

Passed by both Houses



New South Wales

Companion Animals Amendment Bill 2013

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly,
Legislative Assembly,
Sydney,*

, 2013



New South Wales

Companion Animals Amendment Bill 2013

Act No , 2013

An Act to amend the *Companion Animals Act 1998* to make further provision with respect to menacing, dangerous and restricted dogs and the duties and responsibilities of their owners; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Companion Animals Amendment Act 2013*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on a day or days to be appointed by proclamation.
- (2) Schedule 2 [2], [3], [6] and [13] commence on 1 January 2014.

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

[1] **Section 5 Definitions**

Insert in alphabetical order in section 5 (1):

dangerous, in relation to a dog—see section 33.

menacing, in relation to a dog—see section 33A (1).

menacing breed or kind of dog—see section 33A (2).

menacing dog means a dog for the time being the subject of a declaration by an authorised officer of a council under section 34 (1A) or a court under section 45 (1A) that the dog is a menacing dog.

[2] **Section 5 (1)**

Omit “is dangerous” from the definition of *dangerous dog*.

Insert instead “is a dangerous dog”.

[3] **Sections 6A (1) (b), 8 (3) and (4), 11 (1) (penalty provision), 12 (2), 12A (1), 13 (2), 14 (2), 14A (1), 23 (1) (b), (2) (c) and (6), 58G (1) and (5), 58H (2), 64 (6) and 64A (3)**

Insert “, menacing” after “dangerous” wherever occurring.

[4] **Sections 9 (1) and 10**

Omit the following from sections 9 (1) and 10 wherever occurring:

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.

Insert instead:

Maximum penalty:

- (a) 50 penalty units except in the case of a dangerous, menacing or restricted dog, or
- (b) 60 penalty units in the case of a dangerous, menacing or restricted dog.

[5] **Section 9 (3)**

Insert after section 9 (2):

- (3) A person is taken to commit a separate offence under this section on every day the companion animal remains unregistered. However, a person:
 - (a) may not be convicted for the commission of more than one offence in relation to the failure to register a companion animal during any single calendar month, and
 - (b) may be convicted only once in relation to any failure to register a companion animal that occurred before that failure came to the notice of the council of the area in which the animal is ordinarily kept.

Note. This subsection does not limit the number of times a person may be prosecuted under section 10B (Notice requiring companion animal to be registered).

[6] **Section 10A Unregistered companion animal**

Omit the section.

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

Omit “28 days” from section 10B (1). Insert instead “14 days”.

[8] Section 10B (2)

Omit the following:

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.

Insert instead:

Maximum penalty:

- (a) 50 penalty units except in the case of a dangerous, menacing or restricted dog, or
- (b) 60 penalty units in the case of a dangerous, menacing or restricted dog.

[9] Section 10B (3)

Omit “6 months”. Insert instead “3 months”.

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

Omit “is dangerous” from section 11 (1) (b).

Insert instead “is a dangerous dog or a menacing dog”.

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

Omit the following from section 16 (1):

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.

Insert instead:

Maximum penalty:

- (a) 100 penalty units except in the case of a dangerous, menacing or restricted dog, or
- (b) 400 penalty units in the case of a dangerous, menacing or restricted dog.

[12] Section 16 (1AA) and (1AB)

Insert after section 16 (1):

(1AA) If a dog (other than a dangerous, menacing or restricted dog) rushes at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not any injury is caused to the person or animal:

- (a) the owner of the dog is guilty of an offence if the incident occurs as a result of a reckless act or omission by the owner, or
- (b) if the owner is not present at the time of the incident and another person who is of or above the age of 16 years is in charge of the dog at that time—that other person is guilty of an offence if the incident occurs as a result of a reckless act or omission by that other person.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

(1AB) If a dangerous, menacing or restricted dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not any injury is caused to the person or animal:

- (a) the owner of the dog is guilty of an offence if the incident occurs as a result of a reckless act or omission by the owner, or
- (b) if the owner is not present at the time of the incident and another person who is of or above the age of 16 years is in charge of the dog at that time—that other person is guilty of an offence if the incident occurs as a result of a reckless act or omission by that other person.

