

# Companion Animals Act 1998 No 87

[1998-87]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Children and Young Persons Legislation (Repeal and Amendment) Act 1998 No 158* (amended by  
*Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010 No 67*)  
(not commenced)  
*Children and Young Persons (Care and Protection) Amendment (Children's Services) Act 2010 No 67*  
(not commenced — to commence on 1.1.2011)

### Authorisation

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# Companion Animals Act 1998 No 87



New South Wales

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# Companion Animals Act 1998 No 87



New South Wales

An Act to provide for the identification and registration of companion animals and for the duties and responsibilities of their owners; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Companion Animals Act 1998*.

### 2 Commencement

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

### 3 (Repealed)

### 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.

### 4 Policy regarding animal welfare

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

### 5 Definitions

(1) In this Act:

***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.

**assistance animal** means an animal referred to in section 9 (Disability discrimination—guide dogs, hearing assistance dogs and trained animals) of the [Disability Discrimination Act 1992](#) of the Commonwealth, but does not include a working dog.

**Note—**

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

**authorised officer** means:

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

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

**companion animal** means each of the following:

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

**Note—**

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

**corrective services dog** means a dog that is being used on official duty by a correctional officer (within the meaning of the [Crimes \(Administration of Sentences\)](#))

[Act 1999](#)).

**Note—**

This Act contains special exemptions for corrective services dogs. Because this definition requires that the dog is being used on official duty by a correctional officer, the exemptions apply only when the dog is “on duty”.

**council** means:

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

**council pound** means:

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

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

**desexed** means rendered permanently incapable of reproduction.

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

**disability** has the same meaning as in the [Disability Discrimination Act 1992](#) of the Commonwealth.

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

**exercise a function** includes perform a duty.

**function** includes a power, authority and duty.

**Fund** means the Companion Animals Fund established by this Act.

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

**identified companion animal** means a companion animal that is identified as referred to in section 70 (1).

**local authority** is defined in section 6.

**owner** is defined in section 7.

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

**Note—**

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

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

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

**public place** means:

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

(b) any other place,

that the public are entitled to use.

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

**registered** means registered under this Act.

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

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

**restricted dog** is defined in section 55.

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

**veterinary practitioner** has the same meaning as in the [Veterinary Practice Act 2003](#).

**working dog** means a dog used primarily for the purpose of droving, tending, working or protecting stock, and includes a dog being trained as a working dog.

(2) (Repealed)

(3) Notes in the text of this Act do not form part of this Act.

## **6 Meaning of “local authority”**

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

## **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 under Division 1 or 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.

### **Note—**

Councils also have functions in relation to companion animals under other legislation. For example, the number of dogs or cats that are able to be kept on premises can be restricted by a council by giving an order to the occupier in terms of order No 18 in the Table to section 124 of the [Local Government Act 1993](#).

## **6B Duty to provide certain information to councils**

- (1) If an official person has any information about:
  - (a) a dog that the person reasonably believes is a threat to the public, or
  - (b) an incident involving a dog attacking or biting, without provocation, a person or animal,it is the duty of the official person to provide that information to the relevant council (or councils) as soon as it is reasonably practicable.

### **Note—**

The relevant council would usually be the council of the area in which the dog is ordinarily kept. However, the relevant council may also be the council of the area in which the incident concerned took place.

- (2) An official 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.
- (3) In this section, **official person** means:
  - (a) a police officer, or
  - (b) an officer of the Royal Society for the Prevention of Cruelty to Animals, New South Wales, or of the Animal Welfare League NSW, as referred to in paragraph (b) of the definition of **officer** in section 4 (1) of the [Prevention of Cruelty to Animals Act 1979](#).

## 7 Meaning of “owner”

- (1) Each of the following persons is the **owner** of a companion animal for the purposes of this Act:
  - (a) the owner of the animal (in the sense of being the owner of the animal as personal property),
  - (b) the person by whom the animal is ordinarily kept,
  - (c) the registered owner of the animal.
- (2) A reference in this Act to **the owner** of a companion animal is a reference to each and all owners of the animal.

### Note—

A provision of this Act that makes the owner of a companion animal guilty of an offence makes each owner guilty of the offence.

- (3), (4) (Repealed)
- (5) When a companion animal is ordinarily kept by an employee on behalf of his or her employer, the animal is for the purposes of this Act taken to be ordinarily kept by the employer and not the employee. This subsection does not prevent an employee being the registered owner of an animal and does not prevent the employee being an owner if the employee is the registered owner.
- (6) In any prosecution of the owner of a companion animal for an offence against this Act it is a defence if the defendant establishes that:
  - (a) another owner of the animal has been convicted of an offence arising out of the same circumstances, or the commission by another owner of the animal of an offence arising out of the same circumstances has been proved but a court has made an order under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#) in respect of the offence, or

- (b) another owner of the animal has paid the amount of the penalty prescribed under section 92 (Penalty notices) for an alleged offence arising out of the same circumstances.

## **Part 2 Compulsory identification and registration of companion animals**

### **8 Identification required from 12 weeks of age and before sale**

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

Maximum penalty:

- (a) 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.

- (4) A person who sells an animal in contravention of subsection (2) is guilty of an offence.

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.

- (5) The regulations may change the age from which a companion animal is required to be identified under subsection (1) from 12 weeks to any other age (either generally for all companion animals or for a particular kind or class of companion animal).

#### **Note—**

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

### **9 Registration required from age 6 months**

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

Maximum penalty:

- (a) 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.

**Note—**

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

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

**10 Regulations may require registration**

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

Maximum penalty:

- (a) 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.

**Note—**

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

**10A Unregistered companion animal**

The owner of an unregistered companion animal that is required to be registered is guilty of an offence on each occasion the animal is in a place other than where it is ordinarily kept.

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.

**10B Notice requiring companion animal to be registered**

- (1) If a companion animal that is required to be registered is not registered, 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 register the animal within 28 days after the date the notice is given.
- (2) The owner of the companion animal must comply with the notice.

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.

(3) A notice under this section may be given on more than one occasion to the owner of an unregistered companion animal that is required to be registered (but only after an interval of at least 6 months since the last such notice was given).

#### **11 Owner required to notify certain changes and events**

(1) The owner of an identified companion animal (whether or not it is registered) must notify the Director-General when any of the following happens:

(a) any change occurs in the registration information or identification information for the animal (notification must be given within 14 days after the change occurs),

(b) the making or revocation of a declaration by a court under Part 5 that the animal (being a dog) is dangerous (notification must be given within 7 days after the declaration is made or revoked),

(c) the animal dies (notification must be given within 28 days after the animal dies),

(d) the animal has been missing for more than 72 hours (notification must be given within 96 hours after the animal went missing),

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

(e) any other event prescribed as a notifiable event by the regulations.

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.

(2) The regulations may provide for the manner in which a notification under this section is to be given to the Director-General. Notification is not considered to have been given unless it is given in compliance with any such applicable provisions of the regulations.

(3) When the Director-General is notified of a change in registration information, the Director-General is to provide the registered owner of the animal with a certificate of registration free of charge showing the registration information as changed. If the change is a change of ownership, the certificate of registration is to be provided to the new owner.

(4) A person who in any notification given for the purposes of this section makes a statement or gives information that the person knows is false or misleading in a material particular is guilty of an offence.



Maximum penalty: 8 penalty units.

### **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.

## **Part 3 Responsibilities for control of dogs**

### **Division 1 General responsibilities**

#### **12 Dog to wear collar and tag**

- (1) A dog must have a collar around its neck and there must be attached to the collar:
  - (a) a name tag that shows the name of the dog and the address or telephone number of the owner of the dog, and
  - (b) (Repealed)

- (2) The owner of the dog is guilty of an offence if this section is not complied with.

