section:
 - (a) the period of 2 months after a cat reaches 4 months of age,
 - (b) the period of 2 months (or any other period prescribed by the regulations) after a person acquires ownership of a cat.
- (4) A person cannot be proceeded against, and a section 11E notice cannot be issued, for an offence committed in relation to a cat during a grace period for an offence against this section if the person duly applies for a permit for the cat by the end of the grace period.

11C Annual permit required for dangerous dogs

- (1) A permit is required to own a dangerous dog. The permit is required on and from the date that is 7 days after the declaration that the dog is a dangerous dog takes effect.
- (2) The owner of a dangerous dog is guilty of an offence if a permit is not in force in relation to the dog on or after the date from which it is required under this section.
Maximum penalty: 60 penalty units.
- (3) This section applies to a dog whether or not the dog is also a restricted dog and, accordingly, another permit will be required by section 11D if that section applies.

11D Annual permit required for restricted dogs

- (1) A permit is required to own a restricted dog. The permit is required on and from the following date:

- (a) if the dog is an American pit bull terrier, pit bull terrier, Japanese tosa, dogo Argentino or fila Brasileiro, Perro de Presa Canario or Presa Canario—the date that the animal is 6 months old,
 - (b) if the dog is of a breed, kind or description whose importation into Australia is prohibited by or under the *Customs Act 1901* of the Commonwealth—21 days after the importation of the breed, kind or description of the dog was first prohibited,
 - (c) if the dog is declared to be a restricted dog by an authorised officer of a council under Division 6 of Part 5—21 days after the declaration takes effect,
 - (d) if the dog is of a breed, kind or description prescribed by the regulations for the purposes of section 55—21 days after the day that the breed, kind or description was first prescribed.
- (2) The owner of a restricted dog is guilty of an offence if a permit is not in force in relation to the dog on or after the date from which it is required under this section.
Maximum penalty: 60 penalty units.
- (3) This section applies to a dog whether or not the dog is also a dangerous dog and, therefore, another permit will be required by section 11C if that section applies.

11E Notice requiring permit for companion animal

- (1) If this Division requires a permit to own a companion animal, the council of the area in which the animal is ordinarily kept may give the owner of the animal a notice, in the approved form, requiring the owner to apply for a permit in relation to the animal within 14 days after the date the notice is given.
- (2) The owner of the companion animal must comply with the notice.
Maximum penalty:
- (a) in the case of a cat—50 penalty units, or
 - (b) in the case of a dangerous dog or restricted dog—60 penalty units.
- (3) A notice under this section may be given on more than one occasion to the owner of a companion animal (but only after an interval of at least 3 months since the last such notice was given).

11F Exemptions for animals in custody of rehoming organisations

- (1) This Division does not apply to a companion animal that is in the custody of any of the following:
- (a) a council, or an operator of a council pound that is not a council,
 - (b) the Animal Welfare League NSW,
 - (c) The Cat Protection Society of NSW Inc,
 - (d) the Royal Society for the Prevention of Cruelty to Animals; New South Wales.
- (2) This Division does not apply to a companion animal that is in the custody of any other organisation that is, for the time being, designated as a rehoming organisation by the Departmental Chief Executive under section 88B, if the animal has not been in the custody of that organisation or any other rehoming organisation for more than 12 months.

11G Further exemptions

This Division does not apply to any of the following companion animals:

- (a) a dog that is ordinarily used by a police officer on official duty,
- (b) a dog that is ordinarily used on official duty by a correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),
- (c) a dog used by a Commonwealth officer on official duty,
- (d) a companion animal in the custody of an accredited research establishment within the meaning of the *Animal Research Act 1985*, or the holder of an animal research authority or an animal supplier's licence within the meaning of that Act, for purposes in connection with animal research, as authorised under that Act,
- (e) a companion animal kept at a licensed animal display establishment within the meaning of the *Exhibited Animals Protection Act 1986* and lawfully exhibited in accordance with that Act,
- (f) a companion animal prescribed by, or of a class prescribed by, the regulations.

11H Continuing offences

A person who commits an offence under section 11B, 11C or 11D commits another, separate, offence under that section each calendar month that the contravention of that section continues.

Note. This section does not limit the number of times a person may be prosecuted under section 11E (Notice requiring permit for companion animal).

Division 2 Permit scheme

11I Application for permit

- (1) An application for a permit must be made to the Departmental Chief Executive in accordance with the regulations.
- (2) The application fee prescribed by the regulations must be paid when the application is made or within any other period that is approved by the Departmental Chief Executive.
- (3) The application must include or be accompanied by any information and particulars that are prescribed by the regulations.
- (4) On receiving an application for a permit, the Departmental Chief Executive may carry out any investigations and inquiries that the Departmental Chief Executive considers necessary to enable the Departmental Chief Executive to consider the application properly.
- (5) Section 12 of the *Criminal Records Act 1991* does not apply in relation to an application for a permit.
- (6) A person does not commit an offence against Division 1 in respect of the ownership of a companion animal during any period in which an application for a permit duly made by the person is pending before the Departmental Chief Executive for determination.

