



New South Wales

Companion Animals Amendment Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Companion Animals Act 1998* (the *Principal Act*) as follows:

- (a) to enable certain dogs to be declared by the Local Court or council officers to be menacing dogs and to provide for special controls and higher offence penalties to apply in relation to those dogs,
- (b) to increase penalties for certain offences relating to the failure to register a companion animal and the control of dogs,
- (c) to shorten the period within which an owner of an unregistered companion animal who is given a notice by a council officer must register the animal and allow subsequent registration notices to be given more frequently,
- (d) to extend the period within which proceedings for certain offences relating to dog attacks may be brought to within the period of 12 months after the date on which the offence is alleged to have been committed,
- (e) to clarify the circumstances in which a council officer may seize a dog that is the subject of a proposed dangerous or menacing dog declaration,
- (f) to enable the Local Court to order that the owner of a dog undertake responsible pet ownership training in specified circumstances,
- (g) to provide that the Local Court must, except in exceptional circumstances, make a destruction order in relation to a dog on conviction of the owner of the dog of an offence involving the serious injury or death of a person caused by the dog,

(h) to make a number of miscellaneous, savings and transitional amendments.

The Bill also makes a number of amendments to the *Companion Animals Regulation 2008* and a consequential amendment to the *Criminal Procedure Act 1986*.

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, except for Schedule 2 [2], [3], [6] and [13] which are to commence on 1 January 2014.

Schedule 1 Amendment of Companion Animals Act 1998 No 87

Amendments relating to menacing dogs

The Principal Act and the regulation under that Act contain special provisions relating to the control of dangerous dogs and provide for higher penalties for offences where the offence relates to a dangerous dog. Under that Act, in certain circumstances, an authorised officer of a council or the Local Court may declare a dog to be a dangerous dog.

Schedule 1 [26] inserts proposed section 34 (1A) into the Principal Act to enable an authorised officer of a council to declare a dog to be a menacing dog if the authorised officer is satisfied that:

- (a) the dog is menacing, or
- (b) the dog is of a menacing breed or kind of dog (or a cross-breed of a menacing breed or kind of dog), or
- (c) the dog has been declared a menacing dog under a law of another State or a Territory that corresponds with the Principal Act.

No appeal will lie to the Local Court under section 41 of the Principal Act against a declaration by an authorised officer of a council that a dog is a menacing dog or against a refusal by a council to revoke a declaration that the dog is a menacing dog.

Schedule 1 [39] inserts similar provisions to enable the Local Court to also make menacing dog declarations in the same circumstances.

Schedule 1 [25] provides that a dog is *menacing* if it:

- (a) has displayed unreasonable aggression towards a person or animal (other than vermin), or
- (b) has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.

Schedule 1 [25] also enables regulations under the Principal Act to declare a breed or kind of dog to be a *menacing breed or kind of dog*. The Minister administering the Principal Act is not to recommend the making of such a declaration in a regulation unless the Minister is satisfied that the breed or kind of dog concerned displays characteristics associated with menacing behaviour.

Schedule 1 [1]–[3], [10], [17]–[24], [27]–[28], [31]–[33], [35], [37]–[39], [42]–[43], [45]–[46], and [49] make a number of consequential amendments. A number of amendments are made to provisions of the Principal Act that currently apply to declared dangerous dogs to apply those provisions to declared menacing dogs (including providing for higher maximum penalties for offences in relation to a menacing dog).

Schedule 1 [44] provides for special control requirements for menacing dogs. In general the control requirements for dangerous dogs apply to menacing dogs. However, a menacing dog is required to be enclosed on the property on which the dog is ordinarily kept only where the dog is not under the effective control of a person of or above the age of 18 years. Similarly, the control requirement relating to keeping a menacing dog on a lead and muzzled applies only when the dog is outside the property on which it is ordinarily kept (rather than whenever the dog is outside its enclosure as is the case for dangerous dogs).

Schedule 1 [34] amends section 39 (2) of the Principal Act to provide that a council may revoke a dangerous dog or menacing dog declaration but only if satisfied that it is appropriate to do so and, if the council determines that it is necessary, the dog has undergone appropriate behavioural training.

Schedule 1 [50] provides that an authorised officer may seize a dangerous dog if the control requirements referred to in section 51 (1) (c), (c1) or (e) of the Principal Act are not complied with in relation to the dog on any occasion (rather than on at least 2 separate occasions over any period of 12 months as is currently the case). **Schedule 1 [50]** also provides that an authorised officer may seize a menacing dog if the requirements referred to in proposed section 51 (1A) (b) or (c) of the Principal Act are not complied with in relation to the dog on at least 2 separate occasions over any period of 12 months.

Schedule 1 [51] provides that:

- (a) a declaration that a dog is a dangerous dog is taken to revoke any declaration that the dog is a menacing dog, and
- (b) a declaration that a dog is a menacing dog is taken to revoke any declaration that the dog is a dangerous dog, and
- (c) a declaration that a dog is a dangerous or menacing dog does not prevent the issuing of a nuisance dog order in relation to the dog.