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.
- (3) The regulations may impose requirements in respect of the size, colour and material of a tag for use for the purposes of this section.
  - (4) This section does not apply to a dog while it is on property of which the owner of the dog is the occupier or to a working dog.

#### **12A Preventing dog from escaping**

- (1) The owner of a dog must take all reasonable precautions to prevent the dog from escaping from the property on which it is being kept.

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.

- (2) For the purposes of subsection (1), **owner** of a dog includes the person who is for the time being in charge of the dog.

### **13 Responsibilities while dog in public place**

- (1) A dog that is in a public place must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person.

- (2) If this section is contravened:

- (a) the owner of the dog, or
- (b) if the owner is not present at the time of the offence 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.

Maximum penalty:

- (a) 10 penalty units except in the case of a dangerous or restricted dog, or
- (b) 100 penalty units in the case of a dangerous or restricted dog.
- (3) Any person (including an authorised officer) can seize a dog that is in a public place in contravention of this section. If the owner of the dog is present, the dog cannot be seized except by an authorised officer and only then if the contravention continues after the owner has been told of the contravention. A reference in this subsection to the owner of the dog includes a reference to the person who is for the time being in charge of the dog.

#### **Note—**

Putting the dog on a leash prevents the dog being seized but it does not excuse the contravention and does not stop action being taken for the contravention.

- (4) A dog is not considered to be under the effective control of a person if the person has more than 4 dogs under his or her control.
- (5) This section does not apply to:
- (a) a dog accompanied by some competent person in an area declared to be an off-leash area by a declaration under this section (but only if the total number of dogs that the person is accompanied by or has control of does not exceed 4), or
- (b) a dog engaged in the droving, tending or working of stock, or
- (c) a dog being exhibited for show purposes, or
- (d) a dog participating in an obedience class, trial or exhibition, or

- (e) a police dog, or
- (e1) a corrective services dog, or
- (f) a dog secured in a cage or vehicle or tethered to a fixed object or structure.

**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.

- (6) A local authority can by order declare a public place to be an off-leash area. Such a declaration can be limited so as to apply during a particular period or periods of the day or to different periods of different days. However, there must at all times be at least one public place in the area of a local authority that is an off-leash area.

#### **14 Dogs prohibited in some public places**

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

curtilage of a residence).

- (f) **Child care centres** (meaning any property occupied or used for a purpose connected with the conduct of a child care service as defined in the *Children (Care and Protection) Act 1987*, other than any property used for a residence or the curtilage of a residence).
- (g) **Shopping areas where dogs are prohibited** (meaning a shopping arcade or shopping complex, including any part of it that is used by the public for parking or access to shops, in which or part of which the local authority has ordered that dogs are prohibited and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that dogs are prohibited there). This paragraph does not apply to any shop or part of a shop.
- (h) **Wildlife protection areas** (meaning any public place or any part of a public place set apart by the local authority for the protection of wildlife and in which the local authority has ordered that dogs are prohibited for the purposes of the protection of wildlife and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that dogs are prohibited in or on that public place).

(2) If a dog is in a place in which dogs are prohibited under this section:

- (a) the owner of the dog, or
- (b) if the owner is not present at the time of the offence 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.

Maximum penalty:

- (a) 10 penalty units except in the case of a dangerous or restricted dog, or
- (b) 100 penalty units in the case of a dangerous or restricted dog.

(3) Any person (including an authorised officer) can seize a dog that is in a place in which dogs are prohibited under this section. If the owner of the dog is present, the dog cannot be seized except by an authorised officer and only then if the owner fails to remove the dog from the place when the officer directs the owner to do so. A reference in this subsection to the owner of the dog includes a reference to the person who is for the time being in charge of the dog.

**Note—**

Removing the dog prevents the dog being impounded but it does not excuse the contravention and does not stop action being taken for the contravention.

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

**14A Dogs not prohibited in outdoor dining areas in certain circumstances**

- (1) The relevant legal restrictions do not prohibit a dog (other than a dangerous or restricted dog) from being in an outdoor dining area if:
  - (a) the dog is under the effective control of some competent person and is restrained by means of an adequate chain, cord or leash that is attached to the dog, and
  - (b) the person does not feed the dog or permit the dog to be fed, and
  - (c) the dog is kept on the ground.
- (2) However, if the outdoor dining area is within a public place declared by a local authority to be an off-leash area:
  - (a) it is not necessary for the dog to be restrained by means of a chain, cord or leash, and
  - (b) the dog can be fed while the dog is on the ground, but not using any apparatus provided for the consumption of food by humans, and

- (c) the dog can sit on a person's lap, but must not be allowed to sit on any table or chairs or make contact with other apparatus provided for the consumption of food by humans.
- (3) This section does not confer any entitlement on a person accompanied by a dog to use any table and chairs or other apparatus provided in an outdoor dining area by a food business (within the meaning of the *Food Act 2003*) without the permission of the operator of the food business.
- (4) The **relevant legal restrictions** are:
  - (a) section 14 (1) (b), and
  - (b) the *Food Act 2003* and the Food Standards Code (within the meaning of that Act).
- (5) An **outdoor dining area** is an area that:
  - (a) is used for the consumption of food by humans, and
  - (b) is not enclosed, and
  - (c) can be entered by the public without passing through an enclosed area in which dogs are prohibited by this Act or the other relevant legal restrictions,but does not include any part of an area that is used for the preparation of food.
- (6) An area is enclosed if, except for doorways and passageways, the area is substantially or completely enclosed, whether permanently or temporarily, by:
  - (a) a ceiling or roof, and
  - (b) walls or windows (or both).

## **15 Greyhounds and other breeds to be muzzled**

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

(b) if the owner is not present at the time of the offence and another person who is of or above the age of 16 years is in charge of the greyhound or other dog at that time—that other person,

is guilty of an offence.

Maximum penalty: 8 penalty units.

(3) The regulations may prescribe any breed, kind or description of dog as a breed, kind or description to which this section applies and a dog of that breed, kind or description is then a dog to which this section applies.

## **16 Offences where dog attacks person or animal**

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

(a) the owner of the dog, or

(b) if the owner is not present at the time of the offence 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.

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.

(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.

(2) It is not an offence under this section if the incident occurred:

(a) as a result of the dog being teased, mistreated, attacked or otherwise provoked,  
or

- (b) as a result of the person or animal trespassing on the property on which the dog was being kept, or
- (c) as a result of the dog acting in reasonable defence of a person or property, or
- (d) in the course of lawful hunting, or
- (e) in the course of the working of stock by the dog or the training of the dog in the working of stock.

(3) This section does not apply to a police dog or a corrective services dog.

### **17 Dog must not be encouraged to attack**

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

Maximum penalty:

- (a) 20 penalty units except in the case of a dangerous or restricted dog, or
- (b) 100 penalty units or 6 months imprisonment, or both, in the case of a dangerous or restricted dog (except in the circumstances referred to in paragraph (c)), or
- (c) 200 penalty units or imprisonment for 2 years, or both, in the case of a dangerous or restricted dog that has attacked or bitten a person.

#### **Note—**

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

- (2) This section does not apply to something done by a person:
- (a) in the reasonable defence of a person or property,
  - (b) in the proper performance of the person's duties as a police officer or correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),
  - (c) in the course of the use of a dog for the working of stock or the training of a dog in the working of stock,
  - (d) in the course of lawful hunting.

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

- (1) If a dog attacks or bites any person or animal (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.

**19 (Repealed)**

**20 Dogs defecating in public place**

- (1) If a dog defecates in a public place:
- (a) the owner of the dog, or
  - (b) if the owner is not present at the relevant time 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,

must immediately remove the dog's faeces and properly dispose of them.