11J Issuing of permit

- (1) The Departmental Chief Executive may, after considering an application for a permit:

- (a) issue a permit to the applicant, or
 - (b) refuse to issue a permit to the applicant.
- (2) The regulations may prescribe mandatory or discretionary grounds for refusing to issue a permit.

11K Conditions of permit

- (1) A permit is subject to the following conditions:
- (a) any condition prescribed by the regulations,
 - (b) any conditions imposed on the permit by the Departmental Chief Executive, whether at the time the permit is issued or at any later time.
- (2) The Departmental Chief Executive may, at any time, by notice in writing served on the holder of the permit:
- (a) revoke or vary any condition imposed on the permit (other than a condition prescribed by the regulations), or
 - (b) impose new conditions on the permit.
- (3) The Departmental Chief Executive may impose, revoke or vary conditions on a permit for any reason, and in circumstances, that the Departmental Chief Executive considers appropriate or necessary.
- (4) The holder of a permit must comply with any condition to which the permit is subject.
- Maximum penalty: 20 penalty units.

11L Term of permit

A permit for a cat, dangerous dog or restricted dog continues in force for a period of 12 months from the date on which it was issued, or from another date specified in the permit, unless it is sooner surrendered or revoked or otherwise ceases to be in force.

11M Sale of animal subject to permit

- (1) If a companion animal that is the subject of a permit is sold, the permit continues to apply to the companion animal for the remainder of the term of the permit unless it is sooner surrendered or revoked or otherwise ceases to be in force.
- (2) For the purposes of this Part, the person to whom the companion animal is sold is taken to be the holder of the permit, which is taken to be subject to the same conditions as those to which the permit was subject immediately before the sale of the animal.

Division 3 General

11N Regulations—permits

The regulations may make provision for or with respect to any of the following:

- (a) the making of an application for a permit (including the form of an application and the information and evidence to accompany an application),
- (b) the requirements for the issue of a permit (including any identification requirements),
- (c) the grounds for refusal of a permit,

- (d) the fees payable in connection with a permit or an application for the issue or renewal of a permit (including any late payment fees or fees for the issue of a replacement permit),
- (e) any exemptions from, or reductions in, any fee payable,
- (f) the renewal of permits,
- (g) the revocation of permits,
- (h) the notification, by the holder of a permit, of the sale of a companion animal that is subject to a permit,
- (i) enabling the functions of the Departmental Chief Executive under this Part to be exercised by a council or any other person, or class of persons, appointed by the Departmental Chief Executive.

[7] Section 12A Preventing dog from escaping

Insert after section 12A (1):

- (1A) The regulations may, for the purposes of this section, specify what constitutes or does not constitute reasonable precautions to prevent a dog from escaping.

[8] Section 33A Meaning of “menacing” and “menacing breed or kind of dog”

Insert after section 33A (3):

- (4) For the purposes of this section, a *serious injury* includes any of the following:
 - (a) any injury that requires hospitalisation of a person or animal,
 - (b) a broken bone that requires medical or veterinary attention,
 - (c) a major laceration (that is, a wound caused by the tearing of body tissue or by multiple punctures caused by more than one bite from a dog) that requires medical or veterinary attention,
 - (d) a partial or total loss of sensation or function in a part of the body that requires medical or veterinary attention,
 - (e) any other injury requiring medical or veterinary attention, of the same level of seriousness as the injuries described in paragraphs (b)–(d),
 - (f) an injury that requires a person to have cosmetic surgery.

[9] Section 51 Owner of dangerous or menacing dog must comply with control requirements

Insert after section 51 (1) (k):

- (l) The dog must be the subject of a permit issued under this Act, as required by section 11C.

[10] Section 55 Interpretation

Insert after section 55 (1) (c):

- (c1) Perro de Presa Canario or Presa Canario,

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

Insert after section 56 (1) (h):

- (i) **Permit required**

The dog must be the subject of a permit issued under this Act, as required by section 11D.

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

Omit “8 penalty units” from section 60 (1). Insert instead “15 penalty units”.

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

Omit “8 penalty units” from section 61 (1). Insert instead “15 penalty units”.

[14] Sections 74 and 75

Omit the sections.

