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**Companion Animal Legislation**

by

**Marie Swain**

**Briefing Paper No 1/98**

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**Marie Swain**

**NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE**

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**Mr Stewart Smith (9230 2798) Research Officer, Environment**

**Ms Marie Swain (9230 2003) Research Officer, Law/Social Issues**

**Mr John Wilkinson (9230 2006) Research Officer, Economics**

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## **Executive Summary**

In light of the foreshadowed legislation pertaining to companion animals in New South Wales, this Briefing Paper looks at the role of companion animals in modern society (pages 5 to 7) and examines the positive aspect of companion animal ownership (pages 7 to 9) and the responsibilities it brings with it (pages 9 to 11).

It then describes the extensive range of issues canvassed in the Green and White Papers, including: what is meant by responsible care (page 12); the need for community education and awareness (page 12); the identification and registration of companion animals (page 14); the sale and transfer of ownership (page 17); the number of companion animals per household (page 18); breeding control (page 20); specific issues relating to cats such as curfews (pages 21 to 24); specific issues relating to dogs including the concept of ‘dangerous’ dogs (pages 24 to 35); specific issues relating to trained assistance animals (page 35); environmental and health issues posed by companion animals in our community (page 35); fees, penalties and costs associated with owning a companion animal (page 36); and how measures identified as necessary to responsible companion animal ownership can be implemented and enforced.

The approach taken in other Australian jurisdictions, namely Victoria and South Australia are briefly outlined (page 40 to 41).



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## 1 Introduction

The purpose of this Briefing Paper is to look at the issues raised by the New South Wales Companion Animals Working Party <sup>1</sup> ('the Working Party') in its *Companion Animals Green Paper*, ('the Green Paper') released for community comment in May 1996, and the position adopted in the subsequent White Paper <sup>2</sup> in light of the submissions received. Similar measures in other jurisdictions, notably Victoria and South Australia, are also discussed.

The introduction of companion animal legislation in New South Wales has been under consideration for a number of years, first by the former Coalition government <sup>3</sup> and in more recent times, by the Labor government. <sup>4</sup> While such legislation is aimed specifically at cats and dogs, it could be extended to cover any other species kept primarily as companion animals. Currently, dogs are regulated by the *Dog Act 1966* ('the Act'), and there is no legislative equivalent regulating cats. The proposed companion animal legislation is distinct from the *Prevention of Cruelty to Animals Act 1979* (which expressly prevents cruelty to animals and punishes offenders) and aims:

- to actively promote the welfare of companion animals and responsible ownership;
- to educate owners on how these aims can be achieved;
- to strike a balance between the needs of those who own companion animals with those who do not; and

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<sup>1</sup> *NSW Companion Animals Green Paper* developed by the NSW Companion Animals Working Party advising the Minister for Local Government, 1996. Organisations represented on the Working Party were: the Australian & New Zealand Federation of Animal Societies; Australian Institute of Environmental Health; Australian Veterinary Association; Cat Protection Society; Department of Agriculture, Animal Welfare Unit; Dog Industry Advisory Council; Domestic Animals Birth Control Co-operative Society; Guide Dog Association of NSW & ACT; Local Government and Shires Associations of NSW; NSW Animal Welfare League; RAS Cat Control; Royal NSW Canine Council; Royal Society for the Prevention of Cruelty to Animals; WIRES; Department of Local Government; and the Minister's Office. A representative of the Animal Welfare Advisory Council (AWAC) was appointed, however, the AWAC decided to decline representation, preferring to participate in the general consultation process.

<sup>2</sup> *Companion Animals White Paper* ('the White Paper') released for public comment by Hon E Page MP, Minister for Local Government, December 1997. The closing date for submissions is 13 February 1998.

<sup>3</sup> 'Government on prowl against cat menace', *Sydney Morning Herald*, 9 June 1992; 'Cats will get it in the neck in new plan', *Sunday Telegraph*, 14 June 1992; and 'Stray cats death knell', *Telegraph Mirror*, 30 September 1994.

<sup>4</sup> 'Now its reining cats and dogs', *Telegraph Mirror*, 25 September 1995; 'Law bites pet owners', *Sun Herald*, 3 December 1995; 'New pet laws win council support', *Daily Telegraph*, 19 July 1996; and 'Cats and dogs registered for life in planned law change', *Sydney Morning Herald*, 1 September 1997.

- to take into account the impact of companion animals on the environment, particularly in relation to attacks on native wildlife.<sup>5</sup>

To assist in the implementation and enforcement of this legislation, codes of practice setting minimum standards of care and defining owner responsibilities, have been proposed.

Given the sensitive nature of the topic, striking a balance between all the competing interests, is an inherently difficult task.<sup>6</sup> This was alluded to in the 1981 debate on the Dog (Amendment) Bill by the Minister for Local Government, when he said:

I approached the introduction of this measure to this House with considerable apprehension, as in all the years I have been in public life I have never encountered difficulties greater than those that beset me when the Government set about endeavouring to amend the Dog Act of 1966, which replaced the Dog and Goat Act of much earlier years. When the matter was being discussed within the department, following the receipt of representations from thousands of citizens and many councils in New South Wales ... the harmony that usually exists ... completely disappeared. Owners of terriers, dachshunds, dobermans and chihuahuas all had different points of view as to the appropriateness of the suggestions that had been made. When finally the difficulties experienced in the department were overcome the matter went before Cabinet, where 19 unleashed members of the Cabinet considered the proposals put forward by the department. I could see the need for leads on people when there were 19 different points of view. The possibility of reconciling those points of view seemed remote indeed. I cannot recall legislation that had greater difficulty getting from the Cabinet table to the Parliament than this Dog (Amendment) Bill. Although I found it an interesting experience, the suggestion that something similar should be done about cats completely appalled me. As a result of the difficulties I have had with an animal that is far more tractable than cats, there is no prospect of my endeavouring to find a solution to their problem.<sup>7</sup>

Similar sentiments were expressed in the Victorian and South Australian Parliaments during the passage of their respective companion animal legislation.

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<sup>5</sup> Green Paper, p7.

<sup>6</sup> According to the White Paper, more than 4600 submissions were received by the Department of Local Government in response to the Green Paper.

<sup>7</sup> Hon HF Jensen MP, *NSWPD*, LA, 3 March 1981, pp4345-4346.



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## 2 The role of companion animals in modern society

While the majority of animals kept in our society are kept as pets, some are kept for more functional purposes such as guard dogs, guide dogs used by those with physical disabilities, dogs used as working animals on rural properties<sup>8</sup> or by the police, customs, or those in the security industry. To ensure all these aspects of animal ownership are addressed, the Working Party has defined a companion animal as ‘any animal which is kept for the mutual welfare and benefit of the animal and its carer. It may be kept primarily as a companion or pet, for protection or for providing assistance to its carer, such as for working purposes or for providing assistance for people with disabilities.’<sup>9</sup>

According to a study released in 1995,<sup>10</sup> caring for a pet is the norm in Australia. In 1994, 66% of Australian households owned a pet: 57% owned a dog or a cat; 42% owned a dog and 31% owned a cat. There were approximately 3.8 million dogs and 2.9 million domestic cats Australia wide at that time, with New South Wales accounting for 1.226 million dogs and 865,000 cats. When market research figures were first collected in 1966, the total number of owned dogs in Australia was estimated to be 1.3 million. From 1978 to 1988, the number of dog-owning households increased from 1.74 million to 2.13 million households. It is clear from these figures that owning pets has become more popular over time.<sup>11</sup> Responses to the *National People and Pets Survey*<sup>12</sup> confirmed the relatively high level of current pet ownership and revealed that pets were part of the family for more than four out of five Australians. 53% of people who did not currently own an animal said they would like to have a pet in the future. The main reasons given for not owning a pet were: living in accommodation not suited to a pet, such as rental property or accommodation without yard space, and no one at home to care for a pet.

Figures provided in a report by BIS Shrapnel<sup>13</sup> show that the popularity of companion animal ownership has created one of the largest industries in Australia, employing over 30,000 people and contributing around \$2.2 billion to the economy annually (a third of which - \$720 million - was spent in New South Wales). Of the total annual expenditure on pets, 60% is spent on dogs and 33% is spent on cats, with food for pets accounting for a

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<sup>8</sup> Reference is made to the need when developing any new legislation to give specific consideration to working dogs on rural properties, Green Paper, p31.

<sup>9</sup> Green Paper, p61.

<sup>10</sup> Reark Research Report, *Pet Care Industry Statistics 1994*, prepared for the Petcare Information and Advisory Service, Melbourne, 1995.

<sup>11</sup> Harlock Jackson, *Public Open Space and Dogs: A Design and Management Guide for Open Space Professionals and Local Government*, prepared for the Petcare Information and Advisory Service, 1995. [Http://www.petnet.com.au/openspace](http://www.petnet.com.au/openspace).

<sup>12</sup> McHarg M, Baldock C, Heady B and Robinson A, *National People and Pets Survey*, A Report to the Urban Animal Management Coalition, Sydney, 1995. [Http://www.petnet.com.au/People and Pets/52UAMR.HTML](http://www.petnet.com.au/People and Pets/52UAMR.HTML)

<sup>13</sup> BIS Shrapnel, *Contribution of the Pet Care Industry to the Australian Economy*, 1995.

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little over 50% of expenditure and veterinary services for 21% of money spent by owners. Moreover, exports of processed pet food are significant to Australia's overseas earnings. These exports totalled \$204 million in 1994 and showed a 72% increase over 1992 figures. Exports of pets and pet-related products totalled \$260 million and again showed significant percentage increases. According to BIS Shrapnel, 'the pet industry, therefore, is a large sector that contributes significantly to Australia's economy. Most importantly, the pet care industry is growing, so the contribution will increase even further.'<sup>14</sup>

A 1992 study<sup>15</sup> identified an emerging pattern of attitudes in the Australian community which strongly favours increased pet ownership and a stronger commitment to the care of pets. This trend was said to be in response to the 'relentless pace of social, cultural, economic, political and technological change which has so profoundly destabilised Australian society in the 1980s and into the 1990s'.

As a consequence, according to one of those who prepared the study, Hugh Mackay, there have been three primary effects, all of which are relevant to the question of pet ownership and care: (i) there has been a widespread sense of loss of control of our lives; (ii) a growing sense of isolation, as a direct result of the fragmentation of families and households and a feeling that the traditional Australian neighbourhood is under threat; and (iii) Australians have lost confidence in their future and in the future of Australian society. Morale is down and people have a strong need for comfort, reassurance, ritual and other experiences which will reassure them and help to rebuild their confidence in their own future.