Maximum penalty: 8 penalty units.

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

## **21 Nuisance dogs**

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

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

- (6) A council whose authorised officer issues an order under this section must notify the Director-General within 7 days after the order is issued.
- (7) An order under this section is final and is not subject to any appeal or review.

#### **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.
- (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.

#### **22 Action to protect persons and property against dogs**

- (1) Any person may lawfully seize a dog if that action is reasonable and necessary for the prevention of damage to property.
- (2) Any person may lawfully seize, injure or destroy a dog if that action is reasonable and necessary for the protection of any person or animal (other than vermin) from injury or death.
- (3) However, subsection (2) does not authorise the seizure of, injury to or destruction of a dog that is engaged in the droving, tending, working or protection of stock unless the action is reasonable and necessary for the protection of a person from injury or death.
- (4) (Repealed)
- (5) If a dog that is not under the effective control of some competent person enters any inclosed lands within the meaning of the *Inclosed Lands Protection Act 1901* and approaches any animal being farmed on the land, the occupier of the land or any

person authorised by the occupier can lawfully injure or destroy the dog if he or she reasonably believes that the dog will molest, attack or cause injury to any of those animals.

- (6) An authorised officer who finds a dog attacking or harassing an animal (other than vermin) within a wildlife protection area (as defined in section 14 (1) (h)) can lawfully injure or destroy the dog if there is no other reasonably practicable way of protecting the animal.
- (7) A person who takes action under the authority of this section that results in the injury to or death of a dog must:
  - (a) take reasonable steps to ensure that an injured dog receives any necessary treatment, and
  - (b) report the matter to an authorised officer (unless the person is an authorised officer) and comply with such reasonable directions as the authorised officer may give for the purpose of causing the dog to be returned to its owner or taken to a council pound, and
  - (c) take reasonable steps to inform the owner of the dog.
- (8) An authorised officer is not to give a direction under this section for the purpose of causing a dog to be taken to a council pound unless the authorised officer is satisfied that the owner of the dog cannot be identified.
- (9) Nothing in this section authorises a contravention of the *Prevention of Cruelty to Animals Act 1979*.
- (10) The authority conferred by this section to destroy a dog extends only to authorising the destruction of the dog in a manner that causes it to die quickly and without unnecessary suffering.

### **23 Disqualification from owning or being in charge of dog**

- (1) A person who is convicted of any of the following offences is permanently disqualified from owning a dog or from being in charge of a dog in a public place:
  - (a) an offence under section 16 (1A),
  - (b) an offence under section 17 where the dog concerned was a dangerous or restricted dog at the time of the offence,
  - (c) an offence under section 35A of the *Crimes Act 1900*.
- (2) A court that convicts a person of an offence under any of the following provisions of this Act can order that the person is disqualified from owning a dog, or from being in charge of a dog in a public place, for a specified period:

- (a) section 15 (Greyhounds and other breeds to be muzzled),
  - (b) section 16 (1),
  - (c) section 17 (Dog must not be encouraged to attack), except where the dog concerned was a dangerous or restricted dog at the time of the offence,
  - (d) section 36 (Obligations of owner when notified of proposed dangerous dog declaration),
  - (e) section 49 (Failure to comply with destruction or control order),
  - (f) section 51 (Owner of dangerous dog must comply with control requirements),
  - (g) section 56 (Owner of restricted dog must comply with control requirements),
  - (h) any other provision prescribed by the regulations as a provision to which this subsection applies.
- (3) A court that convicts a person of more than one offence under any of the following provisions of this Act during any 5 year period can, on the second or subsequent conviction during that period, order that the person is disqualified from owning a dog, or from being in charge of a dog in a public place, for a specified period:
- (a) section 21 (Nuisance dogs),
  - (b) any other provision prescribed by the regulations as a provision to which this subsection applies.
- (4) The maximum period of disqualification that a court can order under this section is 5 years. An order under this section is in addition to any penalty that the court can impose for an offence.
- (5) The making of an order by a court under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#) in respect of a person charged with an offence is to be treated for the purposes of this section as a conviction of the person for the offence.
- (6) A person who is the owner of a dog, or who is in charge of a dog, in contravention of a disqualification or order under this section is guilty of an offence.
- Maximum penalty:
- (a) 10 penalty units except in the case of a dangerous or restricted dog, or
  - (b) 100 penalty units in the case of a dangerous or restricted dog.

## **24 Appeal against disqualification from owning or being in charge of dog**

- (1) A person against whom an order disqualifying the person from owning or being in charge of a dog is made under section 23 may appeal to the District Court, in

accordance with the rules of that Court, against the order.

- (2) An appeal may be made only within 28 days after the date on which the order is made.
- (3) An appeal that is duly lodged operates to stay the order of disqualification pending the determination of the appeal.
- (4) The District Court has jurisdiction to hear and determine an appeal made under this section.

## **Division 2 Liability for injury or death caused by dog**

### **25 Liability for injury to person or damage to personal property**

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

### **26 Continuation of liability when person dies from dog attack**

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

## **27 Liability for injury to animal**

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

## **28 Contributory negligence**

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

## **Part 4 Responsibilities for control of cats**

### **29 Cats must have form of identification**

- (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.

- (2) The identification may take any of the following forms:
  - (a) a collar worn around the cat's neck with a tag or tags attached,
  - (b) a microchip,
  - (c) any other form of identification prescribed by the regulations.
- (3) The owner of the cat is guilty of an offence if this section is not complied with.  
Maximum penalty: 8 penalty units.
- (4) This section does not affect the operation of section 8.
- (5) This section does not apply to:
  - (a) a cat on property of which the owner of the cat is the occupier, or
  - (b) a cat being exhibited for show purposes or proceeding immediately to or from a place at which it will be, or has been, exhibited for show purposes.

### **30 Cats prohibited in some public places**

- (1) Cats are prohibited in the following places:
  - (a) **Food preparation/consumption areas** (meaning any public place, or part of a public place, that is within 10 metres of any apparatus provided in that public place or part for the preparation of food for human consumption or for the consumption of food by humans).
  - (b) **Wildlife protection areas** (meaning any public place or any part of a public place set apart by the local authority for the protection of wildlife and in which the local authority ordered that cats are prohibited for the purposes of the protection of wildlife and in which, or near the boundaries of which, there are conspicuously exhibited by the local authority at reasonable intervals notices to the effect that cats are prohibited in or on that public place).
- (2) If a cat is in a place in which cats are prohibited under this section:
  - (a) the owner of the cat, or
  - (b) if the owner is not present at the time of the offence and another person who is of or above the age of 16 years is in charge of the cat at that time—that other person,is guilty of an offence.  
Maximum penalty: 8 penalty units.
- (3) Any person (including an authorised officer) may seize a cat that is in a place in which



cats are prohibited under this section for the cat's own protection.

- (4) If the owner of the cat is present, an authorised officer (but no other person) may seize the cat (whether or not for the cat's own protection), but only if the owner fails to remove the cat from the place when the officer directs the owner to do so. A reference in this subsection to the owner of the cat includes a reference to the person who is for the time being in charge of the cat.

**Note—**

Removing the cat prevents the cat being impounded but it does not excuse the contravention and does not stop action being taken for the contravention.

- (5) A cat is not prohibited under this section in a place that is a food preparation/ consumption area if the place is a public thoroughfare (such as a road, footpath or pathway).
- (6) A local authority is authorised to make the orders contemplated by this section.

**31 Nuisance cats**

- (1) For the purposes of this section, a cat is a nuisance if the cat:
  - (a) makes a noise that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises, or
  - (b) repeatedly damages anything outside the property on which it is ordinarily kept.
- (2) If an authorised officer of a council is satisfied that a cat is a nuisance, the officer 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.
- (3) The order must specify the behaviour of the cat that is required to be prevented. The order can specify more than one kind of behaviour.
- (4) An order remains in force for 6 months after it is issued.
- (5) The owner of a cat must comply with an order issued to the owner under this section and must continue to comply with it while it is in force.