Maximum penalty: 500 penalty units or imprisonment for 4 years, or both.

[13] Section 16 (1A)

Insert “, a menacing dog” after “a dangerous dog”.

[14] Section 16 (1A)

Omit the following:

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

Insert instead:

Maximum penalty: 700 penalty units or imprisonment for 5 years, or both.

[15] Section 16 (4) and (5)

Insert after section 16 (3):

- (4) If, on the trial of a person charged with an offence against subsection (1AA) or (1AB) the trier of fact is not satisfied that the person committed the offence but is satisfied that the person committed an offence against subsection (1), the trier of fact may find the person not guilty of the offence charged but guilty of an offence against subsection (1), and the person is liable to punishment accordingly.
- (5) For the purposes of this section, recklessness may also be established by proof of intention.

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

Omit section 17 (1). Insert instead:

- (1) A person who sets on or urges a dog (other than a dangerous, menacing or restricted dog) to attack, bite, harass or chase any person or animal (other than vermin) is guilty of an offence, whether or not actual injury is caused.
Maximum penalty: 200 penalty units.
- (1A) A person who sets on or urges a dangerous, menacing or restricted dog to attack, bite, harass or chase any person or animal (other than vermin) is guilty of an offence, whether or not actual injury is caused.
Maximum penalty: 700 penalty units or imprisonment for 5 years, or both.
Note. If the dog is a dangerous, menacing or restricted dog, conviction for an offence under this section results in permanent disqualification from owning a dog or from being in charge of a dog in a public place. See section 23.

[17] Sections 21 and 21A

Re-number sections 21 and 21A as sections 32A and 32B and transfer the sections to Division 1A (Nuisance dogs) of Part 5 (as inserted by item [24] of this Schedule) and amend any cross references in and to the transferred sections accordingly.

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

Insert “(1AB) or” after “section 16” in section 23 (1) (a).

[19] Section 23 (2) (b)

Insert “or (1AA)” after “section 16 (1)”.

[20] Section 23 (2) (d)

Omit “(Obligations of owner when notified of proposed dangerous dog declaration)”.

Insert instead “(Obligations of owner when notified of proposed declaration)”.

[21] Sections 23 (2) (f), 27 (2) (a), 44 (2) (note) and 51 (4)

Insert “or menacing dog” after “dangerous dog” wherever occurring.

[22] Sections 25 (2) (a) and 58H (1) and (4) (a)

Insert “, menacing dog” after “dangerous dog” wherever occurring.

[23] Part 5, heading

Omit the heading. Insert instead:

Part 5 Special provisions relating to control of dogs

[24] Part 5, Division 1, heading

Omit the heading. Insert instead:

Division 1A Nuisance dogs

Division 1 Declarations relating to dangerous and menacing dogs

[25] Section 33 Meaning of “dangerous”

Omit “this Division” from section 33 (1). Insert instead “this Act”.

[26] Section 33 (1) (c)

Omit the paragraph.

[27] Section 33A

Insert after section 33:

33A Meaning of “menacing” and “menacing breed or kind of dog”

- (1) For the purposes of this Act, a dog is *menacing* if it:
 - (a) has displayed unreasonable aggression towards a person or animal (other than vermin), or
 - (b) has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.
- (2) The regulations may declare a breed or kind of dog to be a *menacing breed or kind of dog*.
- (3) The Minister is not to recommend the making of a regulation under subsection (2) unless the Minister is satisfied that the breed or kind of dog concerned displays characteristics associated with menacing behaviour. A

failure to comply with this subsection does not invalidate the regulation concerned.