Mackay argues that these shifts in social attitudes help to explain the increasing value which Australians are placing on the role of pets in their lives:

Stress and loneliness are very undesirable states for human beings to find themselves in, and pet ownership is looming larger than ever as a therapeutic strategy deliberately calculated to reduce stress and to relieve the pain of loneliness.<sup>16</sup>

Similar sentiments were still evident in a more recent study conducted by Mackay in 1996. He writes that:

At various points in the discussion ... participants felt that it was time to 'cheer up'. Recognising that much of the discussion had been bleak and negative, conscious attempts were made to find 'something positive to say'. The two topics most likely to arise in this context were sport and pets ... pets are the reliable providers of companionship of a particularly undemanding kind ... While pets continue to be the object of some hostility - notably involving dog droppings on suburban footpaths, and

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<sup>14</sup> BIS Shrapnel, op cit.

<sup>15</sup> MacCallum Research in association with Hugh Mackay, *What Australians feel about their pets: A study of our attitudes to cat and dog ownership*, prepared for the Petcare and Information and Advisory Service, 1992. [Http://www.petnet.com.au/mccallum/](http://www.petnet.com.au/mccallum/)

<sup>16</sup> Mackay H, *What Australians feel about their pets: A study of our attitudes to cat and dog ownership*, op cit.

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cat attacks on native fauna - pet owners regard their pets as being an integral part of their lives; therapeutic contributors to their sense of well being; companions of the most reliable and undemanding kind.<sup>17</sup>

### 3 Positive Aspects of Companion Animal Ownership

Jackson<sup>18</sup> cites the following as some of the positive aspects of pet ownership:

- pets act as protectors and companions. This is particularly so in an era when the population is ageing and more people are living alone;
- pets teach children about sharing, caring, communication and responsibility;
- pets assist with therapy in hospitals, prisons, psychiatric institutions, nursing homes and schools;
- pets relieve stress;
- pets act as an incentive to exercise; and
- pets are good for our health.

The interaction between people and pets is increasingly becoming a subject of scientific research. Hitherto anecdotal accounts that pets are good for us appear now to have some support. Two recent Australian studies suggest there are quantifiable links between pet ownership and certain health benefits. These are:

*Lower risk factors for heart disease and lower blood pressure:* In 1992 a survey of 5741 people attending the cardiovascular risk clinic at the Baker Medical Research Institute in Melbourne found that pet owners had cholesterol levels 2% lower than those without pets. This can lower the risk of a heart attack by 4%. Pet owners also had lower levels of triglyceride fats in their blood and lower blood pressure.

*Less visits to the doctor:* In 1995, 1011 people were interviewed in another Australian study 'The National People and Pets Survey', which found that pet owners visit the doctor less often and take less medication than non-pet owners. Pet owners reported greater satisfaction with their physical fitness and were less likely to report feeling lonely. Many studies have shown that people who are isolated and depressed are more likely to succumb to illness than those who claim to be content. Other studies have shown that companion animals encourage healthier lifestyles, with more exercise and quiet, stress free times.

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<sup>17</sup> Mackay H, *The Mackay Report: Mind and Mood*, No 85, July, 1996.

<sup>18</sup> Jackson V, 'Domestic Pets in New Urban Areas', *Australian Planner*, Vol 31 No 3, 1994, pp148-152.

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Writing in the *Medical Journal of Australia* in April 1996, Dr Warwick Anderson says:

... These and other health benefits - if they are real - must have a significant impact on government health budgets. From the findings of less frequent visits to a doctor in the National People and Pets Survey and estimations of lower use of medication for cardiovascular disease, we calculated these savings to be in the order of \$800-\$1500 million. Necessarily, there are a number of assumptions in this estimate, as we did not have full details of health expenditure for pet owners; we also made assumptions about the extent of apparent benefits for other household members. Of course, there are costs associated with pet ownership, such as veterinarians' bills and increased supermarket bills, that are voluntarily incurred.

Notwithstanding this impressive estimate of health cost savings, the case for these and other health benefits from pet ownership is not proven and better longitudinal and prospective studies are required. In the meantime, the current scrutiny of the problems that irresponsible pet owners cause should be balanced against the positive aspects of pet ownership. For example, 60% of the people interviewed in the National People and Pets survey said they increased their social contacts through having pets and 80% said their pets were a source of comfort when 'things go wrong'. More than 90% felt very close to their pets.<sup>19</sup>

However, the acceptance of such savings to the health budget is not universal. A critique of Anderson's study by Jorm et al appeared in the April 1997 edition of the *Australian Medical Journal*.<sup>20</sup> The authors claim that as the data in the National People and Pets Survey relating to annual visits to a doctor by pet owners as compared with non-pet owners is based on self-report of health service use rather than on objective records, it needs to be viewed with caution. They say it is possible that pet owners under-reported their visits to the doctor relative to non-owners. To verify Anderson's conclusions, Jorm et al conducted an epidemiological survey of elderly people which asked about pet ownership, in which most of the participants gave permission for their Medicare records to be obtained.

There were 594 respondents (80%) comprised of 169 pet owners and 425 non-owners. Permission to use Medicare data was given by 125 pet owners (74%) and 353 non-owners (83%). The authors claim that there were no statistically significant differences between pet owners and non-owners and that 'using Medicare records and a range of health measures, we failed to confirm the findings of the National People and Pets Survey that pet ownership is good for health and reduces use of health services'.<sup>21</sup> They point out, however, that there are certain differences between their study and the Survey in that their participants were all elderly while the National People and Pets Survey involved people over the age of 16. They

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<sup>19</sup> Dr W Anderson, 'The benefits of pet ownership', *Medical Journal of Australia*, Vol 164, pp441-442.

<sup>20</sup> Jorm A, Jacomb P, Christensen H, Henderson S, Korten A and Rodgers B, 'Impact of pet ownership on elderly Australians' use of medical services: an analysis using Medicare data', *Medical Journal of Australia*, Vol 166, 7 April 1997, pp376-377.

<sup>21</sup> *Ibid*, p377.

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say that ‘it may be that pets produce health benefits in younger people that are not seen in the elderly. If so, then the estimate of health-cost savings will need to be reduced because the elderly are the biggest users of health services.’ Another difference between their study and the National People and Pets Survey was the prevalence of pet ownership was lower in their study (28% of participants compared with 60% of households in the National People and Pets Survey), presumably because of the age difference between samples.

They conclude that ‘as use of health services increases with age, our findings suggest that the claim that pet ownership leads to savings in health services should be viewed with caution.’<sup>22</sup>

#### **4 Implications of Companion Animal Ownership**

While pet ownership has many positive aspects, it needs to be acknowledged that it brings with it a number of responsibilities. Owners are responsible for both the care and control of the animal. If companion animals are not responsibly looked after then problems such as the following occur:

- ▶ failure to desex animals leads to an increase in the population, which often then results in unwanted animals either being put down or dumped. While having animals euthanised humanely is obviously more preferable than some solutions, using this method of controlling unwanted animals is somewhat questionable on a philosophic level. It shows a scant disregard for the value of other living things. There is also the issue of what this practice costs councils and organisations such as the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and the Cat Protection Society. Animals handed in have to be housed while attempts are made to find missing owners or new homes, and if after a certain period of time an animal remains unclaimed, it has to be destroyed. Money spent in this way could have been avoided and put to better use. Neglecting or dumping animals is also an inappropriate solution. Once again it shows lack of consideration for the plight of another living thing: animals left unattended are at risk of sickness and disease; injury and starvation; causing a nuisance by raiding garbage bins and scattering the contents; attacking other animals - and inevitably breeding by animals at large will lead to a further increase in the population, perpetuating the problem.
  
- ▶ concern is also expressed that animals left uncontrolled have an environmental impact, particularly on native birds and animals. Using data obtained from members of ornithological societies and natural history organisations on the type and number of native fauna killed by their own cats, Dr David Paton, a zoologist at the University of Adelaide arrived at the following estimates: cats prey on 186 species of native birds, 64 species of native mammals and 97 species of reptiles and amphibians. On his estimates, the domestic cat population in New South Wales and

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<sup>22</sup>

Jorm A, Jacomb P, Christensen H, Henderson S, Korten A and Rodgers B, op cit.

Victoria between them kill almost 60 million vertebrates a year, on average in a hectare of urban land there will be two cats and each will eat eight birds a year, and they also capture around 16 mammals and eight reptiles a year. According to Paton, feral animals cause even greater destruction. He estimated there numbers at 3.8 million and that they would kill about 3.8 billion native animals a year.<sup>23</sup>

However, Dr Chris Dickman, Director of the Institute of Wildlife Research at the University of Sydney writes that:

... Although it is clear that feral cats prey upon a wide variety of native vertebrates, this is not sufficient to conclude that they have adverse effects. Additional information is needed on cat numbers, the numbers of native animals taken as prey and how native species have fared with the introduction of the cat when the effects of other changes wrought by Europeans are removed ... although the major impact of cats may be direct predation or possibly competition, they carry diseases that can have adverse effects on native fauna ... Despite the abundance of observations linking cats to extensive losses of native species, other evidence suggests that their impact has been minimal.<sup>24</sup>

- ▶ diminishing private space means more dogs are exercised in public areas. If dogs are not appropriately controlled there is a risk not only that people and other animals using these facilities may be harmed but also that the animal itself may be injured. Dogs defecating in public spaces is also of concern from both an environmental perspective and from a user perspective. It has been estimated that there are 500,000 dogs in Sydney alone, producing approximately 100 tonnes of excrement a day. Apart from more general health implications, this excrement is said to contribute to faecal coliform pollution of waterways and to assist in the growth and spread of algal blooms.<sup>25</sup>
  
- ▶ dogs left unattended for long periods of time while their owners are not at home can create a nuisance for neighbours.

It is issues such as these which are considered in the Green Paper.

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<sup>23</sup> Anderson I, 'Should the cat take the rap?', *New Scientist*, 21 May 1994, pp13-14.

<sup>24</sup> Dickman C, 'Raiders of the last ark: Cats in island Australia', *Australian Natural History*, Vol 24 No 5, Winter 1993, pp44-52.

<sup>25</sup> Smith S, 'Stormwater Quality and Urban Living', Parliamentary Library Research Service, *Briefing Note* 33/94, pp4-5.