Maximum penalty: 3 penalty units for a first offence or 8 penalty units for a second or subsequent offence.
- (6) A council whose authorised officer issues an order under this section must notify the Director-General within 7 days after the order is issued.
- (7) An order under this section is final and is not subject to any appeal or review.

### **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.

### **32 Action to protect persons and animals against cats**

- (1) Any person may lawfully seize a cat if that action is reasonable and necessary for the protection of any person or animal (other than vermin) from injury or death.
- (2) (Repealed)
- (3) If a cat that is not under the effective control of some competent person enters any inclosed lands within the meaning of the *Inclosed Lands Protection Act 1901* and approaches any animal being farmed on the land, the occupier of the land or any person authorised by the occupier can lawfully injure or destroy the cat if he or she reasonably believes that the cat will molest, attack or cause injury to any of those animals.
- (4) An authorised officer who finds a cat attacking or harassing an animal (other than vermin) within a wildlife protection area (as defined in section 30 (1) (b)) can lawfully injure or destroy the cat if there is no other reasonably practicable way of protecting the animal.
- (5) A person who takes action under the authority of this section that results in the injury to or death of a cat must:
  - (a) take reasonable steps to ensure that an injured cat receives any necessary treatment, and
  - (b) report the matter to an authorised officer (unless the person is an authorised

officer) and comply with such reasonable directions as the authorised officer may give for the purpose of causing the cat to be returned to its owner or taken to a council pound, and

(c) take reasonable steps to inform the owner of the cat.

(6) An authorised officer is not to give a direction under this section for the purpose of causing a cat to be taken to a council pound unless the authorised officer is satisfied that the owner of the cat cannot be identified.

(7) Nothing in this section authorises a contravention of the *Prevention of Cruelty to Animals Act 1979*.

(8) The authority conferred by this section to destroy a cat extends only to authorising the destruction of the cat in a manner that causes it to die quickly and without unnecessary suffering.

## Part 5 Dangerous dogs

### Division 1 Power to declare dogs dangerous

#### 33 Meaning of “dangerous”

(1) For the purposes of this Division, a dog is **dangerous** if it:

(a) has, without provocation, attacked or killed a person or animal (other than vermin), or

(b) has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin), or

(c) has displayed unreasonable aggression towards a person or animal (other than vermin), or

(d) is kept or used for the purposes of hunting.

(2) A dog is not, for the purposes of subsection (1) (d), to be regarded as being kept or used for the purposes of hunting if it is used only to locate, flush, point or retrieve birds or vermin. **Vermin** for the purposes of this subsection includes small pest animals only (such as rodents).

#### Note—

If a hunting dog is declared to be a dangerous dog, the declaration does not necessarily mean that the dog cannot be used for the purposes of lawful hunting—see section 51 (3).

#### 34 Authorised officer may declare dog to be dangerous

(1) An authorised officer of 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.

- (2) A declaration can be made on the officer's own initiative or on the written application of a police officer or any other person.
- (3) A declaration has effect throughout the State. It is not limited in its operation to the area of the council whose authorised officer made the declaration.

**Note—**

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

**35 Owner to be notified of proposed declaration**

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

**36 Obligations of owner when notified of proposed dangerous dog declaration**

- (1) If a notice is given under section 35 to the owner of a dog of an authorised officer's intention to declare the dog to be dangerous, the owner must:
  - (a) ensure that at all times when the dog is away from the property where it is ordinarily kept:
    - (i) 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 is held by (or secured to) the person, and
    - (ii) it has a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal, and
  - (b) register the dog (if it is not already registered) within 7 days after receiving the notice.

**Note—**

Registration of a dog requires the dog to be microchipped.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) (a) only applies in respect of a dog:

- (a) for 28 days after the notice is given to the dog's owner, or
  - (b) until the authorised officer notifies the owner that the officer has made the proposed declaration or has decided not to make it,
- whichever happens first.
- (3) An authorised officer may seize a dog that is the subject of a proposed declaration if:
- (a) the officer is satisfied that:
    - (i) the requirements of subsection (1) (a) have not been complied with in relation to the dog, or
    - (ii) 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, or
  - (b) the dog has not been registered as required by subsection (1) (b).
- (3A) An authorised officer may seize a dog under subsection (3) (a) only during the period when subsection (1) (a) applies in respect of the dog.
- (4) If a dog is seized under subsection (3), Part 7 applies in respect of the dog, except that a claim for the dog cannot be made under section 64 unless an authorised officer is satisfied that:
- (a) the requirements of subsection (1) (a) are capable of being complied with in relation to the dog, and
    - (a1) 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, and
  - (b) the dog has been registered.
- (5) For the purposes of subsection (1) (a) (i), 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.

### **37 Authorised officer must consider dog owner's objections**

- (1) The owner has 7 days after the date the notice is given in which to object to the proposed declaration.
- (2) If the owner does not object within that time, the authorised officer can proceed to make the declaration after the 7 days have passed.
- (3) If the owner does object within that time, the authorised officer must first consider the

objection before proceeding to make the declaration.

- (4) A reference in this section to the authorised officer is a reference to any authorised officer of the council and is not limited to the authorised officer who gave the notice.

### **38 Authorised officer to notify dog owner of decision and consequences**

- (1) An authorised officer of a council must give notice to the owner of a dog when the authorised officer declares the dog to be dangerous or decides not to declare the dog to be dangerous. The notice must be given within 7 days after the declaration or decision is made.
- (2) A notice that a dog has been declared dangerous must set out:
- (a) the requirements imposed on the owner by this Part and the date or dates by which the owner must comply with those requirements, and
  - (b) the owner's right under section 41 to appeal to the Local Court against the declaration, and
  - (c) the fact that the dog may, under section 58G, be seized and destroyed if the dog attacks or bites a person or animal without provocation or if the requirements imposed on the owner under section 51 (1) (c), (c1) or (e) are not complied with on 2 separate occasions over any period of 12 months (whether or not each occasion relates to the same requirement).
- (3) A declaration has effect from the date specified in the notice or the date on which notice is given, whichever is the later.

### **39 Council can revoke dangerous dog declaration**

- (1) The owner of a dog that has been declared dangerous under this Division can apply to the council of the area in which the dog is ordinarily kept (whether or not it is the council whose authorised officer made the declaration) for the declaration to be revoked.
- (1A) An application under subsection (1) cannot be made until after the period of 12 months following the date on which the dog was declared to be dangerous.
- (2) The council to which the application is made can revoke the declaration but only if satisfied that it is appropriate to do so.
- (3) The council must, as soon as practicable, give notice to the owner of the dog that the declaration has been revoked or that the council has refused to revoke the declaration.

### **40 Director-General to be notified of making or revocation of declaration**

- (1) An authorised officer of a council who makes a declaration under this Division must

give notice of the declaration to the Director-General within 7 days.

- (2) A council that revokes a declaration under this Division must give notice of the revocation to the Director-General within 7 days.

#### **41 Appeal to Local Court**

- (1) The owner of a dog can appeal to the Local Court:
- (a) against the declaration by an authorised officer of a council that the dog is dangerous, or
  - (b) against a refusal by a council to revoke a declaration that the dog is dangerous.
- (2) An appeal can only be made within 28 days after the date the owner of the dog:
- (a) is given notice by the authorised officer under section 38 that the officer has made the declaration, or
  - (b) is given notice by the council under section 39 that it has refused to revoke the declaration.
- (3) The fact that an appeal is pending does not affect the dog's status as a dangerous dog and does not affect the appellant's obligations under this Act as the owner of a dangerous dog, unless the Court otherwise orders.

