

Companion Animals Amendment Bill 2005

Explanatory note

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

Overview of Bill

At present under the *Companion Animals Act 1998 (the Principal Act)*, a council or a Local Court may declare a dog to be a dangerous dog if it has (without provocation) attacked or killed a person or animal or has repeatedly threatened to attack or chase a person or animal. Certain control requirements are currently imposed in relation to dangerous dogs. The Principal Act also imposes similar control requirements in relation to dogs that are currently listed as restricted dogs (eg pit bull terriers) regardless of whether they have been declared dangerous. The failure to comply with the control requirements applying to a dangerous or restricted dog is an offence (the maximum penalty for which is being increased under this Bill from \$5,500 to \$16,500) and may result in the dog being seized by an authorised officer.

The object of this Bill is to amend the Principal Act as follows:

- (a) to impose additional control requirements in relation to dangerous and restricted dogs (such as keeping the dog in an enclosure that complies with the requirements of the regulations, making the dog wear a distinctive collar and ensuring that the dog is muzzled and on a lead when it is outside its enclosure),
- (b) to enable councils to declare certain dogs to be restricted dogs for the purposes of the Principal Act (eg cross-breeds of dogs listed as restricted dogs, but only if they have not been assessed to be a danger to the public),
- (c) requiring restricted dogs to be desexed (dangerous dogs are already required to be desexed within 28 days of being declared dangerous),
- (d) to prohibit the sale (which includes giving away), acquisition and breeding of restricted dogs,
- (e) to increase penalties for most of the offences under the Act (particularly in relation to dangerous and restricted dogs),
- (f) to consolidate and clarify the enforcement powers (including powers of entry) of authorised officers under the Act,
- (g) to enable animals that are seized under the authority of the Act to be taken to premises (such as animal welfare shelters or the premises of veterinary practitioners who are authorised to have access to the Companion Animals Register) instead of having to be taken to council pounds,
- (h) to make it clear that a council may also deal with companion animals that are surrendered to a council pound or that come into the pound's possession otherwise than by being seized under the Act,
- (i) to make a number of other miscellaneous amendments arising out of the statutory review of the Act.

Outline of provisions

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

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

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

Clause 4 amends the *Prevention of Cruelty to Animals Act 1979* to prevent charitable organisations under that Act (such as the RSPCA) from selling or rehoming restricted dogs held by the organisation.

Clause 5 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* as a consequence of the insertion into the Principal Act of a proposed search warrant provision (see **Schedule 1 [107]**).

Schedule 1 Amendment of Companion Animals Act 1998

Dangerous and restricted dogs

Schedule 1 [59] enables a council to declare a dog to be a dangerous dog even though the dog is ordinarily kept in another council's area.

Schedule 1 [61] provides that a person cannot be considered to be in effective control of a dog that is subject to a proposed dangerous dog declaration if the person has more than 2 dogs under his or her control at the one time.

Schedule 1 [65] and [67] enable a court to make a control order under section 47 of the Principal Act or a destruction order under section 48 of the Principal Act in proceedings for an offence under section 56 (which relates to the failure to comply with the control requirements for restricted dogs). **Schedule 1 [66]** makes it clear that the action that a control order may require the dog's owner to do (such as desexing the dog) does not limit the control requirements that apply under section 51 or 56 of the Principal Act.

Schedule 1 [68] and [78] make it clear that the owner of a dangerous or restricted dog must comply with each of the control requirements that apply to dog under the Principal Act.

Schedule 1 [70]–[73] and [79]–[84] amend the control requirements that apply in relation to dangerous and restricted dogs. The new requirements include keeping the dog in an enclosure that complies with the regulations (this replaces the present requirement for the dog to be kept in a child-proof enclosure), wearing a collar of the kind prescribed by the regulations and muzzling the dog and keeping it on a lead whenever it is outside of its enclosure. In the case of restricted dogs, the new requirements also include compulsory desexing and provisions that relate to their sale are removed. The new enclosure requirements are to be phased-in for existing dogs. **Schedule 1 [75]** is a consequential amendment.

Schedule 1 [76] makes it clear that a dangerous dog may be seized by an authorised officer if the officer is satisfied that any of the control requirements applying to the dog have not been complied with.

Schedule 1 [77] specifies the breeds or kinds of dogs that are restricted dogs for the purposes of the Principal Act. The new definition includes dogs declared by a council to be restricted dogs (see **Schedule 1 [88]**).

Schedule 1 [86] provides for the seizure of restricted dogs by authorised officers if any of the control requirements applying to the dog have not been complied with. If the dog is seized after 12 months following the commencement of the relevant amendments, the dog may be destroyed.