[15] Part 9

Insert after Part 8:

Part 9 The Register of Companion Animals

Division 1 Preliminary

78 Definitions

In this Part:

authorised identifier means a person who is an authorised identifier under the regulations.

breeder identification number, in relation to a person, means:

- (a) in any case—the number allocated to the person as a breeder identification number under section 83M, or
- (b) in the case of a person who is a member of a recognised breeders’ organisation—the number allocated to the person by that organisation, or
- (c) in the case of an advertisement about a greyhound—the number allocated to the owner of the animal from whose litter the greyhound being advertised was born at the time of its registration under the greyhound racing rules.

compliance history, in relation to a person (including a breeder), means a record of any of the following:

- (a) a conviction of the person for an offence against, or the making of an order against the person by a court under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of a charge for an offence against:
 - (i) this Act or the regulations, or
 - (ii) section 530 or 531 of the *Crimes Act 1900*, or
 - (iii) the *National Parks and Wildlife Act 1974* or the regulations made under that Act, being an offence that involves a dog or cat being taken into, or being in, a national park or any road traversing a national park, or
 - (iv) the *Prevention of Cruelty to Animals Act 1979* or the regulations made under that Act,
- (b) a penalty notice issued to the person for any of the following, being a notice that was not withdrawn or in relation to which a court had not dismissed the relevant charges:
 - (i) an offence against this Act or the regulations,

- (ii) an offence against the *National Parks and Wildlife Act 1974* or the regulations made under that Act, being an offence that involves a dog or cat being taken into, or being in, a national park or any road traversing a national park,
- (iii) an offence against the *Prevention of Cruelty to Animals Act 1979* or the regulations made under that Act,
- (c) any of the following orders made in relation to the person under this Act (including an expired order):
 - (i) an order under section 23 (2) or (3) disqualifying the person,
 - (ii) a nuisance order under section 31 or 32A (2),
 - (iii) a control order under section 47,
 - (iv) a destruction order under section 48,
 - (v) an ancillary order under section 50,
- (d) any of the following orders under the *Prevention of Cruelty to Animals Act 1979* (including an expired order) made in relation to the person:
 - (i) an order under section 29C about the care of an animal,
 - (ii) an order under section 30 requiring the destruction of the animal,
 - (iii) an order under section 31 (1) relating to a conviction,
 - (iv) an interstate prohibition order that is recognised under section 31AA,
- (e) any other matter prescribed by the regulations.

greyhound racing rules means the racing rules:

- (a) made by Greyhound Racing New South Wales under the *Greyhound Racing Act 2009* and in force before the repeal of that Act, or
- (b) made by the Greyhound Welfare and Integrity Commission under the *Greyhound Racing Act 2017*.

microchip identification number means:

- (a) in the case of a greyhound—the identification number allocated to the microchip implanted in the greyhound in compliance with the greyhound racing rules, or
- (b) in any other case—the identification number allocated to the microchip implanted in a companion animal in connection with the identification of the animal for the purposes of section 8.

recognised breeders' organisation means any of the following organisations:

- (a) the Royal New South Wales Canine Council Limited (trading as Dogs New South Wales),
- (b) the NSW Cat Fanciers' Association Inc,
- (c) Australian National Cats Incorporated,
- (d) any other organisation designated by the Departmental Chief Executive for the purposes of this definition by order published in the Gazette.

rehoming organisation number, in relation to a rehoming organisation, means the number allocated to the organisation under section 83N.

Division 2 Keeping of Register

79 The Register

- (1) There is to be a Register of Companion Animals.

- (2) The Departmental Chief Executive is responsible for the keeping and administration of the Register.
- (3) The Register is to be kept in a form that enables access to the Register to be made online by those persons who are entitled to access information contained in the Register.
- (4) The regulations may make provision for or with respect to either or both of the following:
 - (a) the manner and form in which the Register is to be kept,
 - (b) any other matter concerning the keeping and administration of the Register.

80 Information on the Register

- (1) The Register is to contain the following information in relation to each registered companion animal:
 - (a) the unique identification number allocated to the microchip implanted in the animal in connection with the identification of the animal,
 - (b) in the case of a companion animal that was required to be identified for the purposes of section 8:
 - (i) the name of the authorised identifier who carried out, or supervised, the implantation of the microchip, and
 - (ii) if the authorised identifier was accredited in accordance with the regulations, the authorised identifier number of that identifier,
 - (c) in the case of a companion animal that was identified on a voluntary basis by the implantation of a microchip on or after 1 October 2001 (other than a greyhound registered in accordance with the greyhound racing rules):
 - (i) the name of the authorised identifier who carried out, or supervised, the implantation of the microchip, and
 - (ii) if the authorised identifier was accredited in accordance with the regulations, the authorised identifier number of that identifier,
 - (d) the date on which the animal was identified,
 - (e) the address of the place at which the animal is ordinarily kept,
 - (f) the name of the council of the area in which the animal is ordinarily kept,
 - (g) the type of animal (dog or cat), and the breed of the animal,
 - (h) the animal's date of birth (known or approximate),
 - (i) the animal's sex,
 - (j) the animal's colour and details of any unusual or identifying marks on the animal,
 - (k) the full name and contact details of the current owner of the animal,
 - (l) any other relevant information relating to the owner of the animal that the Departmental Chief Executive required the owner to provide in connection with an application for registration of the animal,
 - (m) the full name of any known previous owner of the animal and any other available contact details for any known previous owner of the animal,
 - (n) any other relevant information relating to any previous owner of the animal that the Departmental Chief Executive required the owner to provide in connection with an application for registration of the animal,