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## **5 Issues Raised in The NSW Companion Animals Green Paper and the White Paper's Comments and Proposals**

The content of both these documents is premised on certain fundamental principles of responsible companion animal care. These are:<sup>26</sup>

All carers have a responsibility to provide their companion animals with:

- safety and protection from injury;
- food, water, shelter, exercise and space that is appropriate to the needs of the animal;
- health care, including vaccination, parasite control and professional veterinarian treatment where necessary;
- identification so that the animal can be safely returned if it is lost; and
- breeding controls to ensure the health of the mother animal and the well being of the offspring. Desexing of animals is encouraged unless they are specifically kept for breeding purposes.

All carers have a responsibility to provide the community with:

- respect for the rights of other animal carers and for people who do not own companion animals;
- protection from nuisance and injury caused by their companion animal;
- protection of other companion animals, livestock and native animals, from their companion animal; and
- protection from stray, dumped and uncared for animals by ensuring responsible breeding practices.

All members of the community have a responsibility to provide animals and their carers with:

- recognition of the benefits that come from keeping companion and working animals;
- respect for the rights of companion animals and their carers; and
- the expectation that responsible standards of companion animal care will be enforced.

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<sup>26</sup>

Green Paper, p8.

## Issue 1 - Responsible Care

While all animals are offered general protection by the *Prevention of Cruelty to Animals Act 1979*, there is no clearly stipulated and enforceable definition of what is meant by ‘responsible care’ in relation to the ownership of cats and dogs. Although there are certain requirements currently made of dog owners under the *Dog Act 1966* (for example, all dogs over six months of age are to be registered), there is nothing specific regarding ‘responsible care’. As stated earlier, there are no legislative requirements regarding ownership of cats.

*Green Paper:* The Working Party proposed standards of care, in line with what the community accepts as responsible, be outlined in a code of practice. Such a code would provide an owner with clear guidelines for the care of the particular animal and at the same time provide those charged with ensuring animal welfare with objective criteria against which the care of the animal could be measured. These codes would address issues such as the animal’s general welfare; health; nutritional requirements; housing and hygiene. Different requirements in relation to control of the animal could be specified depending on whether the animal has been desexed or not. It should be pointed out, however, that while such codes may make it easier to define an owner’s responsibility towards his or her animal and towards others in the community, the problem of enforcement remains.

*White Paper:* In this document it is stated that the proposed legislation will incorporate specific Codes of Practice for the Care and Management of Companion Cats and Dogs, which will clearly define what can be considered ‘responsible care’. Failure to comply with the Codes will not be an offence in itself, but may be used as evidence for an offence under the legislation.<sup>27</sup> The Codes of Practice will define the responsibilities of carers to their animals. Local councils will also be expected to take responsible care for animals in their keeping, and they must make every effort to return an impounded animal to its owner or to find it a new home. If these efforts fail, however, the proposed law will provide that the animal will be humanely euthanised.

## Issue 2 - Community Education and Awareness

Generally speaking, anyone in the community can own a companion animal,<sup>28</sup> and there is no need to demonstrate any particular knowledge or understanding of what adequate care for a pet entails.

*Green Paper:* The Working Party claimed that ‘knowing what the rules are and why they are there will lead to more co-operation. Educating carers to prevent their dog or cat from

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<sup>27</sup> White Paper, p6.

<sup>28</sup> There are provisions, such as section 19A of the *Dog Act 1966*, which disqualify people from ownership of animals in certain circumstances, such as prior convictions of cruelty to animals.



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becoming a nuisance will avoid many problems'.<sup>29</sup> To improve the level of awareness on such issues, it was suggested by the Working Party that a statewide co-ordinating mechanism be introduced to ensure appropriate and consistent information is available. At present, members of the public can seek information and advice about their pets from a range of sources including vets, animal welfare organisations, local councils, and breed registration bodies. The point is made that this 'current lack of co-ordination of information about companion animals sometimes results in members of the public not knowing who they can approach for assistance'.<sup>30</sup> It is proposed that such a central mechanism could:

(i) promote educational programs, thereby raising community awareness about responsible pet ownership; (ii) provide advice to people on animal management practices and legislation; and (iii) develop specific codes of practice, standards and best practice guidelines.<sup>31</sup> It is suggested that the initiative could be funded from registration fees received. Both Victoria and South Australia provide a proportion of registration fees to be used for community education.

The Working Party also favoured requiring every council to have a companion animals advisory committee which would co-ordinate local education and develop local companion animal management plans. If such a requirement were made mandatory, attention would need to be paid to ensuring moves taken were consistent with any plan or approach adopted by the statewide co-ordinating body, and that there were valid reasons for any variations in policy from one local government area to another. For example, under the *Local Government Act 1993*, a council has the power to stipulate the types and numbers of animals or birds kept by a householder.<sup>32</sup> While it is acknowledged that different local government areas can support varying combinations of animals and/or birds, this power should not be used to set a limit because of a like or dislike for particular animals.

*White Paper:* The proposals outlined above are amplified in the White Paper: provision will be made for a proportion of the permanent identification and lifetime registration fees to be used to establish a Statewide Companion Animals Fund; a Companion Animals Advisory Board will be established to advise the Minister in relation to the on-going management of companion animals and to plan and co-ordinate Statewide community education campaigns; and local councils will be encouraged to develop a Local Companion Animals Plan reflecting the special needs of each local community and to establish a Local Companion Animals Advisory Committee.

### Issue 3 - Identification and Registration

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<sup>29</sup> Green Paper, p14.

<sup>30</sup> Green Paper, p15.

<sup>31</sup> Ibid.

<sup>32</sup> Section 124.

The importance of an accurate identification and registration system cannot be overstated. In the twelve months to July 1997, 16,000 cats were destroyed in RSPCA shelters around New South Wales and less than 2% of cats received were collected by owners.<sup>33</sup> Not only would such a system mean that lost, stolen, or injured animals can be returned safely to their owners, but it would allow those responsible for a nuisance animal to be identified, and it would make identification of unowned animals possible.

Currently there is a legislative requirement in relation to the identification and registration of dogs only. The *Dog Act 1966* requires all dogs over six months to be registered annually with the local council.<sup>34</sup> The registered owner of the dog must be a person over 18 or a body corporate.<sup>35</sup> Local councils keep records<sup>36</sup> and issue a registration number and disc for each dog registered.<sup>37</sup> It is an offence to own an unregistered dog. The maximum dog registration fee is \$12.<sup>38</sup> The Regulations make provision for discounted fees in a number of circumstances, for example, if the dog is desexed or is owned by an eligible pensioner.<sup>39</sup>

Despite such legislative provisions, it would appear that the majority of dogs are not registered. It has been estimated that nationally only about 2% of dogs are registered, and in New South Wales the figure has been put at about 30%.<sup>40</sup> While there may be a number of explanations for this including: a lack of awareness of the requirement; a belief that if a dog remains on the owner's property registration is not necessary; cost; and apathy. As well, otherwise responsible owners have cited a lack of perceived benefit for them or their pets. This view is in large part based on experiences where an animal has been lost and registration has not facilitated its retrieval, particularly since registers are kept on a council by council basis - a dog lost in one council area but turning up in another will not be on that council's books. This poses a real difficulty in cases where a dog's collar and registration disc are missing, and there is no other way of identifying the animal.

*Green Paper:* The Working Party outlined a number of options in relation to the identification and registration of both dogs and cats. The first option is to replace the existing council dog registration system with a compulsory permanent lifetime identification system for dogs and cats, with an accessible statewide database under statutory control. A

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<sup>33</sup> Media Release, 'Protecting our cats and dogs', Hon E Page MP, Minister for Local Government, 4 December 1997.

<sup>34</sup> Section 5.

<sup>35</sup> Section 5(1A).

<sup>36</sup> Section 16.

<sup>37</sup> Section 14.

<sup>38</sup> Dog Regulation 1997, Clause 6.

<sup>39</sup> Reduced fees are also available for: a trained hearing or guide dog; a rural working dog; a dog owned by a breeder registered by the Royal NSW Canine Council; a dog kept to assist in the production of veterinary medicines; or one kept for the purpose of greyhound racing.

<sup>40</sup> Green Paper, p16.

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single register, which could be used to identify any animal statewide, is said to have a number of advantages. These include: replacing the need to keep the 177 separate local council registers currently maintained across the State; increasing the ability to return injured and lost animals to their owners, particularly in the situation referred to above, where an animal is injured or found in a local government area other than that in which it is registered; improving customer service by streamlining the administrative processes; and it would lead to efficiency gains and reduced administration costs to councils by the elimination of duplicate systems and processes.<sup>41</sup> To replace lost revenue from annual dog registration, one proposal put forward has been the possible introduction by councils of a companion animals management levy.

The Working Party noted that an appropriate body would need to be designated to implement and maintain such a register and the means by which it would be funded would need to be determined. The onus would still be on the owner to notify details such as death of a registered animal, transfer in ownership or if an animal goes missing. The question of privacy in relation to registration details is addressed in the Green Paper. General privacy rules would apply and the only means by which the register could be accessed would be by the animal's registration number. The organisations permitted access to the register and the scope of information released would need to be defined.

The Working Party referred to a number of available forms of identification for cats and dogs including: a disc worn on a collar; a tattoo in the ear; a microchip implant; or a combination of the above. While a disc containing identification details attached to a collar may be appropriate in some circumstances, the obvious disadvantage is that the disc can become unattached. An identification tattoo while clearly more permanent, presumably needs to be done by a qualified person and under an anaesthetic. If this is the case, cost may be a prohibiting factor for some. Moreover, while remote there is always a likelihood of damage to an ear, such as that sustained in a fight, which may affect the visibility of the identification tattoo. The third suggested means, a microchip implant, would appear to avoid problems associated with these other options. The microchip, which is approximately the size of a grain of rice, is inserted under the skin at the back the animal's neck. The Working Party states that 'once implanted the chip becomes encased in a layer of protein which anchors it in place' and that microchips are 'safe to use, easy to insert and the information contained on them cannot be changed'.<sup>42</sup> When a scanning device is held above the animal, the chip's identification number can be read, which would then permit cross-referencing with owner registration details. To indicate that an animal has a microchip implant, it is common for a small tattoo of the letter 'M' to be done inside the ear. Again the question of the necessity and cost of any anaesthetic would need to be considered.

