



New South Wales

# Companion Animals Amendment Bill 2001

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to create a new offence under which the owner of a dangerous dog will be liable for a penalty higher than those currently applying under the *Companion Animals Act 1998* if the dog attacks or bites any person and the incident occurs because the owner has failed to comply with the control requirements for dangerous dogs under the Act,
- (b) to require dangerous dogs to be registered under the Act within 7 days of being declared dangerous by a local council or Local Court,
- (c) to provide that a number of existing offences under the Act for which only the owner of a companion animal is liable (eg offences relating to the control of dogs in a public place, dogs attacking or biting people, and dogs defecating in

public places) will, if the owner is not present at the time of the offence, be offences for which the person who is in charge of the animal is liable (but only if that person is at least 16 years old),

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

## Outline of provisions

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

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

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

## Schedule 1 Amendments

### Dangerous and restricted dogs

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

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

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

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

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

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

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

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

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

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

### **Ongoing registration offences**

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

### **Minor, consequential and ancillary amendments**

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

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

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

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

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

First print



New South Wales

# Companion Animals Amendment Bill 2001

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New South Wales

# Companion Animals Amendment Bill 2001

No. , 2001

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## A Bill for

An Act to amend the *Companion Animals Act 1998* in relation to dangerous dogs and to make further provision with respect to the control, registration and identification of companion animals; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Companion Animals Amendment Act 2001</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Companion Animals Act 1998 No 87</b>	7
The <i>Companion Animals Act 1998</i> is amended as set out in Schedule 1.	8 9

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<b>Schedule 1 Amendments</b>	1
(Section 3)	2
<b>[1] Section 5 Definitions</b>	3
Omit the definition of <i>compulsory identification</i> from section 5 (1) (and the note following the definition).	4 5
<b>[2] Section 5 (1)</b>	6
Insert in alphabetical order:	7
<i>identified companion animal</i> means a companion animal that is identified as referred to in section 70 (1).	8 9
<b>[3] Section 7 Meaning of “owner”</b>	10
Omit the second sentence of the note following section 7 (2).	11
<b>[4] Section 7 (3)</b>	12
Omit the subsection.	13
<b>[5] Sections 10A and 10B</b>	14
Insert after section 10:	15
<b>10A Unregistered companion animal</b>	16
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.	17 18 19 20
Maximum penalty:	21
(a) 2 penalty units except in the case of a dangerous or restricted dog, or	22 23
(b) 5 penalty units in the case of a dangerous or restricted dog.	24 25



<b>10B</b>	<b>Notice requiring companion animal to be registered</b>	1
(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 form approved by the Director-General, requiring the owner to register the animal within 28 days after the date the notice is given.	2 3 4 5 6 7
(2)	The owner of the companion animal must comply with the notice.	8 9
	Maximum penalty:	10
(a)	2 penalty units except in the case of a dangerous or restricted dog, or	11 12
(b)	5 penalty units in the case of a dangerous or restricted dog.	13 14
(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).	15 16 17 18
<b>[6]</b>	<b>Section 11 Owner required to notify certain changes and events</b>	19
	Omit “a registered companion animal” from section 11 (1).	20
	Inset instead “an identified companion animal (whether or not it is registered)”.	21 22
<b>[7]</b>	<b>Part 3, heading</b>	23
	Omit “of owners”. Insert instead “for control”.	24
<b>[8]</b>	<b>Section 13 Responsibilities while dog in public place</b>	25
	Omit section 13 (2). Insert instead:	26
(2)	If this section is contravened:	27
(a)	the owner of the dog, or	28
(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,	29 30 31
	is guilty of an offence.	32

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Maximum penalty:	1
(a) 5 penalty units except in the case of a dangerous or restricted dog, or	2 3
(b) 20 penalty units in the case of a dangerous or restricted dog.	4 5
<b>[9] Section 13 (3)</b>	6
Insert “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.” after “contravention.”.	7 8 9
<b>[10] Section 14 Dogs prohibited in some public places</b>	10
Omit section 14 (2). Insert instead:	11
(2) If a dog is found in a place in which dogs are prohibited under this section:	12 13
(a) the owner of the dog, or	14
(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,	15 16 17
is guilty of an offence.	18
Maximum penalty:	19
(a) 5 penalty units except in the case of a dangerous or restricted dog, or	20 21
(b) 20 penalty units in the case of a dangerous or restricted dog.	22 23
<b>[11] Section 14 (3)</b>	24
Insert “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.” after “so.”.	25 26 27
<b>[12] Section 15 Greyhounds and other breeds to be muzzled</b>	28
Omit section 15 (2). Insert instead:	29
(2) If this section is contravened:	30
(a) the owner of the greyhound or other dog, or	31