- (o) the breeder identification number (if any) of the owner of the animal that produced the litter from which the animal was born,
 - (p) in the case of a companion animal purchased or otherwise acquired from a rehoming organisation—the rehoming organisation number of the organisation from which the animal was purchased or otherwise acquired,
 - (q) any permit details in relation to the animal,
 - (r) any other information relating to the animal that the regulations require to be contained on the Register.
- (2) The Register is to contain the following information in relation to each registered owner of a companion animal specified in the Register, including any person who is no longer a registered owner:
- (a) the name, and telephone number, of the owner,
 - (b) if the owner is a natural person—the date of birth of the owner,
 - (c) if the owner is not a natural person—any ABN or other identification information about the entity,
 - (d) the compliance history of the owner,
 - (e) any other relevant information relating to the registered owner of the animal that the Departmental Chief Executive required the registered owner to provide in connection with an application for registration of the animal.
- (3) The Register is to contain the following information in relation to a companion animal the registered owner of which is not a natural person:
- (a) the name, date of birth and telephone number, of each natural person who, at the time of registration, was a person who will ordinarily keep the animal,
 - (b) the compliance history of that person,
 - (c) any other relevant information relating to that person that the Departmental Chief Executive required the registered owner of the animal to provide in connection with an application for registration of the animal.
- (4) The Register is also to contain any other information prescribed by the regulations.

Division 3 Access to Register

81 Access to Register to be provided free of charge

If a person is entitled to access information contained in the Register by this Division, the Departmental Chief Executive is required to provide that access free of charge.

82 Limited access by owners of companion animals

A person who is the owner of a companion animal is entitled to access information contained in the Register, but only for the purposes of notifying, in accordance with section 11, changes in the registration information or identification information for any companion animal owned by the person.

83 Limited access by members of public

Any member of the public is entitled to access information contained in the Register, but only for any of the following purposes:

- (a) to ascertain whether or not a companion animal is registered (that is, whether all registration information has been entered and payment has been made),
- (b) to verify that a microchip identification number is valid,
- (c) to find the details that correspond to a microchip identification number, namely, the breed, sex and age of the relevant companion animal and whether or not it has been desexed,
- (d) to verify that a breeder identification number is valid,
- (e) to find the details that correspond to a breeder identification number, namely:
 - (i) the business name of the owner of any animal from whose litter the animal being researched was born, and
 - (ii) the breed, sex and age of all companion animals on the Register that are recorded as having been bred by any owner of the animal from whose litter the animal being researched was born,
- (f) to verify that a rehoming organisation number is valid,
- (g) to find the details that correspond to a rehoming organisation number, namely, the name and address of the relevant rehoming organisation,
- (h) to ascertain whether or not a companion animal is required to have a permit,
- (i) to determine whether or not a permit is in force in relation to the animal and the date on which any such permit expires.

83A Unrestricted access by Minister

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.

83B General access by Secretary of Department of Industry and persons authorised by that Secretary

- (1) The Secretary of the Department of Industry, and any person authorised by the Secretary for the purposes of the administration and enforcement of the *Prevention of Cruelty to Animals Act 1979*, are entitled to access information contained in the Register, subject to subsection (2).
- (2) The Departmental Chief Executive may give different degrees of access to the Register to different classes of persons referred to in this section, having regard to the different functions that they perform.

83C General access by certain employees of local authorities

- (1) A local authority may approve an employee or class of employees of the local authority to be eligible to access the Register, either generally or only for the purposes specified in the approval.
- (2) An approved employee is entitled to access information contained in the Register, subject to the terms of the approval.
- (3) For the purposes of this section, the Departmental Chief Executive may, from time to time, prepare, adopt or vary guidelines relating to the exercise by a local authority of the function of approving employees under this section.

- (4) The Departmental Chief Executive may, by giving a written notice to a local authority, suspend access to the Register by any specified employee, or by all employees, approved by the local authority under this section.
- (5) A local authority may withdraw an approval under this section at any time and is required to notify the Office of Local Government of that withdrawal as soon as possible after it occurs.
- (6) When exercising functions under this section, a local authority is required to comply with any relevant guidelines issued under this section.