[28] Section 34 Authorised officer may declare dog to be dangerous dog or menacing dog

Omit section 34 (1). Insert instead:

- (1) An authorised officer of a council may declare a dog to be a dangerous dog if the authorised officer is satisfied that:
 - (a) the dog is dangerous, or
 - (b) the dog has been declared a dangerous dog under a law of another State or a Territory that corresponds with this Act.
- (1A) An authorised officer of a council may declare a dog to be a menacing dog if the authorised officer is satisfied that:
 - (a) the dog is menacing, or
 - (b) the dog is of a menacing breed or kind of dog (or a cross-breed of a menacing breed or kind of dog), or
 - (c) the dog has been declared a menacing dog under a law of another State or a Territory that corresponds with this Act.
- (1B) A declaration may be made under this section even if the dog is ordinarily kept in another council's area.
- (1C) The regulations may prescribe procedures that must be followed or matters that must be considered (or both) before an authorised officer makes a declaration under subsection (1A) (b).

[29] Sections 35 (1), 38 (2) and 47 (2) (c)

Omit "dangerous" wherever occurring. Insert instead "a dangerous dog or a menacing dog".

[30] Section 36 Obligations of owner when notified of proposed declaration

Omit "dangerous" from section 36 (1). Insert instead "a dangerous dog or a menacing dog".

[31] Section 36 (1) (b)

Insert ", regardless of its age," after "registered)".

[32] Section 36 (3) (b)

Omit the paragraph. Insert instead:

- (b) the dog is not registered (regardless as to whether the 7 day period referred to in subsection (1) (b) has expired).

[33] Section 38 Authorised officer to notify dog owner of decision and consequences

Omit section 38 (1). Insert instead:

- (1) An authorised officer of a council must give notice to the owner of a dog of the following:
 - (a) a declaration under this Division,
 - (b) a decision not to make a declaration under this Division.

The notice must be given within 7 days after the declaration or decision is made.

[34] Section 38 (2) (b)

Insert “in the case of a dangerous dog declaration—” before “the owner’s”.

[35] Section 39 Council can revoke declaration

Omit “dangerous” wherever occurring in section 39 (1) and (1A).

Insert instead “a dangerous dog or a menacing dog”.

[36] Section 39 (2)

Omit the subsection. Insert instead:

- (2) The council to which the application is made may revoke the declaration but only if satisfied that:
 - (a) it is appropriate to do so, and
 - (b) if the council determines that it is necessary—the dog has undergone appropriate behavioural training.
- (2A) In making a determination under subsection (2) (a) in relation to a menacing dog declaration, the council is to have regard to the nature and extent of any behavioural training that the dog has undergone.

[37] Section 41 Appeal to Local Court regarding dangerous dog declarations

Omit “is dangerous” wherever occurring in section 41 (1).

Insert instead “is a dangerous dog”.

[38] Section 41 (1), note

Insert at the end of section 41 (1):

Note. No appeal lies to the Local Court against a declaration by an authorised officer of a council that a dog is a menacing dog or against a refusal by a council to revoke a declaration that the dog is a menacing dog.

[39] Part 5, Division 2, heading

Omit the heading. Insert instead:

Division 2 Power of Local Court to declare dogs dangerous or menacing

[40] Section 44 Local Court has power to declare dog to be dangerous or menacing dog

Omit section 44 (1). Insert instead:

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

[41] Section 45 When Local Court can declare dog to be dangerous or menacing dog

Omit section 45 (1). Insert instead:

- (1) The Local Court may declare a dog to be a dangerous dog if the Court is satisfied that:
 - (a) the dog is dangerous, or

Note. Section 33 sets out the meaning of “dangerous” in relation to a dog for the purposes of this Act.

(b) the dog has been declared a dangerous dog under a law of another State or a Territory that corresponds with this Act.

(1A) The Local Court may declare a dog to be a menacing dog if the Court is satisfied that:

- (a) the dog is menacing because of any observed behaviour of the dog, or
- (b) the dog is of a menacing breed or kind of dog (or a cross-breed of a menacing breed or kind of dog), or
- (c) the dog has been declared a menacing dog under a law of another State or a Territory that corresponds with this Act.

[42] Section 47 Control orders

Insert after section 47 (3) (b):

- (c) training that is associated with responsible pet ownership.

[43] Section 48 Destruction orders

Insert after section 48 (3):

(3A) A Court must, except in exceptional circumstances, make a destruction order on conviction of the owner of the dog of an offence involving the serious injury or death of a person caused by the dog.

