



New South Wales

Companion Animals and Other Legislation Amendment Bill 2018

Explanatory note

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

Overview of Bill

The object of this Bill is to implement the Government's response to the Final Report of the Joint Select Committee Inquiry into Companion Animal Breeding Practices in New South Wales, and make other amendments about the welfare of animals and the duties and responsibilities of their owners, as follows:

- (a) by requiring permits to be obtained annually for dogs that have been declared to be restricted dogs or dangerous dogs and for cats that are not desexed by the time they are 4 months old,
- (b) by adding to the information about companion animals and their current and former registered owners that is required to be recorded on the Register of Companion Animals,
- (c) by extending the range of persons who can obtain access to that Register, including by providing for members of the public to find registration information and verify microchip numbers and other identifying details,
- (d) by increasing by 10 penalty units (currently \$1,100) the maximum penalty for a second or subsequent offence of failing to register a companion animal,
- (e) by increasing the maximum penalty for the offences of denying entry to an assistance animal, or unlawfully imposing a charge for entry of an assistance animal (from 8 penalty units to 15 penalty units, that is, from \$880 to \$1,650),
- (f) by regulating advertisements about dogs or cats (including an unborn dog or cat, and an animal that is to be given away) to ensure that they include identifying information about the animal,

- (g) by giving inspectors the power to require a person to produce documents, in limited circumstances,
- (h) by extending the power of courts hearing criminal proceedings for animal cruelty offences and certain other offences to make orders requiring the accused person to reimburse a person or organisation that incurred costs for the care of animals incurred as a result of the offence or those proceedings,
- (i) by authorising courts to disqualify persons convicted of animal cruelty offences from keeping, or participating in keeping, animals in the future.

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 repeals an uncommenced amendment to the *Companion Animals Act 1998* as a consequence of the re-arrangement of provisions of that Act by the proposed Act.

Schedule 1 **Amendment of Companion Animals Act 1998** **No 87**

Annual permits required for certain companion animals

Schedule 1 [6] inserts the following provisions that require an annual permit, in addition to the current lifetime registration, for certain animals (to give effect to Recommendation 3 of the Committee's report):

- (a) **Proposed section 11B** requires the owner of a cat that is 4 months old or older and has not been desexed to ensure that a permit is in force for the cat. A period of grace is provided, allowing the owner until the cat is 6 months old to apply for a permit and allowing a person who becomes the owner of an older cat a 2-month period in which to apply for a permit. (The transitional provisions inserted by **Schedule 1 [22]** make it clear that the new permit requirement will not apply to a cat that was registered before the proposed section commences.)
- (b) **Proposed section 11C** requires the owner of a dangerous dog to ensure that a permit is in force for the dog. (The transitional provisions inserted by **Schedule 1 [22]** apply the requirement to a dog that was declared to be dangerous before the proposed section commences.)
- (c) **Proposed section 11D** requires the owner of a restricted dog to ensure that a permit is in force for the dog. (The transitional provisions inserted by **Schedule 1 [22]** apply the requirement to a dog that was declared to be restricted before the proposed section commences.)
- (d) **Proposed section 11E** provides for a council to give the owner of a companion animal that is not the subject of a permit required by the Act a notice requiring the person to ensure that a permit is obtained within 14 days.
- (e) **Proposed section 11F** exempts companion animals that are in the custody of a rehoming organisation from the application of the obligations to obtain permits imposed by proposed sections 11B, 11C and 11D.
- (f) **Proposed section 11G** exempts certain other companion animals from the operation of the obligation to obtain a permit and provides for the regulations to exempt further classes of companion animals.
- (g) **Proposed section 11H** provides that a person is taken to commit a separate offence under proposed section 11B, 11C or 11D for each calendar month that the relevant companion animal is not the subject of a permit.

- (h) **Proposed section 11I** provides for the making of an application for a permit.
- (i) **Proposed section 11J** provides for the issue of a permit.
- (j) **Proposed section 11K** provides for the imposition of conditions on a permit.
- (k) **Proposed section 11L** provides that a permit continues in force for a period of 12 months unless it is sooner surrendered or revoked or it otherwise ceases to be in force.
- (l) **Proposed section 11M** provides that if a companion animal that is the subject of a permit is sold, the permit continues to apply to the companion animal for the remainder of the term of the permit unless it is sooner surrendered or revoked or it otherwise ceases to be in force.
- (m) **Proposed section 11N** provides that the regulations may make provision for or with respect to applications for and the issue of permits, fees and other matters relating to permits.

Schedule 1 [9] includes in the list of control requirements with which owners of dangerous or menacing dogs must comply a requirement that a dangerous dog must be the subject of a permit issued under the Act.

Schedule 1 [11] includes in the list of control requirements with which owners of restricted dogs must comply a requirement that the dog must be the subject of a permit issued under the Act.

Schedule 1 [16] includes a specific reference to permit fees paid under the Act in a section that specifies the amounts that must be paid in the Companion Animals Fund.