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(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,	1
		2
		3
		4
	is guilty of an offence.	5
	Maximum penalty: 5 penalty units.	6
<b>[13]</b>	<b>Section 16 Offences where dog attacks person or animal</b>	7
	Omit section 16 (1). Insert instead:	8
(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:	9
		10
		11
(a)	the owner of the dog, or	12
(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,	13
		14
		15
	is guilty of an offence.	16
	Maximum penalty:	17
(a)	10 penalty units except in the case of a dangerous or restricted dog, or	18
		19
(b)	100 penalty units in the case of a dangerous or restricted dog.	20
		21
<b>[14]</b>	<b>Section 16 (1A)</b>	22
	Insert after section 16 (1):	23
(1A)	The owner of a dangerous dog is guilty of an offence if:	24
(a)	the dog attacks or bites any person (whether or not any injury is caused to the person), and	25
		26
(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 in relation to the dog.	27
		28
		29
	Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.	30
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<b>[15]</b>	<b>Section 17 Dog must not be encouraged to attack</b>	1
	Omit section 17 (1) (b). Insert instead:	2
	(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	3 4 5
	(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.	6 7 8
<b>[16]</b>	<b>Section 18 Dog that has attacked or bitten may be secured or seized</b>	9
	Omit section 18 (3) (b). Insert instead:	10
	(b) is under the effective control of its owner or other person for the time being in charge of the dog (unless the owner or other person set on or urged the dog to attack or bite the animal concerned).	11 12 13 14
<b>[17]</b>	<b>Section 20 Dogs defecating in public place</b>	15
	Omit section 20 (1). Insert instead:	16
	(1) If a dog defecates in a public place:	17
	(a) the owner of the dog, or	18
	(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,	19 20 21
	must immediately remove the dog's faeces and properly dispose of them.	22 23
	Maximum penalty: 5 penalty units.	24
<b>[18]</b>	<b>Section 23 Disqualification from owning dog</b>	25
	Omit section 23 (1). Insert instead:	26
	(1) A person who is convicted of any of the following offences is permanently disqualified from owning a dog:	27 28
	(a) an offence under section 16 (1A),	29

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Companion Animals Amendment Bill 2001

Schedule 1 Amendments

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	(b) an offence under section 17 where the dog concerned was a dangerous or restricted dog at the time of the offence,	1 2 3
	(c) an offence under section 35A of the <i>Crimes Act 1900</i> .	4
<b>[19]</b>	<b>Section 23 (2) (b)</b>	5
	Omit the paragraph. Insert instead:	6
	(b) section 16 (1),	7
<b>[20]</b>	<b>Part 4, heading</b>	8
	Omit “of owners”. Insert instead “for control”.	9
<b>[21]</b>	<b>Section 30 Cats prohibited in some public places</b>	10
	Omit section 30 (2). Insert instead:	11
	(2) If a cat is found in a place in which cats are prohibited under this section:	12
		13
	(a) the owner of the cat, or	14
	(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,	15 16 17
	is guilty of an offence.	18
	Maximum penalty: 5 penalty units.	19
<b>[22]</b>	<b>Section 30 (4)</b>	20
	Insert “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.” after “so.”.	21 22 23
<b>[23]</b>	<b>Section 47 Control orders</b>	24
	Omit section 47 (2) (a). Insert instead:	25
	(a) in proceedings for an offence under section 16, 17, 49, or 51 of this Act, or under section 35A of the <i>Crimes Act 1900</i> ,	26 27 28

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<b>[24] Section 48 Destruction orders</b>	1
Omit section 48 (2) (a). Insert instead:	2
(a) on conviction of the owner of the dog of an offence under section 35A of the <i>Crimes Act 1900</i> , or under section 16, 17, 49 or 51 of this Act,	3 4 5
<b>[25] Section 51 Owner of dangerous dog must comply with control requirements</b>	6 7
Omit section 51 (1) (a). Insert instead:	8
(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.	9 10 11 12 13
<b>[26] Section 51 (1) (k)</b>	14
Insert after section 51 (1) (j):	15
(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.	16 17 18
<b>[27] Section 51 (1), note</b>	19
Omit “Section 9” from the note. Insert instead “Section 11”.	20
<b>[28] Section 52 Dangerous dog can be seized if owner cannot comply with control requirements</b>	21 22
Insert “of the council of the area in which the dog is ordinarily kept” after “authorised officer” in section 52 (3).	23 24
<b>[29] Section 56 Owner of restricted dog must comply with control requirements</b>	25 26
Insert after section 56 (1) (g):	27
(h) The dog must, if more than 6 months old, be registered under this Act if not already so registered.	28 29