83D Limited access by contractors approved by local councils

- (1) A council may approve a person whom the council engages to operate a council pound to be eligible to access the Register, to the extent provided by this section.
- (2) A person approved by a council under this section is entitled to access information contained in the Register, but only for the following purposes:
 - (a) identifying any companion animal that has been seized or surrendered under this Act,
 - (b) locating the owner of a companion animal in the custody of the person.
- (3) For the purposes of this section, the Departmental Chief Executive may, from time to time, prepare, adopt or vary guidelines relating to the exercise by a council of the function of approving persons under this section.
- (4) The Departmental Chief Executive may, by giving written notice to a council, suspend access to the Register by any specified person, or by all persons, approved by the council under this section.
- (5) A council may withdraw an approval under this section at any time and is required to notify the Office of Local Government of that withdrawal as soon as possible after it occurs.
- (6) When exercising functions under this section, a council is required to comply with any relevant guidelines issued under this section.

83E Limited access by veterinary practitioners or their employees

- (1) A veterinary practitioner is entitled to access information contained in the Register, but only for the purpose of locating the owner of a companion animal in the custody of the veterinary practitioner or his or her practice.
- (2) An employee of a veterinary practitioner who is being supervised by a veterinary practitioner is entitled to access information contained in the Register, but only for the purpose of locating the owner of a companion animal in the custody of the veterinary practitioner or his or her practice.

83F Departmental Chief Executive may approve other persons to access the Register

- (1) The Departmental Chief Executive may approve a person to have access to information contained in the Register.
- (2) A person approved under this section is entitled to access information contained in the Register, but only for the following purposes:
 - (a) identifying any companion animal that has been seized or surrendered under this Act,
 - (b) locating the owner of a companion animal in the custody of the person.

- (3) The Departmental Chief Executive may withdraw an approval under this section at any time.
- (4) Before withdrawing a person's approval, the Departmental Chief Executive must:
 - (a) notify the person of the proposed withdrawal of the approval, and
 - (b) give the person a reasonable opportunity to make submissions to the Departmental Chief Executive in respect of the proposed withdrawal, and
 - (c) have due regard to any such submissions.
- (5) The Departmental Chief Executive must cause a person whose approval is withdrawn to be notified of the withdrawal in writing. Withdrawal of an approval takes effect on the day on which the notice is given, or from a later day specified in the notice.

83G Regulations can authorise general or limited access by other specified officers and persons

- (1) The following persons are entitled to access information contained in the Register:
 - (a) the holder of any office prescribed by the regulations for the purposes of this section,
 - (b) a person who is a member of a class of persons prescribed by the regulations for the purposes of this section.
- (2) The Departmental Chief Executive may give different degrees of access to the Register to different classes of persons referred to in this section, having regard to the different functions that they perform.

83H Regulations—access to Register

- (1) The regulations may provide for the ways in which access to the Register can or must be given.

Note. For example, access to the Register could be by telephone or by electronic means.
- (2) The regulations may require the Departmental Chief Executive to keep specified records with respect to the access given to the Register under this Part and may provide for the persons who are entitled to access those records.

83I Departmental Chief Executive may issue guidelines about access to Register

- (1) The Departmental Chief Executive may issue guidelines, not inconsistent with this Part, about the manner in which a person who is entitled under this Division to access the Register may access the Register.
- (2) A person who is entitled under this Division to access the Register is entitled only to the extent that the person complies with any guidelines issued under this Division.

Division 4 Arrangements about Register

83J Agreements about Register

- (1) The Departmental Chief Executive may enter into an agreement or other arrangement with any person or body in respect of the exercise of functions of the Departmental Chief Executive under this Act by the person or body on behalf of the Departmental Chief Executive.

- (2) Such an agreement or other arrangement can make provision for the ownership of information entered on the Register to be vested in the Departmental Chief Executive.

83K Exchange of information with other Australian jurisdictions

- (1) Relevant information held by the Departmental Chief Executive may be provided to a relevant inter-State enforcement agency for the purposes of the administration or enforcement by that agency of legislation concerning animal welfare or management, including the prevention of cruelty to animals.
- (2) The Departmental Chief Executive may enter into an arrangement (an **information sharing arrangement**) with a relevant inter-State enforcement agency for the purpose of sharing or exchanging relevant information held by the Departmental Chief Executive or the agency.
- (3) The **relevant information** held by the Departmental Chief Executive that may be provided under this section, and to which an information sharing arrangement may relate, is limited to the following:
 - (a) information concerning the contravention of this Act or the regulations,
 - (b) information concerning an offence under the *Prevention of Cruelty to Animals Act 1979* or section 530 or 531 of the *Crimes Act 1900*,
 - (c) information concerning the registration of companion animals under this Act,
 - (d) details of complaints relating to animal welfare,
 - (e) any other information of a type prescribed by the regulations.
- (4) Under an information sharing arrangement, the Departmental Chief Executive and the relevant inter-State enforcement agency are, despite any other Act or law of the State, authorised:
 - (a) to request and receive information held by the other party to the arrangement, and
 - (b) to disclose information to the other party, and
 - (c) to hold and use the information so received.
- (5) Subsection (4) applies only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or of the functions of the relevant inter-State enforcement agency concerned that relate to animal welfare or management, including the prevention of animal cruelty.
- (6) This section does not:
 - (a) require the Departmental Chief Executive to provide information to a relevant inter-State enforcement agency only in accordance with subsection (1) or with an information sharing arrangement where that information can otherwise be lawfully provided, or
 - (b) limit the operation of any other Act or law under which a relevant inter-State enforcement agency is authorised or required to disclose information to another person or body.
- (7) In this section:

information includes reports, recommendations, opinions, assessments and operational plans.