The use of microchip technology would greatly facilitate the setting up of a central statewide register. Such a system is already in use by breeders of dogs and cats and animal welfare organisations, as a means of providing permanent identification, with details being held by a central national register. According to the Working Party, a disadvantage of micro

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<sup>41</sup> Green Paper, p17.

<sup>42</sup> Ibid.

chipping at present is that it can be expensive. To counter this it is proposed that a one-off lifetime identification and registration fee (approximately \$15-\$25) be introduced.<sup>43</sup> Other solutions such as subsidies may also be available. While a one-off registration scheme may have benefits such as reducing costs in the long term and removing the inconvenience of renewal each year, it is important that the cost not put ownership of a companion animal out of the reach of certain groups such as those receiving pensions.

Other options are: requiring all dogs and cats to be micro-chipped as a means of permanent identification but not requiring registration; and continuing the existing system of registering individual dogs annually and introducing similar registration requirements for cats.

*White Paper:* In recognition of the fact that successful implementation of the proposed legislation will result in additional costs to local councils, the White Paper recommends that local councils be given the option of raising operational funding through a special one-off rate increase.<sup>44</sup> Councils would only be entitled to raise this charge if they establish a local advisory committee and engage in extensive community consultation when developing a local management plan.

Other recommendations made in the White Paper are:

- introduction of a compulsory permanent identification and lifetime registration system for cats and dogs with an accessible Statewide register under statutory control. The registered owner will retain all liability for the animal's actions until such time as the Register is notified of change of ownership;
- the preferred means for identifying animals would be a combination of microchip and collar tag. According to the White Paper, 'as implanting a microchip is not an act of veterinary science in New South Wales, there will be provision for certification of implanters, who will be required to comply with a Code of Practice.'<sup>45</sup> Implanters will be responsible for forwarding completed forms to the Register within 7 days of micro-chipping an animal. The Register will have to comply with all government provisions in relation to privacy. However, authorised users (such as councils, vets and animal welfare organisations) will have 24 hour, year round access to the Register; and
- provision will be made for the staged introduction of the fee for dogs and an exemption for cats owned prior to commencement of the new Act to alleviate any potential hardship. Owners of older dogs will have three years to comply with the new lifetime identification/registration requirements and may continue with annual registration during that time. The inclusive cost of purchasing a microchip, having

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<sup>43</sup> Reduced fees would still be available in circumstances where they are currently permitted.

<sup>44</sup> It is estimated that an amount averaged at around \$5 per rateable assessment or 10 cents a week, would be sufficient to provide funds for a proactive council animal management program, White Paper, p8.

<sup>45</sup> White Paper, p10.

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it implanted and registering a cat or dog for life is proposed at \$15 for pensioners and \$35 for the general public.<sup>46</sup>

#### **Issue 4 - Sale and Transfer of Ownership**

*Green Paper:* The Working Party looked at the responsibilities which should attach to those in the business of supplying cats and dogs - pet shops, markets, and breeders - to ensure that many of the problems arising out of the lack of socialization or treatment the animal received when young, are avoided. It is also important to ensure that animals supplied in this fashion are free from disease and health problems. While certain standards have been laid down in the Prevention of Cruelty to Animals (Animals Trades) Regulation 1996 ('the Animal Trades Regulation'), the Working Party recommended that all sales and transfer of ownership of companion animals comply with a more detailed code of practice, which would be included in the proposed companion animal legislation, and cover aspects such as: the minimum age for transfer, general health and vaccination, desexing and permanent identification. It has been suggested that a certificate indicating compliance with such requirements be supplied.

At present there are no controls over private sales or gifts of animals 'free to a good home', and this practice is not without its problems. Just as in the commercial setting, issues such as ill health, poor disposition and lack of socialization may be evident. People may be inclined to respond more on impulse to such ads where an initial outlay of money is not required. This may lead to a more casual approach in the animal's maintenance, and a greater likelihood that inappropriate pets are chosen. It is less likely, for instance, that a person will obtain a Rottweiler or a Doberman on a whim, given the cost of purchasing such an animal. If a person is going to go to this sort of expense, it could be expected that more thought would have gone into the decision and consideration given to whether they have suitable accommodation for a large dog, whether they have time to spend exercising it, whether they are able to afford to maintain it and so on. If a dog is obtained at no initial cost, some of these issues may not have been as thoroughly thought through. Given the potential problems which can arise from animals being given away, some people argue that the practice should be banned altogether. While not adopting this particular line, the Working Party recommended that even people giving animals away, be required to comply with the same code of practice as those involved commercially in the trade of animals.

The Working Party also recommended that desexing of dogs and cats (with the exception of those kept for breeding or working farm dogs) should be strongly encouraged at the time of sale or transfer. It is not clear on whom this onus will lie. Presumably it will be the responsibility of the owner of the animal who has had the puppies or kittens to ensure all the offspring have been desexed before they are sold or given away, as this is the only way of guaranteeing that those animals are in fact desexed. If this is the case, then the cost for the owner of the parent animal (which in most instances will be the owner of a female animal) may be significant. This figure would include not only the cost of the actual operation to

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<sup>46</sup> Media Release, 'Protecting our cats and dogs', Hon E Page MP, Minister for Local Government, 4 December 1997.

desex the animals, but also the associated food and maintenance costs until they have reached the appropriate age for desexing (six months is commonly given as an appropriate age, although there are differences of opinion on this). Given that cats and dogs tend to have a number of offspring in any one litter, the cost of ensuring all animals are desexed prior to sale or transfer of ownership could be prohibitive. If the onus is on the owner of the parent animal, it may lead to puppies and kittens being dumped or inhumanely destroyed to avoid the cost. If, as would appear reasonable, the responsibility and cost of desexing the animal is on the person taking or buying it, there is no guarantee that an animal will be desexed in the future. The question of compulsory desexing has been raised and is discussed in detail in a later section.

*White Paper:* The proposed legislation will require all sales and transfers of cats and dogs (including private sales and gifts) to comply with the provisions of the Animal Trades Regulation, which has been designed for all those involved in the breeding and sale of puppies and kittens, including all breeders, pet shops and market stall holders. The new law will require all animals to be permanently identified (microchipped) and registered by 10 weeks of age (or at the point of sale or transfer, if sooner) and the desexing of animals not specifically kept for breeding purposes will be encouraged. It is still not clear upon whom the onus, and ultimately the cost, will lie for ensuring the animal is identified and registered. Moreover, if an animal is to be registered and identified by 10 weeks of age, it is highly likely that it will be too young to be desexed. This means any incentive of offering reduced registration fees for animals that have been desexed will be nullified.

## **Issue 5 - Numbers of Dogs and Cats**

There is no specific legislative provision limiting the number of cats or dogs a person can own. Under the *Prevention of Cruelty to Animals Act 1979* any restrictions on owning animals is based on the standard of care provided and the general welfare of the animals. There is, however, a power under the *Local Government Act 1993* which enables a council to issue an order to the occupier of premises on which 'an inappropriate number or kind' of animals are being kept.<sup>47</sup> Individual councils may develop a policy limiting the number of animals, including cats and dogs, which can be kept on a property. This policy is then used as a bench mark to establish the 'relevant standards or requirements' in the area. Failure to comply may give rise to an order being served. Natural justice provisions in the Act ensure that a person on whom such an order is to be served is given the opportunity to show cause why the policy should not apply to them. This submission is dealt with on its merits. Failure to respond can be seen as acceptance that there are no reasons why the policy should not apply.<sup>48</sup>

*Green Paper:* Three options were put forward by the Working Party in relation to limiting

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<sup>47</sup> Order 18, Section 124.

<sup>48</sup> Green Paper, p21.

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the numbers of dogs and cats: <sup>49</sup>

- 1 Define in the proposed legislation the number of animals which can be kept so that the same standard applies throughout the State;
- 2 Set no limit on the number of companion animals a person can keep as long as the carer complies with minimum standards of animal care and community amenity, included in the legislation; and
- 3 Maintain the current system under the *Local Government Act 1993*, where individual councils can issue an Order in specific instances limiting numbers of animals to be kept.

As the Working Party pointed out, what constitutes ‘too many animals’ depends very much on the individual circumstances. These can vary not only from one local government area to the next, but also within a particular council area. This makes setting an overall policy, which stipulates a finite number of animals permitted per household, extremely difficult. A household, where a number of dogs are kept, which is situated on a large block of land in an outer suburb with sufficient distance between neighbouring properties may not pose a problem, whereas a dog left to its own devices in a small courtyard of a semi in the inner city where the owner is out all day may.

Another issue often raised is that local government areas may vary in their ability to support different mixes and levels of animals, and that it is important, therefore, for each individual council to be able to determine what is appropriate. It is argued, for example, that cats in areas bordering national parks, nature reserves or bushland should be limited in number, if not prohibited altogether. The Working Party canvassed the possibility of councils with areas designated as ‘critical habitat’ under the *Threatened Species Conservation Act 1995*, being able to introduce local animal management plans placing restrictions on cats. In the short term this would permit the introduction of a curfew, with a view to banning all cats in the longer term. This would be done by preventing people from bringing new cats into the area and could go as far as stipulating for new housing estates at the development approval stage, that no cats were to be allowed in the area.

This may be too simplistic an approach. As stated above, not only are there variations within a local government area, but often problems related to animals have their origins in the treatment they receive from their owners. Any animal which is neglected, ill-fed and left to wander is going to present more of a problem than one which is well-cared for and properly maintained. There is probably sufficient reason to retain a provision which allows a council to serve an order on an occupier of premises where ‘inappropriate numbers or kinds’ of animals are being kept. However, caution needs to be exercised in setting more general policies which limit the numbers or types of animals kept. This is so not only for the reasons referred to above, but also to ensure that decisions are not taken based on a like or dislike of particular animals.

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<sup>49</sup> Green Paper, p21.

Some councils such as Cessnock City Council, Hurstville and Wyong have already taken steps to restrict numbers of companion animals.<sup>50</sup> The preferred option put forward by the Working Party is that which does not limit the number of companion animals a person can keep, as long as minimum standards of animal care and community amenity to be spelled out in the legislation, are complied with.

*White Paper:* The proposed legislation will not limit the number of companion animals which can be kept as long as the carer ensures that both the welfare of animals and community amenity is maintained. Councils will retain their ability under the *Local Government Act 1993* to limit numbers in particular instances and non-compliance with the Codes of Practice will give rise to the serving of an Order 18 under section 124 of that Act.