#### **42 Determination of appeals by Local Court**

The Local Court may determine an appeal by confirming the decision of the authorised officer or the council (as the case requires) or by revoking the declaration.

**Note—**

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

#### **43 (Repealed)**

### **Division 2 Power of Local Court to declare dogs dangerous**

#### **44 Local Court has power to declare dog to be dangerous**

- (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 dangerous or against a refusal by a council to revoke such a declaration), the Court may declare a dog to be dangerous.
- (2) A declaration by the Local Court has effect throughout the State.

**Note—**

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

#### **45 When Local Court can declare dog to be dangerous**

- (1) The Local Court can declare a dog to be dangerous if the Court is satisfied that the dog:
  - (a) has, without provocation, attacked or killed a person or an animal (other than vermin), or
  - (b) has, without provocation, repeatedly threatened to attack or repeatedly chased a person or an animal (other than vermin), or
  - (c) has displayed unreasonable aggression towards a person or animal (other than vermin), or
  - (d) is kept or used for the purposes of hunting.
- (2) Section 33 (2) applies for the purposes of subsection (1) (d).

#### **46 Revocation of Local Court declaration**

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

### **Division 3 Powers of Courts to make destruction and control orders**

#### **47 Control orders**

- (1) A **control order** is an order of a Court that the owner of a dog take such action (other than destroying the dog) within the period specified in the order as the Court thinks necessary to prevent, or reduce the likelihood of, the dog attacking or causing injury to persons or animals.
- (2) A control order can be made by a Court in the following circumstances:
  - (a) in proceedings for an offence under section 16, 17, 49, 51 or 56 of this Act, or under section 35A of the *Crimes Act 1900*,
  - (b) on an appeal under this Act against the declaration by an authorised officer of a council that a dog is dangerous or against a council's refusal to revoke such a declaration,
  - (c) on the Court declaring the dog to be dangerous under Division 2.
- (3) The action that a control order can require the owner of a dog to take includes (without limiting any of the requirements that apply in relation to the dog under section 51 or 56) the following action:



- (a) the desexing of the dog,
  - (b) the behavioural or socialisation training of the dog.
- (4) A control order can be made in addition to any other order made by the Court in the proceedings concerned.

#### **48 Destruction orders**

- (1) A **destruction order** is an order of a Court that the owner of a dog destroy the dog or cause the dog to be destroyed, or that a dog be destroyed by some person authorised by the Court, within the period specified in the order.
- (2) A destruction order can be made by a Court in the following circumstances:
- (a) on conviction of the owner of the dog of an offence under section 35A of the *Crimes Act 1900*, or under section 16, 17, 49, 51 or 56 of this Act,
  - (b) on confirming the declaration by an authorised officer of a council that a dog is dangerous or a council's refusal to revoke such a declaration.
- (3) However, a Court must not make a destruction order unless it is satisfied that the making of a control order, or an order permanently removing the dog from its owner (which the Court is, by this subsection, authorised to make), will not be sufficient to protect the public from any threat posed by the dog.
- (4) If the Court makes an order permanently removing a dog from its owner, the dog is to be dealt with under Part 7 as if it were a seized animal. However, the dog is not to be sold to the owner from whom it was removed by the order.
- (5) The making of an order by a Court under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of a person charged with an offence is to be treated for the purposes of this section as a conviction of the person for the offence.
- (6) A destruction order can be made in addition to any other order made by the Court in the proceedings concerned.
- (7) A destruction order is sufficient authority for the destruction of a dog. The dog must be destroyed in a manner that causes it to die quickly and without unnecessary suffering.

#### **49 Failure to comply with destruction or control order**

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

Maximum penalty: 100 penalty units.

## **50 Ancillary orders to enable destruction order to be carried out**

- (1) A Court may, if it makes a destruction order that a dog be destroyed by some person authorised by the Court, require the owner of the dog to take, within such period as is specified in the destruction order, such action as is, in the opinion of the Court, necessary to enable the destruction order to be carried out.
- (2) The Court may also make an order for the payment of any costs incurred in destroying the dog.
- (3) The owner of a dog who does not comply with an order under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

## **Division 4 Responsibilities of owners of dangerous dogs**

### **51 Owner of dangerous dog must comply with control requirements**

- (1) The owner of a dog that is declared to be dangerous under this Act 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 a dangerous dog. If the owner appeals against the declaration, the operation of this paragraph is stayed until the appeal is either withdrawn or determined.
  - (b) The dog must not at any time be in the sole charge of a person under the age of 18 years.

#### **(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.

#### **Note—**

A certificate of compliance in relation to the prescribed enclosure must be obtained by the owner of the dog—see section 58H.

- (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.
- (d) One or more signs must be displayed on that property showing the words “Warning Dangerous Dog” in letters clearly visible from the boundaries of the

property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.

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

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

**(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.

**(f)–(h) (Repealed)**

- (i) The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:
  - (i) that the dog (with or without provocation) has attacked or injured a person or an animal (other than vermin)—notice to be given within 24 hours after the attack or injury,
  - (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed,
  - (iii) that the dog has died—notice to be given as soon as practicable after the death,
  - (iv) (Repealed)
  - (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location,
  - (vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location.
- (j) If the owner intends to keep the dog in the area of a council that is not the area in which the dog was ordinarily kept when the declaration was made, the owner must notify the council of the area in which the dog is intended to be ordinarily kept of his or her intention to do so.

- (k) The dog must, regardless of its age, be registered under this Act (if not already so registered) within 7 days after it is declared a dangerous 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 dangerous dog or revokes the declaration. If the order is made or revoked by a council, the council is required to notify the Director-General (see section 40).

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

Maximum penalty: 150 penalty units.

- (3) **Exemption from being on lead and muzzled while hunting** In the case of a dog that has been declared dangerous on the ground that it is kept or used for the purposes of hunting, the requirements imposed under subsection (1) (e) do not apply while the dog is actually engaged in lawful hunting.

- (4) The requirements imposed under this section on the owner of a dangerous dog are additional to the other requirements of this Act imposed on the owner of a dog.

- (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.

## **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.

## **52A Prohibition on selling dangerous dog or proposed dangerous dog**

- (1) A person who sells, or advertises the sale of, a dangerous dog or proposed dangerous 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 dangerous dog or proposed dangerous dog to a council pound or an approved animal welfare organisation.

**Note—**

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

- (3) In this section and in section 52B, **proposed dangerous dog** means a dog that is the subject of a proposed declaration under Division 1.

**52B Prohibition on accepting ownership of dangerous dog or proposed dangerous dog**

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

Maximum penalty: 150 penalty units.

- (2) A person does not commit an offence under this section:

(a) 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, or

(b) if the person does not know, or could not reasonably be expected to know, that the dog was a dangerous dog or proposed dangerous dog.

**53 Inconsistency with agreements**

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

**Note—**

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

**54 Civil liability of owner of dangerous dog**

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

## Division 5 Special restrictions for other dogs

### 55 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,
- (d1) any other dog of a breed, kind or description whose importation into Australia is prohibited by or under the [Customs Act 1901](#) of the Commonwealth,
- (e) any dog declared by an authorised officer of 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:

**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 an authorised officer of 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.

### 56 Owner of restricted dog must comply with control requirements

(1) The owner of a restricted dog must ensure that each of the following requirements is complied with:

(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 an authorised officer of 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.

**Note—**

A certificate of compliance in relation to the prescribed enclosure must be obtained by the owner of the dog—see section 58H.

- (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.
- (b) The dog must not at any time be in the sole charge of a person under the age of 18 years.
- (c) One or more signs must be displayed on that property showing the words “Warning Dangerous Dog” in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.