relevant inter-State enforcement agency means an agency of the Commonwealth or another State or Territory that has functions concerning the

enforcement of a law about animal welfare or management, including the prevention of cruelty to animals, and includes the following:

- (a) a police force,
- (b) an animal welfare body,
- (c) a local government body,
- (d) a government department or public authority.

Division 5 Miscellaneous

83L Certificates relating to Register

(1) The Departmental Chief Executive can issue a certificate certifying as to whether or not a particular companion animal is or was registered at a particular time and certifying any registration information for the animal entered on the Register at a particular time.

(2) 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 a companion animal and the address at which it is ordinarily kept.

83M Allocation of breeder identification numbers

The Departmental Chief Executive may allocate a breeder identification number to any person who is the owner of a companion animal that has a litter.

83N Allocation of rehoming organisation numbers

The Departmental Chief Executive may allocate a rehoming organisation number to any rehoming organisation that has applied to the Departmental Chief Executive for a number.

[16] Section 84 Establishment of Fund

Insert “, permit fees” after “registration fees” in section 84 (1) (a).

[17] Section 85 Payments from the Fund

Insert after section 85 (1) (b):

- (b1) any refund of registration fees, permit fees or other amounts paid under this Act, in circumstances in which the Departmental Chief Executive considers that it is reasonable and necessary to do so, and

[18] Section 86A

Insert before section 87:

86A Ear-marking or tattooing of animals

(1) A veterinary practitioner who desexes a female companion animal is to ear-mark or tattoo the animal, for the purpose of indicating that the animal is desexed, at the time that it is under anaesthetic for the desexing procedure.

(2) Subsection (1) does not authorise or require any ear-marking or tattooing procedure to be undertaken without the consent of the owner of the companion animal.

- (3) Subsection (1) does not apply if:
 - (a) the veterinary practitioner has sought the consent of the owner of the companion animal and the owner has denied consent to the ear-marking or tattooing procedure, or
 - (b) the veterinary practitioner considers that the ear-marking or tattooing procedure cannot be undertaken safely and humanely at that time.
- (4) For the purposes of this section, the Departmental Chief Executive may, from time to time, prepare, adopt or vary guidelines relating to ear-marking or tattooing of companion animals.

[19] Section 88

Omit the section. Insert instead:

88 Delegation by Departmental Chief Executive

The Departmental Chief Executive can delegate any of his or her functions under this Act (other than this power of delegation) or the regulations to any officer of the Office of Local Government.

[20] Section 88B

Insert after section 88A:

88B Designation of organisations as rehoming organisations

- (1) The Departmental Chief Executive may, by notice in writing, designate an organisation as a rehoming organisation.
- (2) The designation of an organisation under this section:
 - (a) may be granted subject to conditions or unconditionally, and
 - (b) may be revoked by the Departmental Chief Executive, by notice in writing.
- (3) The Departmental Chief Executive may, in the same notice or in a further written notice, exempt an organisation that has been designated under this section from any or all of the following obligations:
 - (a) the obligation under section 9 to register any or all companion animals in the custody of the organisation,
 - (b) the obligation to pay a fee for the registration of any or all companion animals in the custody of the organisation,
 - (c) the obligation to pay a fee for a permit relating to any or all companion animals in the custody of the organisation.
- (4) The exemption of an organisation under this section:
 - (a) may be granted subject to conditions or unconditionally, and
 - (b) may be revoked by the Departmental Chief Executive, by notice in writing.

[21] Section 89 Confidentiality of certain information

Omit section 89 (4) (b). Insert instead:

- (b) as authorised or required by Division 3 of Part 9, but only if done in accordance with any guidelines under section 83I, or

[22] Schedule 3 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of
Companion Animals and Other Legislation
Amendment Act 2018**

Meaning of “amending Act”

In this Part:

amending Act means the *Companion Animals and Other Legislation Amendment Act 2018*.

Permit requirement does not apply to cats registered before requirement imposed

- (1) Section 11B, as inserted by the amending Act, does not apply to a cat that was registered before the commencement of the section.
- (2) Section 11B, as inserted by the amending Act, does not apply to a cat that was born before the commencement of the section that was not registered before that commencement until the date that is 21 days (or any longer period prescribed by the regulations) after the commencement of the section, or the date that the cat is 4 months old, whichever occurs later.