### **Issue 6 - Desexing and Breeding**

Ever increasing numbers of unwanted companion animals pose a number of problems for the community. As there are no legislative provisions requiring controls to be placed on breeding, this situation is difficult to avoid.

*Green Paper:* The introduction of compulsory desexing for the majority of cats and dogs owned as pets was raised as a possible option by the Working Party. This suggestion came with the caveat, however, that such a measure could only be required if there was community support for it. Other issues, such as the assessment of the long term impact on breeding stock, and maintaining affordability and choice of pets also need to be taken into account in any option put forward as a means of controlling animal populations. Actively encouraging owners to desex their animals is seen as a useful first step.

Apart from the obvious benefit of halting uncontrolled breeding, desexing animals is said to make them less aggressive. Entire (the term used by breeders for a non-desexed animal) companion animals are more liable to create a nuisance in the community, with males more likely to defend their territory and females more likely to defend their young. Animals which have been desexed have less tendency to stray and to fight. Reasons given for not desexing animals or delaying it, sometimes are linked to the gender of the animal. For instance, it is not uncommon for owners of female animals to express the view that 'they should be allowed to have at least one litter'. This statement seems to be tied to some notion of maternal fulfilment. Animals are incapable of such sentiments and do not experience anguish as a result of never reproducing. It is often the case that owners of male animals are reluctant to have them desexed as it is seen as some sort of threat to the animal's masculinity. Views such as these need to be overcome to prevent the increase in unwanted cats and dogs and the concomitant problems that result. Other mechanisms such as incentives to encourage compliance, for example, offering reduced registration fees for desexed animals or the imposition of more stringent requirements on owners of animals

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<sup>50</sup> 'Households limited to 2 dogs, 2 mogs', *Newcastle Herald*, 22 October 1992; 'Feathers fly over curb on backyard pets', *Sydney Morning Herald*, 24 November 1994, and 'Backyard animals forced to face home alone on the range', *Sydney Morning Herald*, 27 June 1996.



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which have not been desexed to keep them under ‘lock and key’, may need to be introduced.

*White Paper:* The proposed legislation will actively promote, through community education, the desexing of companion animals unless specifically kept for breeding purposes. The 1994 National People and Pets Survey revealed that of those surveyed, 90% of owned cats and 61% of owned dogs had been desexed. This would seem to indicate that community education has been a largely successful strategy with a majority of owners choosing to have their animals desexed. However, numbers of stray and abandoned animals will be carefully monitored during the introduction stage of the proposed legislation and, if necessary, strategies in relation to desexing of animals will be reviewed.

### Issue 7 - Cats

As stated above cats currently have no legal status. Making provision for them in any companion animal legislation would provide cats and their owners with similar rights, protections and responsibilities as dogs and their owners.

*Green Paper:* The Working Party discussed the need to differentiate between essentially three different sub-sets of the cat population present in our community. There are **owned cats**, (cats dependent on one or a few households to sustain themselves and for which someone accepts responsibility); **stray cats**, (cats dependent on humans or the activities of humans but for which no person is identified as responsible); and **feral cats** (cats not directly dependent on humans or the activities of humans to sustain themselves). This categorisation is not universally agreed upon. Some make no distinction between stray and feral, using either term synonymously to mean an unowned cat. Others take the view that any owned cat which is dumped or lost is capable of becoming a feral cat.

For the purpose of the proposed companion animal legislation, the issue is avoided by dividing the cat population into those that are owned and those that are not. Any distinction between ‘stray’ and ‘feral’ has been removed. In this way different objectives in relation to each of the groups can be specified. The aim for the ‘owned’ group of cats is to encourage owners to look after them more responsibly, which includes ensuring they are easily identifiable, that they are desexed, and that the potential for causing nuisance or damage in the community is minimised, if not reduced. It is then possible to distinguish the approach to be taken in relation to unowned cats. In essence, provisions will be made permitting cats that cannot be identified as belonging to someone to be destroyed. Whether any attempt to find homes for such animals would be made or whether there would be a ‘period of grace’ before they were euthanised, is not discussed in the Green Paper.

*White Paper:* Carers of cats will have similar rights and responsibilities as carers of dogs. They may be subject to a similar range of offences as those for carers of dogs if they fail to provide responsible care for their companion cat. Provisions for companion cats and their carers include:

- carers are responsible for preventing their cat from causing injury or damage to any

person, animal or property;

- carers are responsible for preventing their cat from causing a nuisance in a public or private place;
- cats are prohibited from certain places such as shopping areas and school grounds;
- individual cats may be subject to a nuisance or destruction order;
- a stray or nuisance cat found in a designated area set aside for protection of wildlife may be seized and detained. Designated areas may be those defined by the Minister for the Environment or local areas defined by a council in their local companion animal management plan. Such plans are to be prepared in consultation with the local community;
- clear procedures will be laid down to assist councils in dealing with a complaint that a cat is causing a nuisance.
- a cat whose owner is not known may be caught by an authorised council officer or, where this is not practicable, with the consent of an authorised council officer. The cat must then be delivered to the local pound or animal shelter used by the local council; and
- any action to catch or otherwise restrain a cat on a property onto which it has strayed may only be taken by the property owner if the cat is endangering the life of a person, bird or animal.

### **Issue 8 - Cat Curfews**

The issue here is twofold: first, whether cats should be contained on their own property and if so, whether this should be required at all times or just at night. Part of the problem to date with cats roaming unsupervised outside their owner's property is that there is no legislative provision comparable to that which applies to owners of dogs. Under the *Dog Act 1966* it is an offence to let a dog wander in a public place if it is not under 'effective control'.<sup>51</sup>

Given the fact that dogs are generally larger than cats and have the potential to inflict greater damage, requiring dogs to be restrained would seem to many to be an acceptable proposition. While unrestrained cats obviously do not pose the same sorts of problems as unrestrained dogs, there are nevertheless many in the community who argue that cats should be more strictly controlled. For some it is the sheer nuisance of someone's else pet coming into the yard, perhaps rummaging through the garbage, fouling in the garden or fighting and caterwauling in the night, for others the relative freedom of cats is seen as a contributing factor to the destruction of native wildlife, especially at night.

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<sup>51</sup> Section 8 - Control of dogs.

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*Green Paper:* As pointed out by the Working Party:

There is widespread debate about the damage caused by cats' hunting. There are many studies which have conflicting findings. Some show that cats are a real threat to native animals, especially endangered species. Other studies show that cats assist in controlling pests such as mice, rats and rabbits. Further research needs to be done to determine exactly what impact owned and unowned cats have on wildlife and the environment.<sup>52</sup>

In 1991 the Sherbrooke council in Victoria became the first council to act against cats, which were blamed for a rapid decline in the population of lyrebirds. It passed by-laws that required cats to be confined at night and to be registered and identified by a collar, an implanted microchip or a tattoo. To encourage owners to have their cats sterilised, the council charges a reduced registration fee for neutered animals. Other regional centres such as Gladstone, Halls Gap and Hamilton in western Victoria have followed Sherbrooke's lead.<sup>53</sup>

Superficially the concept of containing a cat would appear to be no more difficult than containing a dog. However, the fact that barriers such as fences which are adequate to limit a dog's movements, are of limited use when it comes to cats, makes the proposition inherently more difficult. The options are: keeping the cat solely indoors; providing it with a 'cat run', which is a secure enclosure large enough for it to move around in and which is designed to afford protection from the weather, and letting it out only under supervision, or as a more extreme measure, on a leash. None of these solutions is ideal. Not all cats have the same temperament, some are indoor cats, others most definitely are not; not everyone has the space to build a cat-run and for some people restricting an animal's freedom by putting it in a cage is seen as anathema, and exercising total supervision over a cat is extremely difficult given their speed and agility unless they are restrained in some way such as on a leash. Cats, however, generally do not respond well to being on a leash. Apart from any practical difficulties associated with the options listed above, no allowance is made for the fact that all animals do not have the same temperament and what may be suitable for one animal may be totally unworkable for another.

It is not clear from the Green Paper how a curfew would be enforced and what the penalty regime would be for a breach. Would the animal be seized and the owner, if able to be identified, required to pay a fine ? or would the animal be assumed to be 'unowned' and destroyed ? The view supported by the Working Party is that of undertaking a community education campaign which encourages cat owners to contain animals on their property, especially at night. It goes on to add that further consideration of the options to introduce a compulsory curfew and to enable individual councils to set restrictions for special local areas, needs to be given.

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<sup>52</sup> Green Paper, p28.

<sup>53</sup> Anderson I, 'Should the cat take the rap ?', *New Scientist*, 21 May 1994, pp13-14.

*White Paper:* The proposed legislation does not have any general provision for curfews for cats. Cat owners will be expected to maintain reasonable control of their cats at all times so that they do not create a nuisance or danger within the community and there will be an active community education campaign encouraging carers to contain cats on their property. Specific restrictions may apply to individual cats which are subject to a nuisance order. Such an order may require the owner to:

- restrain the cat on the premises where it is ordinarily kept;
- take all reasonable steps to prevent the repetition of the behaviour that gave rise to the order; and
- comply with any other specific conditions of the order.

Local councils will be required to involve their communities in developing local companion animal plans. In areas where there is a specific habitat of particular wildlife, the local plan may include a provision that people who live in that specifically designated area are: (a) encouraged or (b) required to contain their cats (and dogs) on their own properties, either overnight or at all times. A local plan must be developed in conjunction with the local community. In new release areas which are environmentally sensitive, the local council should develop a local companion animals plan as a matter of course.

## **Issue 9 - Dogs**

This section of the Green Paper looks primarily at questions relating to control of dogs in public places. This aspect appears to have been of equal concern to earlier legislators as evidenced by the preamble to 11 Geo IV No 8 which stated that ‘the Streets of the Towns of Sydney, Parramatta, Liverpool and Windsor (were) infested by the great number of dogs which (were) allowed to go loose at all hours of the day and night to the danger of passengers ...’<sup>54</sup> (Particular issues relevant to ‘dangerous’ dogs and security dogs are discussed in later sections.)

*Green Paper:* At the outset it can be stated that the Working Party recommended a review of the *Dog Act 1966* to ensure appropriate measures for the care and management of dogs are included in any companion animal legislation.<sup>55</sup> In the view of the Working Party, it would be appropriate when considering provisions for inclusion in such legislation to address what have been identified as common criticisms of the current *Dog Act 1966*: that is, the need for clearer definitions; the need to update levels for fees and fines; and the lack of consistency and failure of councils to enforce the Act.