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<b>[30]</b>	<b>Section 57 Restricted dog can be seized if owner cannot comply with control requirements</b>	1 2
	Insert “of the council of the area in which the dog is ordinarily kept” after “authorised officer” in section 57 (3).	3 4
<b>[31]</b>	<b>Section 64 Unclaimed animals can be sold or destroyed</b>	5
	Omit section 64 (1). Insert instead:	6
	(1) If a seized animal has not been claimed, the council may sell or destroy the animal:	7
	(a) if the required seizure notice has been given—after the period of 14 days following the giving of the notice, or	8 9 10
	(b) if such a notice is not required to be given—after the period of 7 days following the delivery of the animal to the pound.	11 12 13
<b>[32]</b>	<b>Section 70 Identification</b>	14
	Omit section 70 (1). Insert instead:	15
	(1) The regulations may make provision for the identification of companion animals:	16
	(a) for the purposes of section 8, or	17 18
	(b) otherwise than for the purposes of that section.	19
<b>[33]</b>	<b>Section 70 (2) (a)</b>	20
	Omit “required to be”.	21
<b>[34]</b>	<b>Section 70 (2) (b) and (c)</b>	22
	Omit “compulsory” wherever occurring.	23
<b>[35]</b>	<b>Section 75 Access to Register</b>	24
	Omit section 75 (4) and (5). Insert instead:	25
	(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.	26 27 28

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<b>[36] Section 76 Offence of interfering with identification of animal</b>	1
Omit “compulsory” from section 76 (1).	2
<b>[37] Section 89</b>	3
Omit the section. Insert instead:	4
<b>89 Confidentiality of certain information</b>	5
(1) In this section:	6
<i>confidential information</i> means:	7
(a) any information contained in, or acquired from, the Register, or	8
(b) any other information obtained in connection with the enforcement or administration of this Act or the regulations.	10
<b>Note.</b> 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 surgeons, and information gathered by authorised officers in the course of their enforcement functions.	13
(2) A person must not:	19
(a) access or attempt to access confidential information, or	20
(b) allow a person to have access to confidential information, or	21
(c) directly or indirectly make a record of confidential information, or	23
(d) directly or indirectly disclose or pass confidential information to any person, or	25
(e) use confidential information, or	27
(f) alter, delete, destroy or interfere with any record comprising confidential information, or	28
(g) make any entry in the Register.	30
Maximum penalty:	31
(a) 25 penalty units except in the case of confidential information that is suppressed, or	32
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|-----|--|----------------------------------|
| (b) | 100 penalty units in the case of confidential information that is suppressed.  | 1<br>2                           |
| (3) | For the purposes of subsection (2), confidential information is <i>suppressed</i> if:  | 3<br>4                           |
| (a) | the information contains the personal details of a person who is the owner of a companion animal, and  | 5<br>6                           |
| (b) | the information is entered in the Register, and  | 7                                |
| (c) | the person has requested the Director-General to keep the information confidential, and  | 8<br>9                           |
| (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  | 10<br>11<br>12<br>13             |
| (e) | it is indicated in the Register that the information is suppressed.  | 14<br>15                         |
| (4) | It is not an offence under this section for a person to do anything referred to in subsection (2) (a)–(g):   | 16<br>17                         |
| (a) | for the purposes of, or in connection with, the lawful exercise of functions under the Act, or   | 18<br>19                         |
| (b) | as authorised or required by or under section 75, or   | 20                               |
| (c) | as authorised or directed by the Director-General, or  | 21                               |
| (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. | 22<br>23<br>24<br>25<br>26<br>27 |
| (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.   | 28<br>29<br>30                   |
| (6) | This section does not apply to the disclosure of confidential information to any of the following:   | 31<br>32                         |
| (a) | the Independent Commission Against Corruption,   | 33                               |
| (b) | the National Crime Authority,  | 34                               |
| (c) | the New South Wales Crime Commission,  | 35                               |

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(d) the Ombudsman,	1
(e) any other person or body prescribed for the purposes of this subsection.	2 3
(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:	4 5 6 7 8
(a) the person has requested the disclosure of that information in writing, and	9 10
(b) the animal's behaviour concerned has been reported to a police officer or a council.	11 12
(8) In subsection (7), <i>person</i> includes the person's legal representative.	13 14
<b>[38] Schedule 3 Savings and transitional provisions</b>	15
Insert at the end of clause 1 (1):	16
<i>Companion Animals Amendment Act 2001</i>	17