

Passed by both Houses



New South Wales

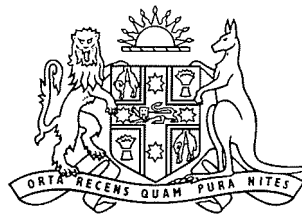
Companion Animals Amendment Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Companion Animals Amendment Bill 2006

Act No , 2006

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

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

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Companion Animals Amendment Act 2006*.

2 Commencement

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

3 Amendment of Companion Animals Act 1998 No 87

The *Companion Animals Act 1998* is amended as set out in Schedule 1.

4 Amendment of other legislation

Each regulation specified in Schedule 2 is amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Companion Animals Act 1998

(Section 3)

[1] Section 3 Application of Act to working dogs

Omit the section.

[2] Section 5 Definitions

Insert “, but does not include a working dog” after “of the Commonwealth” in the definition of *assistance animal* in section 5 (1).

[3] Section 5 (1), definition of “dangerous dog”

Omit “a council”. Insert instead “an authorised officer of a council”.

[4] Section 5 (1)

Insert in alphabetical order:

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.

[5] Section 6A General duties of councils

Omit “by the council under Division 6” from section 6A (1) (b).

Insert instead “under Division 1 or 6”.

[6] Section 6A, note

Insert at the end of the section:

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*.

[7] Section 6B

Insert after section 6A:

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*.

[8] Section 12 Dog to wear collar and tag

Insert “or to a working dog” after “the occupier” in section 12 (4).

[9] Section 12A

Insert after section 12:

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.

[10] Section 13 Responsibilities while dog in public place

Omit the penalty to section 13 (2). Insert instead:

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.

[11] Section 14 Dogs prohibited in some public places

Omit the penalty to section 14 (2). Insert instead:

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.

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

Omit “50 penalty units” from section 23 (6). Insert instead “100 penalty units”.

[13] Section 25 Liability for injury to person or damage to personal property

Insert “or restricted dog” after “dangerous dog” in section 25 (2) (a).

[14] Part 5, Division 1, heading

Omit “of councils”.

[15] Section 33

Omit the section. Insert instead:

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.

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- (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).

[16] Sections 34 (1), 35 (1), 38 (1), 58C (2) and (5) and 58D (1)

Omit “A council” wherever occurring.

Insert instead “An authorised officer of a council”.

[17] Sections 34 (2), 35 (1) and 58A (1)

Omit “the council’s” wherever occurring. Insert instead “the officer’s”.

[18] Section 34 Authorised officer may declare dog to be dangerous

Insert “whose authorised officer made the declaration” after “the council” in section 34 (3).

[19] Sections 35 (2) (b), 37 (2) and (3), 58A (1), 58B (3) (b) and 58C (2)

Omit “the council” wherever occurring. Insert instead “the authorised officer”.

[20] Section 36

Omit the section. Insert instead:

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, 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 the requirements of subsection (1) (a) have not been complied with (but may only seize the dog during the time when subsection (1) (a) applies in respect of the dog), or
 - (b) the dog has not been registered as required by subsection (1) (b).
- (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, 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.

[21] Section 37 Authorised officer must consider dog owner's objections

Insert after section 37 (3):

- (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.

[22] Sections 38 (1) and 58D (1)

Omit "it" wherever occurring. Instead "the authorised officer".

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

Omit section 38 (2) (b). Insert instead:

- (b) the owner's right under section 41 to appeal to a Local Court against the declaration, and
- (c) the fact that the dog may, under section 58G, be seized and destroyed 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).

[24] Section 39 Council can revoke dangerous dog declaration

Omit "this Part" from section 39 (1). Insert instead "this Division".

[25] Sections 39 (1) and 58D (3) (b) and (c)

Omit "that made" wherever occurring.

Insert instead "whose authorised officer made".

[26] Section 39 (1A)

Insert after section 39 (1):

- (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.

[27] Section 40

Omit the section. Insert instead:

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.

[28] Section 41 Appeal to Local Court

Omit section 41 (1) and (2). Insert instead:

- (1) The owner of a dog can appeal to a Local Court:

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- (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.

[29] Section 42 Determination of appeals by Local Court

Omit “of the council”.

Insert instead “of the authorised officer or the council (as the case requires)”.

[30] Section 44 Local Court has power to declare dog to be dangerous

Insert “an authorised officer of” after “against a declaration by” in section 44 (1).

[31] Section 45

Omit the section. Insert instead:

45 When Local Court can declare dog to be dangerous

- (1) A 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).

[32] Sections 47 (2) (b) and 48 (2) (b)

Omit “a council’s declaration that a dog is dangerous” wherever occurring.

Insert instead “the declaration by an authorised officer of a council that a dog is dangerous”.

[33] Sections 49 and 50

Omit “40 penalty units” wherever occurring.

Insert instead “100 penalty units”.

[34] Section 51 Owner of dangerous dog must comply with control requirements

Omit “, and any person who subsequently becomes the owner of such a dangerous dog,” from section 51 (1).

[35] Section 51 (1) (c)

Insert at the end of the paragraph:

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

[36] Section 51 (1) (g) and (h)

Omit the paragraphs.

[37] Section 51 (1) (i) (iv)

Omit the subparagraph.