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

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

**(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.

(e), (f) (Repealed)

(g) The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:

(i) that the dog (with or without provocation) has attacked or injured a person or animal (other than vermin)—notice to be given within 24 hours after the attack or injury,

(ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed,

(iii) that the dog has died—notice to be given as soon as practicable after the death,

(iv) (Repealed)

(v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location,

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

**(h) Registration of dog**

In the case of a dog declared by an authorised officer of 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.

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

Maximum penalty: 150 penalty units.

(3) The requirements imposed under this section on the owner of a restricted dog are additional to the other requirements of this Act imposed on the owner of a dog.

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

**57 Restricted dog 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).

#### **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 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 an authorised officer of 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)-(d1) 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) an authorised officer of a council may authorise the destruction of 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).

### **58 Civil liability of owner of restricted dog**

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

## **Division 6 Declaration of dogs as restricted dogs**

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

- (1) If an authorised officer of 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)-(d1), or
  - (b) is a cross-breed of any such breed or kind of dog,the authorised officer may give notice to the owner of the dog of the officer'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) (Repealed)

### **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 an authorised officer's intention to declare the dog to be a restricted dog, the owner must:
  - (a) ensure that at all times when the dog is away from the property where it is ordinarily kept:
    - (i) 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 is held by (or secured to) the person, and
    - (ii) it has a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal, and
  - (b) register the dog (if it is not already registered) within 7 days after receiving the notice.

**Note—**

Registration of a dog requires the dog to be microchipped.

Maximum penalty: 50 penalty units.

- (2) For the purposes of subsection (1) (a) (i), 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) Subsection (1) (a) only applies in respect of a dog:
- (a) for 28 days after the notice is given to the dog's owner, or
  - (b) until the authorised officer notifies the owner that the authorised officer has made the proposed declaration or has decided not to make it,
- whichever happens first.
- (4) An authorised officer may seize a dog that is the subject of a proposed declaration if:
- (a) the officer is satisfied that:
    - (i) the requirements of subsection (1) (a) have not been complied with in relation to the dog, or
    - (ii) 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, or
  - (b) the dog has not been registered as required by subsection (1) (b).
- (4A) An authorised officer may seize a dog under subsection (4) (a) only during the period when subsection (1) (a) applies in respect of the dog.
- (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 cannot be made under section 64 unless an authorised officer is satisfied that:
    - (i) the requirements of subsection (1) (a) are capable of being complied with in relation to the dog, and
    - (ii) 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, and
    - (iii) the dog has been registered,
  - (b) if the dog is declared to be a restricted dog, 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 Authorised officer 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 authorised officer who gave the notice (or any other authorised officer of the council) 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** An authorised officer of 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 authorised officer 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)-(d1), and
    - (ii) is not a cross-breed of any such breed or kind of dog, or
  - (b) provides the authorised officer 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)-(d1) 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) An authorised officer of 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 Authorised officer to notify dog owner of decision and consequences**

- (1) An authorised officer of a council must give notice to the owner of a dog when the authorised officer 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 an authorised officer of 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 whose authorised officer made the declaration, and
  - (c) may be revoked at any time by the council whose authorised officer made the declaration.
- (4) A declaration or other decision by an authorised officer of a council under this Division is final and is not subject to any appeal or review.
- (5) (Repealed)

**58DA Director-General to be notified of making or revocation of declaration**

- (1) An authorised officer of a council who makes a declaration under this Division must give notice of the declaration to the Director-General within 7 days.
- (2) A council that revokes a declaration under this Division must give notice of the revocation 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 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.

**Division 7 Other provisions relating to dangerous and restricted dogs**

**58G Power to seize and destroy dangerous or restricted dog in certain circumstances**

- (1) **Seizing dangerous or restricted dog that attacks** An authorised officer may seize a dangerous or restricted dog if the dog attacks or bites a person or animal (other than vermin) without provocation.
- (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 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.

- (2) If a dog is seized under this section:
  - (a) the dog is to be delivered as soon as possible to a council pound, and
  - (b) an authorised officer of a council may authorise the destruction of the dog.
- (3) However, if the dog has been seized under subsection (1A), the authorised officer may authorise the destruction of the dog only if the officer is satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.
- (4) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under this section.
- (5) This section does not limit the power of an authorised officer to seize a dangerous or restricted dog under any other provision of this Act.

### **58H Certificate of compliance required for dangerous and restricted dog enclosures**

- (1) A person must not own a dangerous dog or restricted dog unless a certificate of compliance under this section is in force in relation to the enclosure in which the dog is required to be kept under section 51 (1) (c) or 56 (1) (a1) (as the case requires).  
Maximum penalty: 100 penalty units.
- (2) An authorised officer of a council may issue a certificate of compliance in relation to the enclosure in which a dangerous or restricted dog is required to be kept if:
  - (a) the officer is satisfied that the enclosure complies with the relevant requirements imposed under section 51 (1) (c) or 56 (1) (a1), and
  - (b) the fee prescribed by the regulations (or such fee as does not exceed the prescribed fee) in connection with issuing the certificate is paid to the council.
- (3) A certificate of compliance in relation to a dog enclosure may be revoked at any time by an authorised officer of a council if the officer is satisfied that the enclosure does not comply with the relevant requirements.
- (4) A person does not commit an offence under this section:
  - (a) in the case of a dog that is a dangerous dog or restricted dog as at the date on which this section commences—until after the period of 28 days following that commencement, or
  - (b) in any other case—until after section 51 (1) (c) or 56 (1) (a1) is required to be complied with.

## **Part 6 Assistance animals**

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

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

### **60 Assistance animal not to be denied entry**

- (1) An occupier or person in charge or control of a building or place open to or used by



the public or a person in charge or control of any public transport must not, without reasonable cause, refuse to permit a person to take an assistance animal into or onto, or while accompanied by an assistance animal to enter or be in or on, that building or place or public transport if the person has a disability and is using the animal bona fide to assist him or her.

Maximum penalty: 8 penalty units.

- (2) A person prosecuted for a contravention of this section is not entitled to any defence to that prosecution that relies for its efficacy on the presence of the animal concerned.

### **61 Unlawful to impose charge for entry of assistance animal**

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

Maximum penalty: 8 penalty units.

- (2) A person (***the defendant***) does not contravene subsection (1) by imposing a charge in respect of an animal accompanying a person if the defendant proves that:
- (a) in the circumstances it was reasonably necessary for the defendant to supply accommodation for the animal additional to that supplied for the person, that the charge was imposed for that additional accommodation, and that the charge was a reasonable charge in the circumstances, or
  - (b) the defendant reasonably incurred additional expense because of the presence of the animal, that the charge imposed was to recompense the defendant for that additional expense, and that the charge was a reasonable charge in the circumstances.
- (3) When a person is convicted of an offence under this section in respect of a charge imposed on another person, the court may, upon application made by that other person, order the convicted person to refund the amount of that charge.
- (4) The court's order operates as an order for the payment of money under the *Civil Procedure Act 2005* and is enforceable as such an order under that Act. The order can for the purpose of enforcing it be entered in the records of the court exercising jurisdiction under the *Civil Procedure Act 2005* at the place where the order was made, in such manner as may be prescribed by rules made under that Act.

## **Part 7 Procedures for dealing with seized or surrendered animals**

**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.

**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.

**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,
- (b) section 14,
- (c) section 18,
- (d) section 22,
- (e) section 30,
- (f) section 32,
- (g) section 36,
- (h) section 52,
- (i) section 57,
- (j) section 58B.

Animals may also be seized under sections 57D and 58G, however this Part does not apply to animals seized under those sections.

- (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.