[44] Part 5, Division 4, heading

Omit the heading. Insert instead:

Division 4 Responsibilities of owners of dangerous or menacing dogs

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

Omit “be dangerous” from section 51 (1). Insert instead “be a dangerous dog”.

[46] Section 51 (1A)

Insert after section 51 (1):

(1A) The owner of a dog that is declared to be a menacing dog under this Act must ensure that each of the following requirements is complied with while the declaration is in force:

- (a) The dog must be desexed (if it is not already desexed) within 28 days after it is declared to be a menacing dog.
- (b) **Enclosure requirements**

During any period that the menacing dog:

- (i) is on property on which the dog is ordinarily kept, and
- (ii) is not under the effective control of a person of or above the age of 18 years,

the dog must be enclosed in a manner that is sufficient to restrain the dog and prevent a child from having access to the dog.

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

Whenever the menacing dog is outside property on which the dog is ordinarily kept, 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 menacing dog) under his or her control at the one time.

- (d) The requirements set out in subsection (1) (b), (d), (d1), (i), (j) and (k). The reference in subsection (1) (k) to a dangerous dog is taken for the purposes of this paragraph to be a reference to a menacing dog.

Note. Section 11 also requires the owner of a dog to notify the Director-General within 7 days after a Court declares the dog a menacing dog or revokes the declaration. If the order is made or revoked by a council, the council is required to notify the Director-General (see section 40).

[47] Sections 52–53

Insert “or menacing” after “dangerous” wherever occurring.

[48] Section 54 Civil liability of owner of dangerous or menacing dog

Omit “dangerous”. Insert instead “a dangerous or menacing dog”.

[49] Section 57D Declared restricted dogs may be seized and destroyed after transition period

Insert “, (1AA) or (1AB)” after “section 16 (1)” in section 57D (2) (b).

[50] Section 58B Obligations of owner when notified of proposed restricted dog declaration

Insert “, regardless of its age,” after “registered)” in section 58B (1) (b).

[51] Section 58B (4) (b)

Omit the paragraph. Insert instead:

- (b) the dog is not registered (regardless as to whether the 7 day period referred to in subsection (1) (b) has expired).

[52] Part 5, Division 7, heading

Omit the heading. Insert instead:

Division 7 Other provisions relating to dangerous, menacing and restricted dogs

[53] Section 58G Power to seize and destroy dangerous, menacing or restricted dog in certain circumstances

Omit section 58G (1A). Insert instead:

(1A) **Seizing dangerous dog if certain control requirements not complied with**

An authorised officer may seize a dangerous dog if the requirements referred to in section 51 (1) (c), (c1) or (e) are not complied with in relation to the dog.

(1B) **Seizing menacing dog if certain control requirements not complied with**

An authorised officer may seize a menacing dog if the requirements referred to in section 51 (1A) (b) or (c) are not complied with in relation to the dog on at least 2 separate occasions over any period of 12 months (whether or not each occasion relates to the same requirement).

Note. See section 57 (4) for the power to seize a restricted dog for non-compliance with any of the control requirements under section 56.

[54] Section 58I

Insert after section 58H:

58I Miscellaneous provisions relating to declarations

- (1) A declaration that a dog is a dangerous dog is taken to revoke any declaration that the dog is a menacing dog.
- (2) A declaration that a dog is a menacing dog is taken to revoke any declaration that the dog is a dangerous dog.
- (3) A declaration that a dog is a dangerous or menacing dog does not prevent the issuing of an order under section 32A (Nuisance dogs) in relation to the dog.

[55] Section 93 Proceedings for offences

Insert “(other than an offence under section 16 (1AB) or (1A) or 17 (1A))” after “this Act” in section 93 (1).

[56] Section 93 (1A)

Insert after section 93 (1):

- (1A) An offence under section 16 (1AB) or (1A) or 17 (1A) may only be prosecuted on indictment. However, Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made by the prosecution to proceed on indictment) applies to and in respect of those offences.