As a general rule, dogs are required to be ‘on a leash, chain or cord’ and under the ‘effective

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<sup>54</sup> Elms E, ‘Canines and the Law’, *Direct Link*, Vol 1 No 7, 1994, DL6-DL7.

<sup>55</sup> Green Paper, p33.

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control of a competent person' when in a public place,<sup>56</sup> although councils may nominate certain areas as 'off-leash' exercise areas.<sup>57</sup> Particular breeds of dog such as greyhounds and, more recently, American pit bull terriers are required to be muzzled in public places.<sup>58</sup> Dogs are prohibited from a number of areas such as public playgrounds, playing fields, public bathing areas, school grounds and shopping areas.<sup>59</sup> The Working Party raised a number of questions relating to these issues, such as whether a dog which responds to voice commands can be described as being under 'effective control'; the degree to which a child can effectively control a large dog on a leash; and whether dogs in off-leash areas can be considered to be under effective control. The Working Party did not offer firm conclusions on these issues, but recommended that the views of the community be taken into consideration.

There are a number of offence provisions in the current *Dog Act 1966* and depending on the circumstances, authorised officers have the power to seize and impound dogs;<sup>60</sup> destroy a dog attacking a person or attacking or threatening to attack livestock;<sup>61</sup> declare a dog dangerous;<sup>62</sup> or order that a dog be destroyed.<sup>63</sup> Owners are liable if their dog injures a person or damages clothing;<sup>64</sup> causes the death of a person;<sup>65</sup> or injures an animal.<sup>66</sup> Many of these offences occur where a dog has not been sufficiently restrained and an attack has taken place. While it is generally acknowledged that all dogs are capable of inflicting injury, certain breeds are considered because of their size and arguably their temperament to be inherently more dangerous than others. This aspect is considered below in Issue 10.

Studies on dog attacks have been conducted from time to time. One such study was conducted by Peter Thompson, an Injury Epidemiologist in the Department of Health at the

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<sup>56</sup> Section 8, *Dog Act 1966*.

<sup>57</sup> Section 8(4), *Dog Act 1966*.

<sup>58</sup> Section 7, *Dog Act 1966*.

<sup>59</sup> Section 9, *Dog Act 1966*.

<sup>60</sup> Section 10, *Dog Act 1966*.

<sup>61</sup> Section 13, *Dog Act 1966*.

<sup>62</sup> Section 9D, *Dog Act 1966*.

<sup>63</sup> Section 9P, *Dog Act 1966*.

<sup>64</sup> Section 20, *Dog Act 1966*.

<sup>65</sup> Section 20A, *Dog Act 1966*.

<sup>66</sup> Section 20B, *Dog Act 1966*.

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University of Adelaide.<sup>67</sup> This study used two data sources: the South Australian Health Commission's Injury Surveillance System, which provided data about all victims of dog attacks who presented to Queen Elizabeth Hospital in Adelaide between January 1990 and July 1993; and the 1992 South Australian Health Omnibus Survey, a population health survey that provides a large representative sample of the attitudes towards health issues and experiences of people aged over 15. In 1992, 3093 randomly selected persons in Adelaide were interviewed and 13 questions were included concerning dog attacks.

Some of the findings which emerged from the data on dog attacks for the period 1990 to 1993 in Adelaide are:

- there were 356 incidents where a person was injured in a dog attack in this period, which equates to 7.3 attacks per 10,000 per year requiring hospital treatment.
- 1 in 20 respondents to the Omnibus Survey reported that they had been attacked by a dog at least once in the past three years, and a third had been attacked more than once. More than half (51%) reported that they had been attacked in a street or public place.
- of the 88 people who reported in the Omnibus Survey that they had been injured by dogs and had required treatment, 35 people (40%) had consulted a doctor and 11 people (12.5%) had sought hospital treatment per year.
- **Table 1** below illustrates the proportion of dog attacks by various breeds, the representation of particular breeds in the total dog population, and the relative risk of attack by those breeds (representation ratio).
- half of the respondents to the Omnibus Survey felt threatened or feared being attacked by dogs.
- extrapolating from the figures of overall rate of presentation to Queen Elizabeth Hospital following a dog attack, the author says 'it could be expected that around 100,000 Australians will be injured and require treatment each year as a result of dog attack and that 13,000 will seek treatment at a hospital'.<sup>68</sup>

The following points are made in the conclusion to the article:

- 75% of all hospital-treated dog attacks in the study were caused by just five of the 160 or so available breeds of dog. Limiting the availability of these breeds would be one way of reducing injury. Alternatively ownership could be restricted to certified owners who accept responsibility to place specific controls (eg obedience

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<sup>67</sup> Thompson P, 'The public health impact of dog attacks in a major Australian city', *Medical Journal of Australia*, Vol 167 August 1997, pp129-132.

<sup>68</sup> Thompson P, *ibid*, p132.

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training) on these breeds.

- More than half the attacks occurred in a street or public place by uncontrolled dogs on the loose. A number of places (the ACT, Brisbane City Council and a number of Victorian councils) have adopted the strategy of requiring all dogs to be on a leash at all times in public. Brisbane City Council also requires mandatory fencing to contain dogs within their owner's property.
- The finding that half of the population surveyed were concerned about being attacked by dogs indicates that strengthening of dog-control policies will be more acceptable to the community than previously thought.

Thompson suggests that one way of reducing dog attacks could be to adopt a 'user pays' approach by introducing a third party insurance scheme. The issue of a registration permit could be conditional on the presentation of a suitable insurance agreement. For low-risk breeds, it is anticipated that there would be no additional premium to standard home insurance cover, but for high-risk breeds an increased premium would be likely. The premium would ultimately be determined by the extent of the claims relevant to each particular breed (ie the performance of the insured determines the cost). The paying of an additional premium would have the effect of deterring 'spur of the moment' buyers by encouraging them to think more carefully when choosing a breed and perhaps buy a lower-risk breed. An associated benefit may result from insurance companies insisting on better ownership practices for particular breeds before issuing policies.

**Table 1**

| <b>Frequencies of dog attack, by breed, Queen Elizabeth Hospital, January 1990 to July 1993</b> |                   |                          |                                |                             |
|---|-------------------|--------------------------|--------------------------------|-----------------------------|
| Breed of dog  | No of dog attacks | % of all dog attacks (A) | % of total dog population (B)* | Representation ratio (A/B)† |
| German Shepherd   | 39                | 25.3%                    | 10.2%                          | 2.5                         |
| Bull Terrier  | 21                | 13.6%                    | 6.6%                           | 2.1                         |
| Blue/Red Heeler   | 21                | 13.6%                    | 7.7%                           | 1.8                         |
| Doberman  | 18                | 11.7%                    | 2.5%                           | 4.7                         |
| Rottweiler  | 14                | 9.1%                     | 4.2%                           | 2.2                         |
| <b>Total</b>  | <b>113</b>        | <b>73.3%</b>             | <b>31.2%</b>                   | -                           |
| Assorted Terriers   | 10                | 6.5%                     | 15.4%                          | 0.4                         |
| Collie (all varieties)  | 6                 | 3.9%                     | 7.4%                           | 0.5                         |
| Labrador  | 5                 | 3.3%                     | 5.5%                           | 0.6                         |
| Mongrel   | 4                 | 2.6%                     | -                              | -                           |
| Greyhound   | 2                 | 1.3%                     | -                              | -                           |
| Cocker spaniel  | 2                 | 1.3%                     | -                              | -                           |
| Kelpie  | 2                 | 1.3%                     | 6.5%                           | 0.2                         |
| Others  | 10                | 6.5%                     | -                              | -                           |
| <b>Total (overall)</b>  | <b>154</b>        | <b>100%</b>              | -                              | -                           |

\* From the 1992 Omnibus Survey (total number of dogs = 1124). This survey also provided information on the distribution of the dog population by breed. The frequency of breeds involved in attacks was converted to a representation ratio to compare the relative risks between breeds. The ratio was calculated by dividing the percentage of attacks per breed by the percentage of the total dog population represented by the same breed. Representation ratios allow confirmation of whether certain breeds of dog attack more frequently because they are more commonly chosen as pets (eg german shepherds may cause 25% of all attacks simply because they comprise 25% of the dog population).

† The representation ratio can be used to compare relative risks between breeds (eg a german shepherd is about five times more likely to cause a hospital-treated injury than a collie). As mongrels, greyhounds, cocker spaniels and the 'other' breeds were less frequently involved in attacks than the labrador and were a smaller proportion of the dog population than the kelpie, their representation ratio is always less.



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From this Table it can be seen that the first five breeds were responsible for 73% of all hospital-treated attacks, yet they represented only 31% of the dog population. The author notes that 'it is possible that more dangerous dogs existed (eg the prohibited American pit bull terrier), but they did not feature in the Injury Surveillance System data because they comprised a small proportion of the dog population'.<sup>69</sup>

More recent figures compiled by the New South Wales Department of Local Government on Reported Dog Attacks between January and June 1997 reveal:<sup>70</sup>

- 486 dog attacks were reported by a total of 50 councils, 21 of the councils were in the Sydney metropolitan area.
- Of these 486 reported attacks, 59% (288) occurred in the street and 35% (169) on private property. Attacks in the streets were most commonly on people and attacks on private property were most commonly on animals.
- 35% (168) of all reported attacks were on adults, with 15% (73) of attacks being on another dog. 10% (49) of attacks were on children (under 18 years of age). The remaining attacks were on a variety of animals and birds (other dogs and cats being the most common). (Note: 18 attacks involved both a person and an animal - the person being injured in trying to stop the attack.)
- 14% (69) of attacks on people (adults and children) resulted in some form of medical treatment being sought - most commonly a tetanus injection or stitches. 15 attacks required some type of hospital treatment.
- 43 breeds of dog were recorded in the reported attacks. 47% (227) of all the reported attacks were either by cross breeds or where the breed of dog was unknown. As evidenced in **Table 2** below, the breed types most commonly reported in the attacks were:

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<sup>69</sup> Thompson P, op cit, p131.

<sup>70</sup> Attachment to Media Release by the Minister for Local Government, Hon E Page MP, 'Two bites and you're out - automatic life ban for dog attacks under NSW laws', 13 November 1997.