### **63 Owner of seized or surrendered animal to be notified**

- (1) When a seized animal is delivered to a council pound or approved premises, the person in charge of the pound or premises is to give notice of the seizure of the animal to the person who appears (from the best endeavours of the person in charge to establish who the owner is) to be the owner of the animal. Notice of seizure need not be given if those best endeavours fail to establish the name and address of the owner of the animal.
- (1A) When a surrendered animal (other than an animal surrendered by its owner) comes into the possession of a council pound, the person in charge of the pound is to give notice of the possession of the animal to the person who appears (from the best endeavours of the person in charge to establish who the owner is) to be the owner of the animal. Notice of possession need not be given if those best endeavours fail to establish the name and address of the owner of the animal.
- (2) Without limiting the requirement that the person in charge of a pound or approved premises use his or her best endeavours to establish who the owner of an animal is, the person must make the following inquiries:
  - (a) inquiries to determine whether the animal is registered or identified as required by

this Act and, if so, a search of the Register to find the name and address of the owner of the animal,

(b) inquiries based on any form of identification worn by the animal,

(c) such other inquiries as the regulations may require be made.

(3) The notice required by this section is to be in writing and is to be given:

(a) by being served personally on the person to whom it is required to be given, or

(b) by sending it by post to the person to whom it is required to be given at that person's address, being the address shown in the Register as the address of the owner or at such other address as appears to the person who gives the notice to be the owner's address, or

(c) by leaving it with some other person for the person to whom it is required to be given at that person's address.

(4) The regulations may impose requirements on the form and contents of the notice required by this section and may provide for other ways in which the notice can be served.

#### **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.

#### **64 Unclaimed seized or surrendered animal may be sold or destroyed**

(1) If a seized animal (including an animal delivered to a council pound under section 63A) or a surrendered animal (other than an animal surrendered by its owner) has not been claimed, the council may sell or destroy the animal:

(a) if notice under section 63 (1) or (1A) has been given—after the period of 14 days following the giving of the notice, or

(b) if such a notice is not required to be given—after the animal has been held at the council pound for a period of 7 days.

(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 or surrendered 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.
- (3) An animal is **claimed** when:
- (a) a person who appears to the person in charge of the pound to be the owner of the animal or acting on the owner's behalf claims the animal, and
  - (b) the fees for the release of the animal (being fees determined by the council under this Part) are paid to the council, and
  - (c) the charges for the animal's maintenance while it was detained by the council (being charges determined by the council under this Part) are paid to the council.
- (3A) Despite any other provision of this section, if an offence under this Act in relation to a seized animal is in the course of being investigated (or proceedings in relation to any such offence have commenced but have not been 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 investigations are completed or those proceedings are finally determined.
- (4) An unregistered animal that is required to be registered cannot be claimed until an application for registration of the animal has been properly made (and any registration fee that is payable has been paid). The regulations may create exceptions to this subsection.
- (5) Before destroying a seized or surrendered 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 dangerous or restricted dog.

#### **64A Animals surrendered by owners may be sold or destroyed**

- (1) A council may at any time sell or destroy a surrendered animal if the animal was surrendered by its owner to the council pound.
- (2) Before destroying a surrendered 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.
- (3) This section does not authorise a council to sell a dangerous or restricted dog.

## **65 Fees and charges payable when animal detained or held**

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

## **66 Owner not entitled to compensation for sale of animal**

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

## **67 Recovery of fees and charges when animal destroyed**

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

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

### **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.

### **68 Offence of rescuing seized animal**

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

Maximum penalty: 5 penalty units.

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

### **69 Protection of council and council officers**

- (1) A person who destroys an animal under a power conferred by this Act is not liable in damages for any loss that the owner of the animal or any other person has sustained as a result of that action and nor is a council that authorised the person, unless it is established that the person or council did not act in good faith.
- (2) When an animal is sold under a power conferred by this Act:
  - (a) the buyer obtains the ownership of the animal freed and discharged from any right, interest, trust or obligation to which it was subject immediately before sale, and
  - (b) the person who was the owner of the animal immediately before its sale ceases to have any claim in respect of the animal or any right of action in respect of the sale except as specifically provided by this Act.
- (3) A person is not prevented from recovering damages from a council in respect of the sale of an animal if the person establishes that the council, or the person who effected the sale, did not act in good faith or acted without reasonable care.

## **Part 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.
- (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.
- (4) If an authorised officer suspects on reasonable grounds that a person has committed an offence under this section, the authorised officer may, without a warrant, arrest the

person.

- (5) An authorised officer who arrests a person under this section must, as soon as is reasonably practicable, take the person before an authorised officer (within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*) to be dealt with according to law.

#### **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.

## **Part 8 Identification and registration procedures**

### **70 Identification**

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

#### **Note—**

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

### **71 Registration**

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

#### **Note—**

Registration is for life and does not have to be renewed. There are exceptions to this in the case of dogs already registered under the *Dog Act 1966* when the new registration scheme starts (see Schedule 3 Savings and transitional provisions).

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

Maximum penalty: 8 penalty units.

## **72 Certificate of registration**

- (1) The Director-General is to provide the registered owner of a companion animal with a certificate of registration for the animal, showing the registration information for the animal.
- (2) The certificate of registration is to be provided at the time of registration and is to be provided free of charge.
- (3) The certificate of registration is evidence that the animal is registered and that the registration information shown on the certificate is that entered on the Register. Information entered on the Register is presumed (in the absence of evidence to the contrary) to be correct.

### **Note—**

In this way, the certificate of registration can be used as evidence of (for example) the name of the registered owner of an animal and the address at which it is ordinarily kept.

- (4) The Director-General can issue a replacement certificate of registration when a certificate of registration is lost, stolen, damaged or destroyed, and can charge a fee

for the issue of the replacement certificate.

### **73 (Repealed)**

### **74 The Register**

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

**Note—**

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

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

### **75 Access to Register**

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

**Note—**

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

- (3) The regulations may require the Director-General to keep specified records with respect to the access given to the Register under this section and may provide for the persons who are entitled to access to those records.
- (4) The Director-General may give different degrees of access to the Register to different classes of authorised persons, having regard to the different functions that they perform.
- (5) (Repealed)

- (6) The Minister and any person acting with the Minister's authority is entitled to full and free access to information contained in the Register at all times.
- (7) The following persons are **authorised persons** for the purposes of this section:
- (a) authorised officers,
    - (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,
    - (a2) the Chief Inspector of the Royal Society for Prevention of Cruelty to Animals, New South Wales,
    - (a3) the Chief Inspector of the Animal Welfare League NSW,
  - (b) the holder of any office prescribed by the regulations for the purposes of this section,
  - (c) a person who is a member of a class of persons prescribed by the regulations as authorised persons for the purposes of this section.

**Note—**

Police officers and certain council officers are authorised officers.

- (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.

**76 Interfering with identification of animal**

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

Maximum penalty: 15 penalty units.

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

**77 (Repealed)**

**Part 9**

**78-83 (Repealed)**

**Part 10 Companion Animals Fund**

**84 Establishment of Fund**

- (1) There is established in the Special Deposits Account an account to be called the Companion Animals Fund into which is to be paid:
- (a) registration fees and all other fees paid under this Act (other than any fee or charge payable to a council for the purposes of Part 7 or under section 58H), and
  - (b) such money as may be appropriated by Parliament for payment into the Fund, and
  - (c) (Repealed)
  - (d) the proceeds of the investment of money in the Fund, and
  - (e) all money required to be paid into the Fund by or under this or any other Act.
- (2) The Director-General has the control and management of the Fund.
- (3) (Repealed)

**85 Payments from the Fund**

- (1) There is payable from the Fund:
- (a) all amounts required to meet expenditure incurred in the administration or execution of this Act, 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.
- (2), (3) (Repealed)

- (4) The regulations may provide (for the purposes of subsection (1) (b)) for the payment of amounts to councils and other persons out of amounts collected as registration fees under this Act. The Director-General can make arrangements for the payment of those amounts, including arrangements for the deduction of those amounts at the point of payment as registration fees.