[57] Section 93 (3)

Insert after section 93 (2):

- (3) Proceedings for an offence under section 16 or 17 may be brought within the period of 12 months of the date on which the offence is alleged to have been committed.

[58] Schedule 3 Savings and transitional provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

Schedule 2 Amendment of Companion Animals Regulation 2008

[1] Clause 12 Exemptions from identification requirements

Omit clause 12 (3).

[2] Clause 17 Registration fee

Omit clause 17 (1). Insert instead:

- (1) The registration fee payable for the registration of a companion animal is whichever of the following fees is applicable in the particular case:
 - (a) for a desexed animal (except an animal owned by an eligible pensioner)—\$49,
 - (b) for a desexed animal owned by an eligible pensioner—\$19,
 - (c) for an animal that is not desexed (except an animal kept by a recognised breeder for breeding purposes)—\$182,
 - (d) for an animal that is not desexed and that is kept by a recognised breeder for breeding purposes—\$49.

[3] Clause 17 (4)

Insert at the end of the clause:

- (4) The amounts referred to in subclause (1) are adjustable fee amounts that are to be adjusted for inflation as provided by Schedule 2.

[4] Clause 20 Registration information

Insert “or menacing” after “dangerous” in clause 20 (c).

[5] Part 4, heading

Omit the heading. Insert instead:

Part 4 Dangerous, menacing and restricted dogs

[6] Clause 25 Maximum fee for issuing certificate of compliance in relation to prescribed enclosure

Omit “\$100”. Insert instead “\$150”.

[7] Clauses 26 (heading) and 27 (heading)

Insert “, menacing” after “dangerous” wherever occurring.

[8] Clause 27 (2) and 33B (2)

Insert “, a menacing dog” after “a dangerous dog” wherever occurring.

[9] Schedule 1 Penalty notice offences

Insert “, menacing” after “dangerous” wherever occurring.

[10] Schedule 1

Omit “\$165” wherever occurring from the matter relating to sections 9 (1), 10 and 10B (2) in Column 2.

Insert instead “\$275”.

[11] Schedule 1

Omit the matter relating to section 10A.

[12] Schedule 1

Omit "\$550" from the matter relating to section 10B (2) in Column 2.

Insert instead "\$1,320".

[13] Schedule 2

Insert after Schedule 1:

Schedule 2 Adjustment for inflation of certain fees

(Clause 17 (4))

1 Definitions

In this Schedule:

adjustable fee amount means a fee amount prescribed under clause 17 (1) of this Regulation.

Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Consumer Price Index number, in relation to a quarter, means the number for that quarter appearing in the Consumer Price Index.

financial year means a period of 12 months commencing on 1 July.

2 Adjustment of fees

- (1) Each adjustable fee amount is on 1 July each year to be adjusted for inflation as provided by this clause.
- (2) The adjustable fee amount that is to apply for the financial year commencing on that 1 July is to be determined by multiplying the adjustable fee amount that applied for the previous financial year by the annual increase in the Consumer Price Index during that previous financial year.
- (3) The annual increase in the Consumer Price Index during a financial year is to be calculated as B/A where:

B is the Consumer Price Index number for the last quarter for which such a number was published before the end of the financial year.

A is the Consumer Price Index number for the last quarter for which such a number was published before the start of the financial year.
- (4) If B/A is less than 1 (as a result of deflation), B/A is deemed to be 1.
- (5) Before the start of each financial year after the first year of the operation of this clause, the Director-General is to publish notice of the amount of each adjustable fee amount for that financial year (as adjusted under this Schedule) on the following websites:
 - (a) the NSW legislation website,
 - (b) the website of the Division of Local Government.

3 Rounding of adjustments

If the determination of an adjustable fee amount for a financial year under this Schedule results in an amount that is not a whole number multiple of \$1, the

amount calculated is to be rounded up to the nearest whole number multiple of \$1 and that amount as so rounded is the adjustable fee amount for that year.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Insert after clause 25 of Table 2:

26 Companion Animals Act 1998

An offence under section 16 (1AB) or (1A) or 17 (1A) of the *Companion Animals Act 1998*.