**Table 2**

| <b>Rank</b> | <b>Breed Type</b>  | <b>Includes Breeds</b>  | <b>No of attacks</b> | <b>% of attacks</b> |
|-------------|--------------------|---|----------------------|---------------------|
| 1           | Cross              |   | 160                  | 33%                 |
| 2           | Unknown            |   | 67                   | 14%                 |
| 3           | Cattle dog types   | Heeler; Cattle dog;<br>Kelpie   | 58                   | 12%                 |
| 4           | German Shepherd    |   | 54                   | 11%                 |
| 5           | Bull terrier types | American Pit Bull<br>Terrier; Pit Bull<br>Terrier; Bull Terrier;<br>Staffordshire | 48                   | 10%                 |
| 6           | Rottweiler         |   | 45                   | 9%                  |

The first four categories listed were more likely to attack a person, and the last two more likely to attack animals. Of the reported cross breeds, where specific type was identified, the most commonly reported types of cross breeds were Cattle Dog types, Bull Terrier types, German Shepherds, Rottweilers and Terrier types.

In November 1997, as part of the proposed Companion Animals Act, the Government announced that it would include in the legislation, an automatic life ban from owning another dog on those found criminally responsible for dangerous dog attacks, and that maximum penalties for offences involving dogs declared dangerous or of a 'prescribed breed' would be doubled.

*White Paper:* The new legislation will repeal and replace the existing *Dog Act 1966*. Most of the provisions will be transferred, with some being updated and amended. In addition, a specific Code of Practice for all dog owners will be prepared and distributed free of charge when they register their dog, and it will be compulsory for owners to retain a copy.<sup>71</sup> Dog owners will be required to maintain effective control of the animal at all times and will be responsible if the dog:

- attacks, harasses or chases any person, animal or vehicle;
- defecates in any public or private place other than the property of the owner;
- is found in a prohibited place such as a shopping area or school grounds;

If a dog defecates in a place other than the property of the owner, the owner must immediately remove and dispose of the faeces in a way to ensure public health and amenity.

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<sup>71</sup> White Paper, p8.

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A dog in a public place will be required to be on a chain, cord or leash unless it is:

- being exercised in an-off leash area;
- a working stock dog;
- participating in a dog show or obedience class; or
- a police or security dog on duty.

A dog not under effective control and found on property other than that of the owner may be seized and detained by an authorised person or, if that is not practicable, by the property owner with the consent of an authorised person. Any action to catch or otherwise restrain a dog on a property onto which it has strayed may only be taken by the property owner or other person if the dog is endangering the life of a person, bird or animal.

### **Issue 10 - Dangerous Dogs**

Although studies such as those referred to above, seem to indicate that certain breeds of dog are more likely to be involved in dog attacks than others, caution needs to be exercised to ensure generalisations do not occur. To date, the approach adopted under the New South Wales legislation has not been breed specific. The emphasis in general has been on 'the deed, not the breed' and on the owner who has allowed the dog to pose a menace. Amendments were made to the legislation in 1993 to cover this situation. In the Second Reading speech to the Dog (Amendment) Bill and the Crimes (Dogs) Amendment Bill, the Minister for Local Government made the following points:

The object of these Bills is to put in place stronger measures which may be taken against irresponsible dog owners. The Bills focus in particular on owners whose dogs have shown vicious behaviour and which may have already caused harm. While everyone in the community may not own a dog, there are few who are unaffected by dogs in their daily lives. The vast majority of dogs provide benefits to society through companionship or working skills. However, a small minority may pose a significant danger if uncontrolled. Responsible dog ownership is therefore imperative for the good of all in the community ... There is, however, an element which does not observe these basic rules and it is here that the potential for harm arises.

The aim of the amendments is to build upon the existing legislation to encourage responsible dog ownership. The bills make irresponsible owners more accountable for their actions, especially where their dogs have been proven to be dangerous to persons or animals. The measures will also reduce the likelihood of harm occurring in the first place ... With the provisions of the Dog (Amendment) Bill and the Crimes (Dogs) Amendment Bill, the Government is fixing the responsibility for a savage dog squarely on the person who must control the animal - the owner. It is recognised that the problem of savage dogs in the community does not originate with the dog but with the owner ... I turn now to the Dog (Amendment) Bill. Councils will be given powers to declare any savage dog which is ordinarily kept in its area as 'dangerous'. The

owner of a dog declared dangerous is then subject to stringent requirements to control that dog and to increased liability for harm caused by that dog.<sup>72</sup>

Following these amendments, individual councils and local courts have the power to declare a dog ‘dangerous’ if it has, without provocation, attacked or killed a person or an animal, or repeatedly threatened to attack or chase a person or an animal.<sup>73</sup> An owner is notified of council’s intention to declare a dog dangerous and given seven days to object.<sup>74</sup> If the council then declares the dog dangerous, the owner is so notified and given an opportunity to appeal the council’s decision to the Local Court.<sup>75</sup> The owner of a dog which is declared dangerous must comply with control requirements which include:<sup>76</sup>

- keeping the dog under effective control at all times so as to prevent it from attacking any person or animal;
- keeping the dog on a lead at all times if away from the premises where the dog is ordinarily kept;
- displaying warning signs on the premises where the dog is kept; and
- any specific control orders, such as requiring the dog to be muzzled whenever it is in a public place.

In some circumstances the Local Court may order a dog declared dangerous to be destroyed.<sup>77</sup>

An additional category, that of ‘prescribed breeds’, has been created. This category will include those breeds currently on the prohibited imports list under the Customs (Prohibited Imports) Regulation<sup>78</sup> and will place a number of more stringent requirements on owners of such dogs. These include:

- placing warning signs on the property warning of the presence of a dangerous dog;
- erecting fencing around properties along the lines of fencing requirements applying

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<sup>72</sup> Hon G Peacocke MP, *NSWPD*, LA, 21 April 1993, pp1375-1376.

<sup>73</sup> Section 9E, *Dog Act 1966*.

<sup>74</sup> Section 9F, *Dog Act 1966*.

<sup>75</sup> Section 9H, *Dog Act 1966*.

<sup>76</sup> Section 9T, *Dog Act 1966*.

<sup>77</sup> Section 9P, *Dog Act 1966*.

<sup>78</sup> Dogs banned from importation into Australia are: the dogo Argentino; the fila Brasileiro; Japanese Tosa; and the American pit bull terrier or pit bull terrier.

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to swimming pools;

- having the dog under control at all times by means such as cords or leads; and
- notifying the local council on moving to a new area with a dangerous dog.<sup>79</sup>

This solution is seen as more workable than attempting to ban a breed outright, which often leads to the breeding industry going underground and raises the value of the puppies. Moreover, banning particular breeds of dog will not stop all dog attacks.

*Green Paper:* The Working Party supported the development of a clear definition, assessment criteria and control requirements for a ‘dangerous’ dog within the proposed companion animals legislation.<sup>80</sup> It also suggested that all dogs declared dangerous be registered annually, enabling up to date and accurate information to be maintained on such dogs.

*White Paper:* The proposed legislation will include most of the existing provisions in relation to dogs declared dangerous. It will also introduce some more specific definitions and a number of stricter requirements. It will provide separate orders for ‘nuisance’ and ‘dangerous’ dogs. A nuisance dog order may apply to a dog which is consistently found roaming the streets or digging up public property, but which does not threaten or attack in any way.

On commencement of the Act, the Minister for Local Government will declare the four breeds of dog listed under the current Customs (Prohibited Imports) Regulation to be ‘prescribed breeds’. The effect of which will be that they have to be controlled by their owners in the same way as a dog which has been declared dangerous by the court. The Minister will also have powers to declare any other breed of dog to be a ‘prescribed breed’, if owners of other breeds do not exercise greater responsibility in training, controlling and supervising their dog, on their own property or in public areas. The Minister would consult with the public and the Royal NSW Canine Council before taking this action.

If an offence involves a dog which has been declared dangerous or a dog of a ‘prescribed breed’, the present penalties under the *Dog Act 1966* will be doubled. This will generally mean fines of up to \$2,200. In addition, penalties exist under section 35A of the *Crimes Act 1900* for the offences of ‘maliciously cause dog to inflict grievous bodily harm or actual bodily harm’. At present these penalties are 7 years and 5 years respectively. The adequacy of these penalties is to be reviewed in consultation with the Attorney-General.

Under the proposed legislation an owner of a dangerous dog or a dog of a ‘prescribed breed’ will be automatically disqualified from owning a dog: (i) for a period of up to five years if the person has been convicted two or more times of offences under the new

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<sup>79</sup> Media Release by the Minister for Local Government, Hon E Page MP, ‘Two bites and you’re out - automatic life ban for dog attacks under NSW laws’, 13 November 1997.

<sup>80</sup> Green Paper, p37.

legislation; or (ii) permanently if the person has been convicted of an offence under section 35A of the *Crimes Act 1900*.

A dog declared dangerous is to be identified as such on the Statewide Register and desexed, if this hasn't already occurred. Owners of a dog declared dangerous will continue to have a right of appeal and provision will be made for a dangerous dog order to be revoked under specific circumstances. A dog with a repealed dangerous dog declaration will maintain a 'probationary' status, with any subsequent attack resulting in an instant re-declaration as a dangerous dog which will remain in force for the life of the dog, or other action as the court may decide.

At present local council staff are not able to enter a person's property to immediately remove a dog which has attacked or threatened a person or animal. The proposed legislation will permit an authorised officer, in the absence of the dog owner, to enter the owner's property to secure the dog. If the dog is unable to be secured, the authorised officer will be able to issue an immediate interim dangerous dog order and remove the dog to the council pound. This order will be in force for seven days during which time determination of the dangerous dog declaration must be finalised.

The Code of Practice relating to the keeping of dogs will include special precautions to be observed in relation to dangerous dogs or dogs of 'prescribed breeds'.

### **Issue 11 - Security Dogs**

*Green Paper*: Security dogs are defined by the Working Party as 'dogs trained and kept for the purpose of home, business or personal protection where such training includes training to inflict injury upon people.'<sup>81</sup> There are currently no specific provisions in the *Dog Act 1966* relating to such dogs, and there are no formal systems of registration or accreditation of training establishments. The Working Party put forward two options to rectify the situation. The first, is to require all security dogs to comply with controls for dogs declared dangerous under the proposed legislation; and the second is to require specific licences for: (a) individuals or organisations which train security dogs; (b) the security of the premises where the dog is to guard or be kept; (iii) any person purchasing a security dog; and (d) any combination of the above.