Schedule 1 [17] specifically authorises the Chief Executive of the Office of Local Government (the *Departmental Chief Executive*) to give refunds of registration fees, permit fees or other amounts payable under the Act.

Schedule 1 [22] inserts savings and transitional provisions which have the effect that:

- (a) the new permit requirement does not apply to cats registered before the requirement commenced, and
- (b) the new permit requirements extend to dogs that were declared dangerous dogs or restricted dogs before the requirements were imposed.

Keeping of the Register of Companion Animals

Schedule 1 [15] inserts the following provisions about the keeping of the Register of Companion Animals (the *Register*) (to give effect to Recommendation 34 of the Committee's report):

- (a) **Proposed section 78** inserts definitions.
- (b) **Proposed section 79** provides for the Departmental Chief Executive to keep a Register of Companion Animals.
- (c) **Proposed section 80** lists the information that the Register must contain. The additional information includes the following:
 - (i) information about current and former owners of registered companion animals,
 - (ii) identification information about companion animals, including the microchip identification number, breeder identification number and rehoming organisation number, if any,
 - (iii) information about breeders of animals.

Schedule 1 [14] omits existing provisions about the keeping of the Register and access to it.

Access to the Register of Companion Animals

Schedule 1 [15] also inserts the following provisions about access to the Register of Companion Animals (to give effect to Recommendation 34 of the Committee's report):

- (a) **Proposed section 81** requires the Departmental Chief Executive to provide access to the Register free of charge.
- (b) **Proposed section 82** provides that the owner of a companion animal is entitled to access information contained in the Register, but only for the purpose of notifying, in accordance

with section 11, changes in the registration information or identification information of any companion animal owned by the person.

- (c) **Proposed section 83** provides members of the public with limited access to information contained in the Register, but only for the purposes of determining whether a companion animal is registered or the subject of a permit, verifying breeder identification numbers, microchip identification numbers or rehoming organisation numbers or for the purposes of determining the business name of any breeder that corresponds to a breeder identification number, or the details of any animal or rehoming organisation, that correspond to any of those numbers. (This gives effect to Recommendation 15 of the Committee's report.)
- (d) **Proposed section 83A** provides that the Minister and any person acting with the Minister's authority is entitled to unrestricted access to information contained in the Register.
- (e) **Proposed section 83B** provides that the Secretary of the Department of Industry and persons authorised by that Secretary are entitled to access information contained in the Register, subject to any restrictions imposed by the Departmental Chief Executive.
- (f) **Proposed section 83C** provides for a local authority to approve employees of the local authority who may access the Register, subject to the control of the local authority.
- (g) **Proposed section 83D** provides for a local council to approve contractors of the council who operate a council pound as persons who may access the Register, subject to the control of the local council.
- (h) **Proposed section 83E** provides that a veterinary practitioner, or an employee of a veterinary practitioner acting under supervision, is entitled to access information contained in the Register, but only for the purpose of locating the owner of a companion animal that is in the custody of the veterinary practitioner or his or her practice.
- (i) **Proposed section 83F** provides for the Departmental Chief Executive to approve other persons accessing the Register.
- (j) **Proposed section 83G** provides for the regulations to authorise general access by specified officers or by certain other persons.
- (k) **Proposed section 83H** provides for the regulations to make further provision about access to the Register.
- (l) **Proposed section 83I** provides for Departmental Chief Executive to issue guidelines about access to the Register.
- (m) **Proposed section 83J** repeats an existing provision that provides for the Departmental Chief Executive to enter into agreements or arrangements about the exercise of the Departmental Chief Executive's functions relating to the Register.
- (n) **Proposed section 83K** provides for the Departmental Chief Executive to provide information to, or enter into arrangements to enable the exchange of information with, other Australian jurisdictions that administer animal welfare legislation.

Schedule 1 [21] exempts information that is disclosed as authorised or required by proposed Division 3 of Part 9 from confidentiality obligations, but only if it is disclosed in accordance with any guidelines issued by the Departmental Chief Executive.

Other amendments about the Register of Companion Animals

Schedule 1 [15] also inserts the following provisions about the Register of Companion Animals:

- (a) **Proposed section 83L** repeats an existing provision about the evidentiary value of certificates relating to the Register.
- (b) **Proposed section 83M** provides for the allocation of breeder identification numbers by the Departmental Chief Executive. Those numbers are required to appear on the Register.
- (c) **Proposed section 83N** provides for the allocation of rehoming organisation numbers by the Departmental Chief Executive. Those numbers are required to appear on the Register.

Amendments increasing maximum penalties for certain offences

Schedule 1 [3] imposes a higher maximum penalty for a second or subsequent offence of failing to register a companion animal from the time the animal is 6 months old, as follows:

- (a) the maximum penalty for a second or subsequent offence of failing to register a cat or a dog that is not a dangerous, menacing or restricted dog will be 60 penalty units (currently \$6,600) (the existing maximum penalty of 50 penalty units (\$5,500) for a first offence is retained),
- (b) the maximum penalty for a second or subsequent offence of failing to register a dangerous, menacing or restricted dog will be 70 penalty units (currently \$7,700) (the existing maximum penalty of 60 penalty units (\$6,600) for a first offence is retained).