[38] Section 51 (3)

Omit the subsection. Insert instead:

(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.

[39] Sections 52A and 52B

Insert after section 52:

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*.

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- (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.

[40] Sections 55 (1) (e) and (2) (definition of “proposed restricted dog”), 56 (1) (a) and (h), 57D (1), 58A (1) and 58D (3) and (4)

Omit “a council” wherever occurring.

Insert instead “an authorised officer of a council”.

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

Insert at the end of section 56 (1) (a1):

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

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

Omit section 57D (4) (b). Insert instead:

- (b) an authorised officer of a council may authorise the destruction of the dog.

[43] Part 5, Division 6, heading

Omit “by councils”.

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- [44] **Section 58A Notice of intention to declare dog to be restricted dog**
Omit section 58A (3).
- [45] **Section 58B Obligations of owner when notified of proposed restricted dog declaration**
Omit “a council’s” from section 58B (1).
Insert instead “an authorised officer’s”.
- [46] **Sections 58B (5) (b) and 58F (1)**
Omit “by the council” wherever occurring.
- [47] **Section 58C Authorised officer may declare dog to be restricted dog**
Omit “the council that gave the notice” from section 58C (1).
Insert instead “the authorised officer who gave the notice (or any other authorised officer of the council)”.
- [48] **Section 58D Authorised officer to notify dog owner of decision and consequences**
Omit section 58D (5).
- [49] **Section 58DA**
Insert after section 58D:
- 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.

[50] Part 5, Division 7

Insert after Division 6:

Division 7 Other provisions relating to dangerous and restricted dogs

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

- (1) An authorised officer may seize a dangerous dog or restricted dog if:
 - (a) the dog attacks or bites a person or animal (other than vermin) without provocation, or
 - (b) the requirements referred to in section 51 (1) (c), (c1) or (e) or section 56 (1) (a1), (a2) or (d), as the case requires, 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).
- (2) If a dog is seized under subsection (1):
 - (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 on the ground referred to in subsection (1) (b), 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 subsection (1).
- (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.

[51] Section 62 Seized animals must be delivered to owner, council pound or approved premises

Omit the note to section 62 (1). Insert instead:

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.

[52] Section 64 Unclaimed seized animal may be sold or destroyed

Omit section 64 (3A). Insert instead:

- (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.

[53] Sections 64 (6) and 64A (5)

Insert “dangerous or” after “to sell a” wherever occurring.

[54] Section 69G Requirement to state name and address

Insert after section 69G (3):

- (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.

[55] Section 75 Access to Register

Insert after section 75 (7) (a1):

- (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,

[56] Section 84 Establishment of Fund

Insert “(other than any fee or charge payable to a council for the purposes of Part 7 or under section 58H)” after “under this Act” in section 84 (1) (a).

[57] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Companion Animals Amendment Act 2006

[58] Schedule 3, Part 4

Insert after Part 3:

**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 2 Amendment of other legislation

(Section 4)

2.1 Companion Animals Regulation 1999

[1] Clause 5A Categories of identified companion animals

Omit the note to clause 5A (3).

[2] Clause 18 Registration fee

Omit clause 18 (2). Insert instead:

- (2) There is an exemption from payment of a registration fee for the registration of the following:
 - (a) any animal the Director-General is satisfied is in the service of an instrumentality of the State,
 - (b) a working dog.

Note. A working dog is defined in the Act as a dog used primarily for the purpose of droving, tending, working or protecting stock (or a dog being trained as a working dog). If the dog is declared to be a dangerous dog, it cannot be a working dog while the declaration is in force.

[3] Clause 28A

Insert after clause 28:

28A Maximum fee for issuing certificate of compliance in relation to prescribed enclosure

For the purposes of section 58H (2) (b) of the Act, the fee of \$100 is prescribed.

[4] Clause 30 Distinctive collars for dangerous and restricted dogs

Insert at the end of the clause:

- (2) A dog must not wear any such collar unless the dog is a dangerous dog or a restricted dog.
- (3) If subclause (2) 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: 8 penalty units.

- (4) A person does not commit an offence under this clause if the person does not know, or could not reasonably be expected to know, that the collar is of the kind prescribed for the purposes of section 51 (1) (d1) or 56 (1) (c1) of the Act.

[5] Schedule 1 Penalty notice offences

Insert in appropriate order under the heading “**Offence under the Act**”:

Section 12A (1)	\$220
Section 52A (1)	\$1,320
Section 52B (1)	\$1,320

[6] Schedule 1

Omit the matter relating to sections 13 (2) and 14 (2). Insert instead:

Section 13 (2)	\$1,760 (in the case of a dangerous or restricted dog) or \$220 (in any other case)
Section 14 (2)	\$1,760 (in the case of a dangerous or restricted dog) or \$330 (in any other case)

[7] Schedule 1

Insert in appropriate order under the heading “**Offence under this Regulation**”:

Clause 30 (3)	\$220
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2.2 Local Government (General) Regulation 2005

Clause 217 Additional information for inclusion in annual report

Insert after clause 217 (1) (e):

- (f) a detailed statement, prepared in accordance with such guidelines as may be issued by the Director-General from time to time, of the council's activities during the year in relation to enforcing, and ensuring compliance with, the provisions of the *Companion Animals Act 1998* and the regulations under that Act.