Permit requirements extend to dogs declared dangerous before requirement imposed

- (1) Sections 11C and 51 (1) (l), as inserted by the amending Act, extend to a dog that was declared to be a dangerous dog before the commencement of the provisions.
- (2) In such a case, a permit is required under section 11C on and from the date that is 21 days (or any longer period prescribed by the regulations) after the commencement of section 11C.

Permit requirements extend to dogs declared restricted before requirement imposed

- (1) Sections 11D and 56 (1) (i), as inserted by the amending Act, extend to a dog that was a restricted dog, within the meaning of section 55, before the commencement of the provisions.
- (2) In such a case, a permit is required under section 11D on and from the date that is 21 days (or any longer period prescribed by the regulations) after the commencement of section 11D.

Certain organisations taken to be approved rehoming organisations

- (1) In this clause:
existing approved organisation means an organisation that was, immediately before the commencement of section 88B, as inserted by the amending Act, the subject of an approval granted by the Departmental Chief Executive for the purposes of clause 16 (d) of the *Companion Animals Regulation 2008*.
- (2) An existing approved organisation is, on and from the commencement of section 88B, taken to have been:

- (a) designated as a rehoming organisation under section 88B (1), for the same term, and subject to the same conditions (if any), that are specified in the approval, and
 - (b) granted an exemption under section 88B (3) from the obligation to register companion animals under section 9, for the same term, and subject to the same conditions (if any), that are specified in the approval.
- (3) Accordingly, on and from the commencement of section 88B:
 - (a) such an organisation is taken to be a rehoming organisation for the purposes of this Act, and
 - (b) the Departmental Chief Executive may revoke or otherwise deal with the designation or exemption effected by this clause as if it was granted under section 88B.

Schedule 2 Amendment of Prevention of Cruelty to Animals Act 1979 No 200

[1] Long title

Insert “and for the promotion of their welfare” after “animals”.

[2] Section 3 Objects of Act

Insert at the end of section 3 (b) (iii):

, and

- (c) to promote the welfare of dogs and cats by requiring information about them to be provided when they are advertised for sale.

[3] Section 4 Definitions

Omit “, Skills and Regional Development” from the definition of *Department* in section 4 (1).

[4] Section 23A

Insert after section 23:

23A Information required when dogs or cats are advertised for sale or for giving away

- (1) A person must not advertise a regulated dog or cat as being available for sale, to be given away, or to be transferred by any other means, unless the advertisement includes at least one of the following:
- (a) the microchip identification number allocated to the microchip implanted in the animal:
 - (i) in connection with the identification of the animal for the purposes of section 8 of the *Companion Animals Act 1998*, or
 - (ii) in compliance with the greyhound racing rules,
 - (b) the breeder identification number of the person, that is, the number allocated to the person:
 - (i) under section 83M of the *Companion Animals Act 1998*, or
 - (ii) by any recognised breeders’ organisation (within the meaning of Part 9 of the *Companion Animals Act 1998*) of which the person is a member, or
 - (iii) at the time of registration under the greyhound racing rules of the animal from whose litter the greyhound being advertised was born,
 - (c) in the case where the dog or cat is being sold or given away by an organisation that is, at the time the advertisement is made, a rehoming organisation (within the meaning of the *Companion Animals Act 1998*)—the rehoming organisation number allocated to the organisation under section 83N of that Act.

Maximum penalty: 50 penalty units.

Note. In order to comply with the requirements of this section, a person who advertises a companion animal must either obtain a breeder identification number or a rehoming organisation number, or have the animal microchipped (in which case the advertisement may include the microchip number). In the case of a companion animal that has not been born yet, the owner must have a breeder identification number or a rehoming organisation number.

- (2) A person who, when advertising a regulated dog or cat for sale, or when doing something in relation to that advertising, gives a microchip identification number, breeder identification number or rehoming organisation number that the person knows, or ought reasonably to have known, is false is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) A person is not liable to be convicted in respect of the same act or omission of both an offence under this section and an offence under section 52A (1) or 57A (1) of the *Companion Animals Act 1998*.

Note. Sections 52A (1) and 57A (1) of the *Companion Animals Act 1998* make it an offence to sell or advertise the sale of a dangerous, menacing or restricted dog or a dog that is proposed to be a dangerous, menacing or restricted dog.

- (4) In this section:

greyhound racing rules means the racing rules:

- (a) made by Greyhound Racing New South Wales under the *Greyhound Racing Act 2009* and in force before the repeal of that Act, or
- (b) made by the Greyhound Welfare and Integrity Commission under the *Greyhound Racing Act 2017*.

regulated dog or cat means any of the following:

- (a) a dog or cat that is or will be required by the *Companion Animals Act 1998* to be identified (including by being microchipped), including a dog or cat that has not been born or has not yet reached the age at which identification is required,
- (b) a greyhound (whether or not it is registered in accordance with the greyhound racing rules), including a greyhound that has not been born,
- (c) a dog or cat that is in the custody of a council (including a council pound),
- (d) a dog or cat that is in the custody of the Animal Welfare League NSW,
- (e) a dog or cat that is in the custody of The Cat Protection Society of NSW Inc,
- (f) a dog or cat that is in the custody of the Royal Society for the Prevention of Cruelty to Animals; New South Wales.