Schedule 1 [4] provides for the same increase in penalty for the offence of failing to register a companion animal that is required to be registered by the regulations.

Schedule 1 [5] provides for the same increase in penalty for the offence of failing to comply with a notice requiring the registration of a companion animal.

Schedule 1 [12] increases the maximum penalty for the offence of denying entry to an assistance animal from 8 penalty units to 15 penalty units (that is, an increase from \$880 to \$1,650).

Schedule 1 [13] increases the maximum penalty for the offence of unlawfully imposing a charge for entry of an assistance animal from 8 penalty units to 15 penalty units (that is, an increase from \$880 to \$1,650).

Other amendments

Schedule 1 [1], [2] and [19] update references to the Director-General, replacing them with references to the Departmental Chief Executive.

Schedule 1 [2] also insert definitions of words and phrases used in proposed provisions.

Schedule 1 [7] provides for the regulations to prescribe what constitutes or does not constitute reasonable precautions for the purposes of section 12A, which makes it an offence to fail to take reasonable precautions to prevent a dog from escaping from premises.

Schedule 1 [8] lists some examples of injuries that will constitute “serious injury”, for the purposes of a definition that a dog is “menacing”.

Schedule 1 [10] adds Perro de Presa Canario or Presa Canario to the list of dogs that are restricted dogs for the purposes of the Act. Dogs of that breed are already covered by the definition, since their importation into Australia is prohibited by regulations made under the *Customs Act 1901* of the Commonwealth.

Schedule 1 [18] requires a veterinary practitioner who desexes a female companion animal to ear-mark or tattoo the animal at the same time, unless the veterinary practitioner considers that the procedure cannot be undertaken safely and humanely at that time or the owner of the animal does not consent.

Schedule 1 [20] enables the Departmental Chief Executive to designate organisations as rehoming organisations and to exempt such organisations from the obligations to register any or all companion animals in their custody, and from the requirement to pay fees in relation to permits for, or the registration of, any or all companion animals.

Schedule 2 Amendment of Prevention of Cruelty to Animals Act 1979 No 200

Amendments imposing obligations to include information in advertisements

Schedule 2 [4] inserts a provision that:

- (a) requires a person who advertises that a dog or cat is available for sale, to be given way or to be otherwise transferred, or will be available when it is born, to include either a microchip identification number, breeder identification number or rehoming organisation number in the advertisement (and, since the provision extends to advertising dogs or cats that have

not been born, and will not have a microchip number, the provision will require the person to obtain either a breeder identification number or a rehoming organisation number), and

(b) provides that failure to include or to falsify such a number is an offence.

In each case, the maximum penalty for the offence is 50 penalty units (currently \$5,500). The amendment gives effect to Recommendation 21 of the Committee's report, and extends to a transfer of ownership by way of gift.

Schedule 2 [1] modifies the long title of the Act to include a reference to the matter covered by the proposed amendments.

Schedule 2 [2] includes in the objects of the Act the object of promoting the welfare of dogs and cats by requiring information about them to be provided when they are advertised.

Amendments relating to powers of inspectors

Schedule 2 [5] includes in the powers of inspectors in relation to land used for certain commercial purposes, the power to inspect any advertisement, or means of publishing or broadcasting an advertisement, that is on the land.

Schedule 2 [6] provides for inspectors to examine advertisements and means of publishing or broadcasting advertisements if the inspector suspects that an offence against proposed section 23A has been or is about to be committed in respect of the advertisement.

Schedule 2 [7] gives inspectors the power to require a person to answer questions in relation to matters. The power can be exercised only if the inspector suspects on reasonable grounds that the person has knowledge of the matters in respect of which information is reasonably required for the purposes of exercising the powers of an inspector or determining whether there has been a contravention of the Act or the regulations.

Amendments authorising making of interim court orders about costs of caring for animals

Schedule 2 [8] authorises the Local Court to make interim orders, during criminal proceedings for animal welfare offences, to recover reasonable costs incurred for the care and maintenance of animals, or to provide security for payment of any remaining costs, whether or not the person charged is eventually convicted. (At present, orders for those costs may be made only at the end of proceedings, and only if the defendant is convicted.)

Schedule 2 [11] provides that the proposed amendment extends to criminal proceedings that began, but were not finally determined, before the commencement of the amendment.

Amendments to powers of courts to make orders restricting conduct of a convicted person

Schedule 2 [9] and [10] expand the effect of a court order that disqualifies a convicted individual from owning animals, so that the order also prohibits the convicted individual keeping, or participating in keeping, animals, or being party to an arrangement where he or she is entitled to control or influence how animals are kept. This gives effect to Recommendation 27 of the Committee's report.

Schedule 2 [11] provides that the proposed amendment extends to criminal proceedings that began, but were not finally determined, before the commencement of the amendment.

Minor amendment

Schedule 2 [3] updates a reference to a Department.