

[Act 2001 No 23]



New South Wales

Companion Animals Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to create a new offence under which the owner of a dangerous dog will be liable for a penalty higher than those currently applying under the *Companion Animals Act 1998* if the dog attacks or bites any person and the incident occurs because the owner has failed to comply with the control requirements for dangerous dogs under the Act,
 - (b) to require dangerous dogs to be registered under the Act within 7 days of being declared dangerous by a local council or Local Court,
 - (c) to provide that a number of existing offences under the Act for which only the owner of a companion animal is liable (eg offences relating to the control of dogs in a public place, dogs attacking or biting people, and dogs defecating in
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public places) will, if the owner is not present at the time of the offence, be offences for which the person who is in charge of the animal is liable (but only if that person is at least 16 years old),

- (d) to create new offences under which the owner of an unregistered companion animal will be liable if the animal is in a place other than where it is ordinarily kept or if the owner fails to comply with a notice to register the animal,
- (e) to make other amendments to the *Companion Animals Act 1998* of a minor, consequential or ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Companion Animals Act 1998* set out in Schedule 1.

Schedule 1 Amendments

Dangerous and restricted dogs

At present under section 16 of the *Companion Animals Act 1998*, the owner of a dog that attacks or bites any person or animal is guilty of an offence (the maximum penalty is 10 penalty units or 100 penalty units in the case of a dangerous or restricted dog).

Schedule 1 [14] amends section 16 to create an additional offence that relates to attacks by dangerous dogs in aggravated circumstances. The owner of a dangerous dog will be guilty of the new offence if the dog attacks or bites a person and the incident occurs because the owner has failed to comply with the control requirements for dangerous dogs under section 51 of the Act (eg the owner has failed to properly fence the dog or display a warning sign on the property where the dog is ordinarily kept). The maximum penalty will be 200 penalty units and/or 2 years imprisonment.

Schedule 1 [15] increases the existing penalty for the offence under section 17 of the Act of encouraging a dog to attack or bite a person or animal to 200 penalty units and/or 2 years imprisonment so as to bring the penalty into line with the new offence under section 16 referred to above.

Schedule 1 [18] provides that a person who is convicted of the new offence under section 16 is permanently disqualified from owning a dog. **Schedule 1 [19]** is a consequential amendment, and **Schedule 1 [23]** and **[24]** provide that a control order under section 47 of the Act, and a destruction order under section 48 of the Act, will be able to be made in relation to the new offence under section 16.

Schedule 1 [25] provides that the requirement for a dangerous dog to be desexed is stayed while the owner appeals against the dangerous dog declaration of a council or a Local Court.

Schedule 1 [26] provides that a dangerous dog must (regardless of age or any other exemption) be registered within 7 days of being declared dangerous. **Schedule 1 [29]** makes a similar amendment in relation to restricted dogs.

Schedule 1 [28] and **[30]** clarify the operation of provisions relating to the seizure of dangerous and restricted dogs.

Offences committed by persons in charge of companion animals (other than owners)

At present under the Act, only the owner of a companion animal can be convicted of a number of offences that relate to the control of the animal (namely, dogs not being under control in a public place, dogs being prohibited from certain public places, greyhounds not being muzzled, dogs attacking or biting persons or animals, dogs defecating in public places and cats being prohibited from certain areas such as wildlife protection areas). The relevant offences are under sections 13–16, 20 and 30 of the Act.

Schedule 1 [8], [10], [12], [13], [17] and **[21]** provide that if the owner is not present at the time of the offence and another person who is at least 16 years old is in charge of the animal at that time, then that other person is guilty of the offence instead of the owner. **Schedule 1 [7], [9], [11], [16], [20]** and **[22]** are consequential amendments.

Ongoing registration offences

Companion animals must, under section 9 of the Act, be registered from the time they are 6 months old. In order to avoid any argument that the owner of an unregistered animal may be convicted only once for such an offence, **Schedule 1 [5]** creates additional offences in relation to the requirement for registration on an ongoing basis. Under these new offences, the owner of an unregistered companion animal that is required to be registered will be liable if the animal is in a place other than where it is ordinarily kept or if the owner fails to comply with a notice from the local council to register the animal.

Minor, consequential and ancillary amendments

Section 8 of the Act currently requires companion animals to be identified (ie microchipped in the manner set out in the regulations) from the time they are 12 weeks old. The amendments made by **Schedule 1 [1], [2], [6], [32]–[34] and [36]** provide for the identification of companion animals otherwise than for the purposes of section 8 of the Act.

Schedule 1 [3] and [4] remove obsolete provisions in relation to the meaning of “owner”, and **Schedule 1 [27]** corrects a cross-reference in a note.

Schedule 1 [31] makes it clear that a local council can sell or destroy a seized companion animal only after it has been held by the council for the length of time specified under section 64 (1) of the Act.

Schedule 1 [37] provides for the protection of confidential information (eg information contained in the Companion Animals Register). **Schedule 1 [35]** is a consequential amendment.

Schedule 1 [38] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.