Amendments relating to offences and penalties

Schedule 1 [4], [8], [11]–[16] increase the maximum penalties that may be imposed in relation to a number of offences under the Principal Act. Specifically, the offences that are to carry higher maximum penalties are the offences against the following provisions:

- (a) section 9 (1)—relating to a failure to register a companion animal from the time the animal is 6 months old,
- (b) section 10—relating to a failure to register a companion animal when otherwise required under the Principal Act,
- (c) section 10B (2)—relating to a failure to comply with a notice requiring a companion animal be registered,
- (d) section 16 (1)—relating to a dog rushing at, attacking, biting, harassing or chasing any person or animal (other than vermin),
- (e) section 16 (1A)—relating to a dog attack or bite of a person occurring as a result of the owner's failure to comply with specified requirements of the Principal Act,
- (f) section 17 (1)—relating to setting or urging a dog to attack, bite, harass or chase any person or animal.

Schedule 1 [12] also creates 2 new offences that provide that the owner or person in charge of a dog (if that person is of or above the age of 16 years) is guilty of an offence if the 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 and the incident occurs as a result of a reckless act or omission by the owner or that other person. One offence relates to dangerous, menacing and restricted dogs (proposed section 16 (1AB)) and the second offence relates to other dogs (proposed section 16 (1AA)). The offence relating to dangerous, menacing and restricted dogs will carry a higher penalty. **Schedule 1 [15]** makes a consequential amendment. **Schedule 1 [16]**, which increases penalties for the offence under section 17 of the Principal Act, similarly splits the offence. The new offences under proposed sections 16 (1AB) and 17 (1A) and the offence under section 16 (1A) are to be made indictable offences—see **Schedule 1 [52]** and **[53]** and **Schedule 3**.

Schedule 1 [5] amends section 9 of the Principal Act (which contains the requirement that a companion animal be registered from the time the animal is 6 months old) to make it clear that a person is taken to commit a separate offence under this section on every day the companion animal remains unregistered. However, a person:

- (a) may not be convicted for the commission of more than one offence in relation to the failure to register a companion animal during any single calendar month, and
- (b) may be convicted only once in relation to any failure to register a companion animal that occurred before that failure came to the notice of the council of the area in which the animal is ordinarily kept.

Schedule 1 [6] omits section 10A of the Principal Act.

Schedule 1 [54] provides that proceedings for an offence under section 16 (Offences where dog attacks person or animal) or 17 (Dog must not be encouraged to attack) of the Principal Act may be brought within the period of 12 months of the date on which the offence is alleged to have been committed, rather than 6 months as is currently the case.

Amendments relating to notices requiring companion animal to be registered

Schedule 1 [7] amends section 10B (1) of the Principal Act to provide that the notice a council may give to the owner of a companion animal requiring the owner to register the animal is to require that the registration take place within 14 days, rather than the current 28 days.

Schedule 1 [9] amends section 10B (3) of the Principal Act to provide that a second or subsequent notice may be given 3 months after the previous notice, rather than 6 months as is currently the case.

Miscellaneous amendments

Schedule 1 [29] amends section 36 (1) (b) of the Principal Act to clarify that if an owner of a dog is given notice of an intention to make a dangerous or menacing dog declaration by an authorised officer of a council, the owner must register the dog (if it is not already registered) within 7 days, regardless of the dog's age.

Schedule 1 [30] amends section 36 (3) (b) of the Principal Act to clarify that an authorised officer may seize an unregistered dog that is the subject of a proposed dangerous or menacing dog declaration without having to wait until that 7 day period for registration has expired.

Schedule 1 [47] and [48] make parallel amendments to those in Schedule 1 [29] and [30] in relation to proposed restricted dog declarations.

Schedule 1 [40] amends section 47 of the Principal Act to enable the Local Court to order an owner of a dog to undertake responsible pet ownership training in specified circumstances, being:

- (a) in proceedings for an offence under section 16, 17, 49, 51 or 56 of the Principal Act, or under section 35A (Causing dog to inflict grievous bodily harm or actual bodily harm) of the *Crimes Act 1900*, or
- (b) on an appeal against the declaration by an authorised officer of a council that a dog is a dangerous dog or a menacing dog or against a council's refusal to revoke such a declaration, or
- (c) on the Court declaring the dog to be a dangerous or menacing dog.

Schedule 1 [41] amends section 48 of the Principal Act to provide that the Local Court must, except in exceptional circumstances, make a destruction order in relation to a dog on conviction of the owner of the dog of an offence involving the serious injury or death of a person caused by the dog.

Schedule 1 [55] provides for the making of savings and transitional regulations.

Schedule 2 Amendment of Companion Animals Regulation 2008

Schedule 2 [1] removes an exemption from the prohibition on the sale of unidentified companion animals that applies to a sale by a recognised breeder to a pet shop if, at the time of the sale, the animals is less than 12 weeks old.

Schedule 2 [2] increases certain registration fees.

Schedule 2 [3] and [13] provide for the annual indexation of those registration fees.

Schedule 2 [4]–[5], [7]–[9] and [11] make consequential amendments following on from the amendments made by **Schedule 1**.

Schedule 2 [6] increases the maximum fee for issuing a certificate of compliance in relation to a prescribed enclosure for a dangerous dog.

Schedule 2 [10] and [12] increase penalty notice amounts for certain offences.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

Schedule 3 makes a consequential amendment.