#### **86 Investment of money in Fund**

The Director-General may invest money in the Fund:

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

### **Part 11 General**

#### **87 Act binds Crown**

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

#### **88 Delegation by Director-General**

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

#### **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.

#### **89 Confidentiality of certain information**

- (1) In this section:

***confidential information*** means:

- (a) any information contained in, or acquired from, the Register, or
- (b) any other information obtained in connection with the enforcement or administration of this Act or the regulations.

**Note—**



Examples of information obtained in connection with the enforcement or administration of this Act include information relating to identification of companion animals and their owners that is collected by authorised identifiers such as veterinary practitioners, and information gathered by authorised officers in the course of their enforcement functions.

(2) A person must not:

- (a) access or attempt to access confidential information, or
- (b) allow a person to have access to confidential information, or
- (c) directly or indirectly make a record of confidential information, or
- (d) directly or indirectly disclose or pass confidential information to any person, or
- (e) use confidential information, or
- (f) alter, delete, destroy or interfere with any record comprising confidential information, or
- (g) make any entry in the Register.

Maximum penalty:

- (a) 25 penalty units except in the case of confidential information that is suppressed, or
- (b) 100 penalty units in the case of confidential information that is suppressed.

(3) For the purposes of subsection (2), confidential information is **suppressed** if:

- (a) the information contains the personal details of a person who is the owner of a companion animal, and
- (b) the information is entered in the Register, and
- (c) the person has requested the Director-General to keep the information confidential, and
- (d) the Director-General is satisfied that the request is made because the person is concerned that disclosure of the information could jeopardise the safety of the person or any member of the person's family, and
- (e) it is indicated in the Register that the information is suppressed.

(4) It is not an offence under this section for a person to do anything referred to in subsection (2) (a)-(g):

- (a) for the purposes of, or in connection with, the lawful exercise of functions under the Act, or

- (b) as authorised or required by or under section 75, or
  - (c) as authorised or directed by the Director-General, or
  - (d) for the purposes of listing the identification or registration information in respect of a companion animal on a database that is of a class prescribed by the regulations, but only if the owner of the companion animal has expressly consented to that information being so listed.
- (5) It is not an offence under this section for a person to disclose confidential information if the person is required to do so by law.
- (6) This section does not apply to the disclosure of confidential information to any of the following:
- (a) the Independent Commission Against Corruption,
  - (b) the Australian Crime Commission,
  - (c) the New South Wales Crime Commission,
  - (d) the Ombudsman,
  - (e) any other person or body prescribed for the purposes of this subsection.
- (7) This section does not apply to the disclosure of the name of the owner of a companion animal to a person who seeks that information for the purpose of bringing legal proceedings against the owner in respect of the animal's behaviour, but only if:
- (a) the person has requested the disclosure of that information in writing, and
  - (b) the animal's behaviour concerned has been reported to a police officer or a council.
- (8) In subsection (7), **person** includes the person's legal representative.

**90, 91 (Repealed)**

**92 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.

- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **93 Proceedings for offences**

- (1) Proceedings for an offence under this Act may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the 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.

### **94 Double jeopardy**

- (1) A person is not liable to be convicted of an offence under more than one provision of this Act in respect of essentially the same act or omission.
- (2) Payment of a penalty in respect of an alleged offence under section 92 (Penalty notices) is to be treated as a conviction for the offence for the purposes of this section. The making of an order by a court under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of an offence is to be treated as a conviction for the offence for the purposes of this section.

## **95 Fees and charges**

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

## **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:
  - (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).

## **96 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with

respect to any one or more of the following:

- (a) providing for exceptions to specified provisions of this Act (including exceptions for a particular class or description of owner or companion animal, or exceptions based on particular circumstances),
  - (b) exempting a specified class, kind or description of companion animals from all or specified provisions of this Act, either unconditionally or subject to conditions,
  - (b1) limiting the number of restricted dogs that a person may own,
  - (c) imposing maximum fees that can be charged for the issue of replacement certificates of registration,
  - (d) provisions applying (with or without modification) any provision of this Act in respect of an animal prescribed by the regulations as a companion animal for the purposes of this Act,
  - (e) regulating the training of assistance animals and accrediting assistance animals for the purposes of this Act (including by requiring accreditation as a pre-condition for any exemption provided in respect of assistance animals by this Act or the regulations) and provisions of a savings or transitional nature consequent on an animal being prescribed as a companion animal for the purposes of this Act.
- (3) The regulations may create offences punishable by a fine not exceeding 50 penalty units.

#### **97 Review of Act**

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

#### **98 Savings and transitional provisions**

Schedule 3 has effect.

#### **99 (Repealed)**

#### **Schedules 1, 2 (Repealed)**

## Schedule 3 Savings and transitional provisions

(Section 98)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Companion Animals Amendment Act 2001*

*Companion Animals Amendment Act 2005*

*Companion Animals Amendment Act 2006*

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

#### 2 Definition

In this Schedule:

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

### Part 2 Phasing-in of registration

#### 3 Special provision for dogs registered under the Dog Act

- (1) This clause applies to dogs registered under the Dog Act immediately before the commencement of this clause. This clause ceases to apply to a dog that becomes registered under this Act or that ceases to be registered under the Dog Act.
- (2) The provisions of the Dog Act and the regulations under the Dog Act continue in force (as if they had not been repealed) for the purposes of enabling a dog to which this

clause applies to be registered under the Dog Act during the **transition period**.

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

**Note—**

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

- (5) Dogs registered under the Dog Act immediately before the commencement of this clause continue to be registered under the Dog Act as applying under this clause.
- (6) Section 12 (Dog to wear collar and tags) of this Act applies in respect of a dog registered under the Dog Act during the transition period as if the dog were registered under this Act and as if the registration tag most recently issued under the Dog Act to the owner of the dog were the current registration tag for the dog under this Act.
- (6A) Sections 12 (1) (b) and 77 (and the definition of **registration tag**), as in force immediately before their repeal by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2001](#), continue to apply during the transition period in relation to a dog to which this clause applies as if those provisions had not been repealed. However (and despite subclause (6)), section 12 (1) (b) does not apply if the dog is identified in accordance with the regulations.
- (6B) Without limiting subclause (6A), and for avoidance of doubt, it is declared that a person may be prosecuted (and a penalty notice may be served) for an offence committed during the transition period under section 12 or 77 in relation to a dog, or the registration tag of a dog, to which this clause applies.

**Note—**

The [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2001](#) repealed the provisions of this Act (including sections 12 (1) (b) and 77) that deal with registration tags for companion animals.

- (7) The registration fee payable for the registration of a dog under the Dog Act as provided by this clause is the fee as payable under the Dog Act immediately before the commencement of this clause, but the regulations under this Act may prescribe some other fee for that purpose.
- (8) The regulations may create exceptions to this clause, either for all dogs to which this clause applies or for dogs of a particular class or description.

## **Part 3 General**

### **4 Disqualification from owning dog**

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

### **5 Dangerous dog declaration**

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

### **6 Continuation of repealed provisions**

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

## **Part 4 Provisions consequent on enactment of [Companion Animals Amendment Act 2006](#)**

### **7 Council-declared dangerous or restricted dogs**

A declaration by a council in force under Part 5 immediately before the commencement of this clause is taken to be a declaration by an authorised officer of the council under that Part (as amended by the [Companion Animals Amendment Act 2006](#)).

## **Schedule 4 (Repealed)**