[5] Section 24G Powers of inspectors in relation to land used for certain commercial purposes

Insert after section 24G (2) (a1):

- (a2) inspect any advertisement, or means of publishing or broadcasting an advertisement, that is on the land,

[6] Section 24JA

Insert after section 24J:

24JA Powers of inspectors generally to examine advertisements

An inspector may examine an advertisement, or any means of publishing or broadcasting an advertisement, if the inspector suspects, on reasonable grounds, that an offence against section 23A is being, has been or is about to be committed in respect of the advertisement or other thing.

[7] Section 24NA Power to question persons and require production of documents

Insert “or produce documents” after “answer questions” in section 24NA (1).

[8] Section 30A

Omit the section. Insert instead:

30A Court may order payment of care and maintenance costs by accused person

- (1) A court may order a person charged with an offence against this Act or the regulations in respect of an animal to pay to a specified person or organisation the amount specified in the order for any or all reasonable care and maintenance costs incurred by that person or organisation in relation to the animal as a consequence of the offence or alleged offence or in connection with the proceedings. Any such order is a *costs order*.
- (2) For the purposes of this section, *reasonable care and maintenance costs* are any costs reasonably incurred in doing any of the following:
 - (a) taking possession of the animal,
 - (b) transporting the animal,
 - (c) providing the animal with food and drink,
 - (d) providing the animal with shelter,
 - (e) providing the animal with veterinary treatment.
- (3) A costs order can be made:
 - (a) at the time that the court convicts the person of the relevant offence, or
 - (b) at any other time before proceedings for the relevant offence have been concluded.
- (4) An amount required to be paid under a costs order is recoverable by the person or organisation in whose favour the order is made, or a person acting on behalf of that person or organisation, as a debt in a court of competent jurisdiction from the person who is required under the costs order to pay that amount.
- (5) If proceedings against a person for an offence against this Act or the regulations have not concluded, a court may, instead of or in addition to making a costs order, order the person to provide a bond or security for the payment of any specified reasonable care and maintenance costs, or any further reasonable care and maintenance costs, that the person may later be required to pay under a costs order.
- (6) If the amount realised under any such bond or security exceeds the amount payable under a costs order, the excess amount is to be paid or returned to the person who provided the bond or security.
- (7) A court that acquits or discharges a person of an offence against this Act or the regulations may, if it considers it just and reasonable to do so in the circumstances, make any or all of the following orders:
 - (a) an order revoking or varying any previous costs order made by the court in connection with the proceedings,
 - (b) an order requiring any amount or any part of an amount already paid by the accused person under the order to be refunded to the accused person,
 - (c) an order requiring any bond or security provided by the person to be cancelled or returned.
- (8) Reasonable care and maintenance costs incurred after proceedings against a person for an offence have concluded are not recoverable under this section.

- (9) Without limiting subsection (1), the organisations that may be specified in a costs order as organisations to be paid include any of the following:
- (a) a charitable organisation,
 - (b) the NSW Police Force,
 - (c) a government department.
- (10) Nothing in this section limits the operation of section 24J (4), 26AA (2) or 30 (1) (d) and (3).
- (11) In this section:
conviction includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.
court means the Local Court or, if proceedings for the offence concerned are dealt with by the Supreme Court, the Supreme Court.

[9] Section 31 Court may make further orders relating to convicted persons

Omit “either or both” from section 31 (1). Insert instead “any one or more”.

[10] Section 31 (1) (c)

Insert after section 31 (1) (b):

- (c) an order prohibiting the convicted individual from doing any or all of the following:
 - (i) keeping, or participating in keeping, any animal,
 - (ii) being party to an arrangement where the person is entitled to control or influence the keeping of any animal (including any animal owned by another person or in another person’s possession),
 - (iii) have any other involvement with the keeping or care of any animal (including any animal owned by another person or in another person’s possession).

[11] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of
Companion Animals and Other Legislation
Amendment Act 2018**

Meaning of “amending Act”

In this Part:

amending Act means the *Companion Animals and Other Legislation Amendment Act 2018*.

Extension of operation of amendment about court orders relating to certain costs or caring for and maintaining animals

Section 30A, as substituted by the amending Act, extends to proceedings commenced, but not finally determined, before the substitution of that section.

Extension of operation of amendment about court orders relating to convicted persons

Section 31 (1) (c), as inserted by the amending Act, extends to proceedings commenced, but not finally determined, before the commencement of that paragraph.

[Second reading speech made in—
Legislative Council on 23 May 2018
Legislative Assembly on 6 June 2018]