Schedule 1 [87] creates new offences of selling (or advertising the sale of) a restricted dog (which includes giving the dog away), accepting ownership of a restricted dog and causing or permitting a restricted dog to breed. The maximum penalty for these offences is 150 penalty units (\$16,500). The new offences also apply to any dog that a council is proposing to declare to be a restricted dog in accordance with proposed Division 6 of Part 5 of the Act. **Schedule 1 [87]** also inserts proposed section 57D which will enable a dog that is declared by a council to be a restricted dog after the relevant transition period to be seized and destroyed.

Schedule 1 [88] inserts proposed Division 6 of Part 5 into the Act. Under the new Division, a council will be able to declare a dog to be a restricted dog for the purposes of the Principal Act if the council is of the opinion that the dog is one of the breeds or kinds of dogs listed in the Act (eg a pit bull terrier) or is a cross-breed of any such breed or kind of dog. The council will be required to give the dog's owner a notice of the council's intention to declare the dog to be a restricted dog and the owner will be required to keep the dog under effective control and muzzled while the declaration is pending. After 28 days following the issuing of a notice of intention, the council may declare the dog to be a restricted dog, but not if the owner provides a written

statement by an approved breed assessor to the effect that the dog is not of a breed or kind on the restricted dog list or is not a cross-breed of such a breed or kind of dog. If the dog is, however, identified as a cross-breed, the council cannot proceed with the declaration if the owner provides 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 to attack or bite. A written statement provided by an assessor for the purposes of the proposed Division cannot be challenged and any assessor who provides any such written statement does not incur any civil or criminal liability for doing so. The declaration by a council of a dog to be a restricted dog is final and is not subject to any review or appeal.

Schedule 1 [122] enables regulations to be made for the purposes of limiting the number of restricted dogs that a person may own.

Increased penalties for offences

Schedule 1 [10]–[14], [16], [18], [19], [21], [23], [27], [30], [32], [33], [37], [39], [49], [51], [55], [60], [74], [85], [89], [90], [108], [111] and [123] increase the maximum penalty for certain offences under the Principal Act. In particular, the penalty for offences that involve attacks by dangerous or restricted dogs on persons or animals is increased from 100 penalty units (\$11,000) to 300 penalty units (\$33,000) (see **Schedule 1 [32]**). In the case where the attack occurs as the result of the owner's failure to comply with the relevant control requirements applying to the dangerous or restricted dog that has attacked, the penalty is increased from 200 penalty units (\$22,000) to 500 penalty units (\$55,000) (see **Schedule 1 [33]**). Also, the maximum penalty that may be imposed for an offence under the regulations is increased from 10 penalty units (\$1,100) to 50 penalty units (\$5,500) (see **Schedule 1 [123]**).

Schedule 1 [119] places a jurisdictional limit of 200 penalty units (\$22,000) on the maximum penalty that a Local Court may impose for an offence under the Principal Act.

Powers of entry

At present under the Principal Act, authorised officers (ie council rangers and police officers) may enter land for the purposes of seizing animals they are authorised to seize (eg when a dog has attacked a person or animal or if the owner has failed to comply with the control requirements for a dangerous or restricted dog). **Schedule 1 [107]** consolidates the power of entry provisions under the Principal Act (proposed Part 7A) and clarifies the functions that authorised officers have when they enter property to seize animals or to determine whether there has been compliance with (or a contravention of) the Act or the regulations. The power to enter property is extended to cover premises, which will include any building or structure (see **Schedule 1 [6]**), but does not extend to any part of premises used for residential purposes except with the authority of a search warrant under proposed section 69D. Only police officers may obtain a search warrant under the proposed section. Proposed Part 7A also restates existing provisions under the Principal Act that enable authorised officers to require a person to state his or her name and address and that make it an offence to obstruct an authorised officer. The amendments made by **Schedule 1 [36], [62] and [118]** are consequential on the insertion of proposed Part 7A.

Procedures for dealing with seized animals

Section 62 of the Principal Act currently requires animals that are seized under the authority of the Act to be delivered to their owners or to be delivered to a council pound if they cannot be identified. **Schedule 1 [94]** substitutes section 62 to provide that a seized animal must be taken to its owner, a council pound or approved premises (ie premises operated by an approved animal welfare organisation such as the RSPCA or a person who has been authorised by the Director-General of the Department of Local Government to have access to the Companion Animals

Register, see **Schedule 1 [109] and [110]**). If a person other than an authorised officer seizes an animal, the person can arrange with an authorised officer for the animal to be taken to its owner or to a pound or approved premises.

Schedule 1 [97] inserts proposed section 63A to provide that seized animals held at approved premises and not claimed within 72 hours must be delivered to a council pound.

Schedule 1 [99] enables a council to destroy a companion animal before the relevant holding period ends (ie 7 days if a seizure notice has not been given to the owner because the owner cannot be identified or 14 days if a seizure notice has been given) if the council does so in accordance with an adopted policy relating to the management of feral or infant companion animals.

Schedule 1 [100] authorises a council to detain a seized animal at the council pound until such time as proceedings for an offence under the Act involving the owner of the animal have been determined.

Schedule 1 [101] prevents a council from selling a restricted dog that is being detained at a council pound.

Schedule 1 [102] inserts proposed section 64A to expressly authorise a council pound to sell or destroy companion animals that have been surrendered to the pound or that have come into the pound's possession otherwise than by being seized under the Principal Act. If the animal is a restricted dog, it cannot be sold by the council.

Schedule 1 [106] requires a council to report to the Director-General on its pound activities.

The amendments made by **Schedule 1 [5], [7], [29], [42], [53], [58], [63], [91]–[93], [95], [96], [98] and [103]–[105]** are consequential on the amendments to Part 7 of the Principal Act dealing with seized or surrendered companion animals.

Nuisance dogs and cats

Schedule 1 [38], [40], [41], [54], [56] and [57] modify the manner in which authorised officers of councils may issue orders in relation to dogs and cats that are a nuisance as specified in the Principal Act. An authorised officer will be required to give the animal's owner a notice of intention and the owner will be given an opportunity to object to the proposed order. A nuisance dog or cat order is not reviewable.

Miscellaneous amendments

Schedule 1 [1] specifies the principal object of the Principal Act.

Schedule 1 [2] inserts a number of defined terms that relate to the amendments made by the proposed Act.

Schedule 1 [8] requires a council to promote awareness in its area of the requirements of the Principal Act with respect to the ownership of companion animals and to ascertain the existence of all dangerous and restricted dogs in its area.

Schedule 1 [9] makes a minor amendment to the definition of **owner** that does not affect the meaning of that expression for the purposes of the Act.

Schedule 1 [15] provides that forms under the Principal Act that are currently required to be approved by the Director-General of the Department of Local Government may be approved by a council if the Director-General has not approved the particular form concerned.

Schedule 1 [17] requires the owner of a companion animal that has been reported missing to notify the Director-General if the animal is found.

Schedule 1 [20] requires a council to ascertain the ownership of dead companion animals found in its area that have apparently been hit by cars or other vehicles.

Schedule 1 [22] and [25] clarify the requirements in relation to the effective control of a dog while in a public place.

Schedule 1 [24], [26], [28], [50] and [52] make it clear that the fact that a companion animal is in a place in which it is prohibited is sufficient for it to be seized under the Principal Act. **Schedule 1 [120]** is a consequential amendment.

Schedule 1 [31] makes it clear that the regulations may prescribe a dog of any description, and not just of a breed or kind, to be a dog that must be muzzled in accordance with the requirements of section 15 of the Principal Act.

Schedule 1 [35] modifies the circumstances in which an authorised officer may seize or secure a dog that has attacked a person or animal. The dog may be seized or secured within 72 hours of the attack (instead of 4 hours at present) and the officer will be able to seize the dog if it is on the owner's property.

Schedule 1 [43]–[46] enable a court to disqualify a person from being in charge of a dog while in a public place if the person is convicted of an offence relating to a dog attack. At present a person who is convicted of such an offence may be disqualified only from owning a dog. **Schedule 1 [34]** is a consequential amendment.

Schedule 1 [47] makes it clear that the owner of a dog is liable for any damage to a person's personal property (and not just the person's clothing) caused by the dog in the course of attacking the person.

Schedule 1 [48] makes it clear that cats must have (rather than actually wear) a form of identification (which may be in the form of a microchip) that enables a council to ascertain the cat's name and the address and phone number of its owner.

Schedule 1 [69] inserts a missing word.

Schedule 1 [112] repeals the provisions of the Principal Act that provide for the constitution of the Companion Animals Advisory Board. The amendments made by

Schedule 1 [3], [4], [115] and [124] are consequential on the abolition of the Board.

Schedule 1 [109] and [110] enable the Director-General to authorise persons to have access to the Companion Animals Register for the purpose of identifying seized or lost animals.

Schedule 1 [113] removes provisions relating to the payment of money into the Companion Animals Fund from the account established under the *Greyhound Racing Act 2002*.

Schedule 1 [114] substitutes section 85 (1) of the Act as a consequence of the abolition of the Companion Animals Advisory Board and inserts a new provision requiring a council to apply all money it receives from the Companion Animals Fund only for purposes that relate to the management and control of companion animals in its area. **Schedule 1 [116]** is a consequential amendment.

Schedule 1 [117] enables the Director-General to establish advisory committees to assist in the administration of the Principal Act.

Schedule 1 [121] consolidates various provisions of the Principal Act that provide for the manner in which notice is given to the owners of companion animals for certain purposes under the Act. **Schedule 1 [64]** is a consequential amendment.

Schedule 1 [125] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.