The Working Party supported the option of requiring all security dogs (except for government security dogs used by police, customs and corrective services) to comply with controls for dogs declared dangerous, leaving open the question of training, accreditation and management of security dogs for further debate.

*White Paper*: Consultation with the NSW Police Dog Training Unit and members of the dog training industry has taken place in regards to the proposal to develop and introduce standards and accreditation for training programs, trainers and handlers of security dogs.

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<sup>81</sup> Green Paper, p62.

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Further consultation is proposed so that security dog training standards and accreditation for trainers are developed for later staged introduction. In the interim, off duty security dogs will be required to comply with all of the provisions and controls for dogs declared dangerous under the proposed legislation. When on duty, police and security dogs will be exempted from the requirement to be on a leash, chain or cord and may enter any premises or area which their handler may enter in the course of duty.

### **Issue 12 - Trained Assistance Animals**

Guide and hearing assistance dogs are recognised under the current Act and a person who trains or keeps such a dog is entitled to a reduced registration fee. People using dogs for assistance are permitted to be accompanied by their dog in places where usually dogs are not permitted, including travel on public transport.

*Green Paper:* This section of the Green Paper examines whether a system of registration or accreditation should be introduced either for the animals completing training programs or for the people running them. This would enable a required set of training standards to be imposed. Ensuring that both the dog and the user have received appropriate standards of training is essential for the safety of the animal, the user and the general community. In the short term the Working Party supported the maintenance of the existing provisions for trained guide and hearing dogs and recommended that further work with people involved in the disability area take place.

*White Paper:* Existing provisions of the *Dog Act 1966* for guide and hearing assistance dogs are proposed to be carried over into the proposed legislation. In accordance with the *Commonwealth Disability Discrimination Act 1993*, provisions will be extended to people with other types of disability who have a legitimate need for a trained assistance animal. A system of regulation and accreditation of animal, trainers and handlers for trained assistance animals will be developed. The introduction of provisions for travel assistance animals is scheduled for the later part of the staged introduction of the legislation to ensure sufficient time for consultation with relevant groups can occur.

### **Issue 13 - Environmental and Health Issues**

*Green Paper:* It was stated in the Green Paper that: ‘Consideration of the environment is one of the underlying concerns of the proposed companion animals legislation. Any measures to be adopted need to address the environment, community amenity and animal welfare.’<sup>82</sup> This section looks primarily at the problems caused by: dog faeces in public places; attacks on wildlife by dogs and cats, and the need to establish uniform standards in relation to premises maintained by registered breeders and animal boarding businesses.

The issue of dog faeces in public places is raised consistently as a major source of irritation.

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<sup>82</sup>

Green Paper, p42.

Although it is an offence under the legislation as it currently stands to allow a dog to defecate in most public places unless the faeces are removed immediately and disposed of properly,<sup>83</sup> the difficulty with making owners comply means the provision is honoured more in the breach than in the observance. However, the issue is a serious one as dog faeces pose a health hazard, being a potential source of roundworms, hydatids and disease. It has also been identified as a source of pollution, as dog faeces washed into storm water drains finds its ways into our waterways and beaches.

In the context of reducing threats to wildlife, the Working Party supported the options of individual councils limiting the number of companion animals and imposing cat curfews in specified areas adjacent to national parks and other sensitive wildlife areas.

*White Paper:* The proposed legislation will require that, if a dog defecates in any public place, the faeces are to be immediately removed and disposed of properly by the owner. A range of other environmental issues relating to cats and dogs will be able to be addressed through the development of Local Companion Animals Management Plans by the council in consultation with the local community. The proposed legislation will make provision for a dog or a cat found unaccompanied by a person on private property to be removed from that property and returned to its owner or, if the owner is not identifiable, delivered to the local council pound or animal shelter. Any action to remove an animal should be taken by an authorised officer, or if that is not practicable, with the agreement of an authorised officer. There will be provision for any person to take reasonable action to remove a dog or cat from particular property in the event of damage or injury to any person or animal. Any action which results in injury to the cat or dog must be reported to an authorised officer, who must be satisfied the action taken was reasonable in the specific circumstances.

Dogs or cats found unaccompanied by a person in a designated area set aside for the protection of native wildlife may be seized and detained by an authorised person. Clear procedural guidelines will be developed for councils in dealing with noise complaints in relation to companion animals and councils shall retain their powers to serve an Order under section 124 of the *Local Government Act 1993*.

#### **Issue 14 - Fees, Penalties, Costs and Income**

As the situation stands, money collected in relation to dogs comes from the annual registration fee (currently set at \$12 per year); fees charged for the release of an impounded dog; for replacement registration badges; as well as from the proceeds of 'on the spot' fines for the commission of various offences. No money is collected in relation to cats.

*Green Paper:* The point being made in this section of the Green Paper is that to date, the general community and responsible dog owners (ie, those that have registered their animal) have subsidised costs to the community generated by irresponsible owners. It is suggested that consideration be given to introducing measures such as an increasing scale of penalties

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<sup>83</sup> Section 9B, *Dog Act 1966*.



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for repeat offenders. It is also pointed out that the existing scale of fees and penalties has not been updated for several years and is inconsistent with penalties imposed under other pieces of legislation. For example, a person can be fined \$200 for littering but the penalty for allowing a dog to defecate in a public place and not removing the faeces is only \$75. One suggestion made by the Working Party was to set \$200 as a benchmark penalty and link all the other penalties and fines to this amount.

Some of the other options for recouping costs suggested by the Working Party were:<sup>84</sup>

- to maintain the existing structure of fees and penalties, but increasing the amounts in line with CPI increases, and, where appropriate, extending coverage to companion cats;
- to include a levy in the fee for permanent identification and registration to be used for community education; and
- to introduce a local council companion animals management levy to provide funds for the implementation of local companion animal management plans. Such a levy could replace any income lost from changes to the existing dog registration scheme. According to the Working Party, local companion animal management plans ‘would benefit all members of the community. They could promote public safety, protect the environment, provide animal exercise areas and develop training for staff, carers and companion animals.’<sup>85</sup> The Working Party stated that this option would need further consideration in light of community comment.

While it could be argued that only pet owners should be required to contribute to any such fund, the reality is that all ratepayers, whether they own a pet or not, currently subsidise the cost incurred by councils in the management of companion animal related issues.

*White Paper:* The point is made in the White Paper that:

costs of supplying the microchip and Register are commercial costs determined by market forces and therefore beyond the control of the government. Discussions with industry representatives, however, have indicated that costs for microchipping cats and dogs on a compulsory Statewide basis would be significantly less than the costs now charged for lifetime identification. A scale of fees will be maintained to make sure that no-one is prevented from owning an animal simply because of the fees for permanent identification and lifetime registration.<sup>86</sup>

In light of this, it is proposed that the maximum fee for lifetime registration (including costs of permanent identification) for those on a pension will be about \$15. A second level of fees will apply to persons training or keeping guide or disability assistance dogs; and second and

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<sup>84</sup> Green Paper, p45.

<sup>85</sup> Green Paper, p46.

<sup>86</sup> White Paper, p9.

subsequent dogs which are rural working dogs; owned by registered breeders; owned by vets for the production of medicines and people who own racing greyhounds. This fee is expected to be around \$25. For each lifetime registration fee of \$25, \$5 will go to the local council in whose area the animal is kept (for additional staffing, development of local companion animal plans and local community education programs to implement the Act) and there will be a contribution to the State Companion Animals Fund to cover the costs of the Companion Animals Advisory Board for community education, advertising the provisions of the new Act etc. The proposed medium level fee of \$25 is \$7 higher than the present cost of minimum annual registration fees for a dog over a 12 year lifetime. The full fee is expected to be around \$35. From each full fee for lifetime registration, \$5 will go to the local council in whose area the animal is kept and the remainder of the fee, after costs, will go to the State Fund. It is not proposed to charge a fee for changing the details held by the Register in the event the ownership of an animal is transferred to another person. Impounding fees and penalties for offences will be set to reflect the cost of implementing the legislation and be consistent with other relevant legislation. There will be provision for 'on-the-spot' fines for certain offences.

It is proposed that local councils have another avenue for generating the funding needed to enable councils to take a more proactive role in implementing the Act. Provided a council involves its local community in developing a Local Companion Animals Plan, it may apply to the Minister to raise an additional \$5 per annum on each rateable assessment in the local council area.

### **Issue 15 - Implementation and Enforcement**

Local councils are responsible for the implementation of the *Dog Act 1966*. The police and local courts also have powers to act, especially in the control of dangerous dogs.

*Green Paper:* In the Green Paper the Working Party stated that one of the most common criticisms of the current *Dog Act 1966* is that it is not enforced properly, and that any new companion animals legislation needs to be workable for both animal owners and for those having to enforce it. For example, experience overseas and interstate has shown that compulsory cat curfews or banning breeds of dogs can be very difficult to enforce. Council officers currently have discretionary powers to issue a warning rather than a fine. This situation could continue but consideration should be given to a way in which warnings given could be recorded. Similarly if heavier penalties are to be given to repeat offenders it will be necessary to record prior offences. The possibility of using mediation as a means of resolving disputes between neighbours was suggested. In contrast to pursuing legal action through the courts, such an approach would be quicker and less expensive for animal owners and public authorities. However, the right to take court action or appeal decisions could be retained. The Working Party also pointed out that at present complaints about animals can be reported to either the local council or the police, and as there are no clear guidelines there is a risk that no action will be taken while both wait to see what the other will do.

The Working Party put forward the following options:

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- clarify powers and develop operating guidelines for police and councils about companion animals;
  - require all councils to have a companion animals management plan;
  - require all councils to have a companion animals advisory committee;
  - maintain existing authorities and powers;
  - establish a mechanism, to be funded by a proportion of the lifetime identification and registration fees, to co-ordinate community education and implementation of the proposed legislation.

The Working Party supported clarifying the powers and developing operating guidelines for police and councils about companion animals, and requiring all councils to have a companion animals management plan and a companion animals advisory committee.

*White Paper:* Local councils will have the primary responsibility for the implementation of the proposed legislation, and under the new Act increased funds will be available to them so that more staff may be allocated to animal and community welfare. Councils will be asked to develop Local Companion Animal Plans, suited to each local area. Each council will be asked to set up a broad-based local committee to help with development of the local plan. Before a local plan is adopted by council, it will have to be advertised so that all proposals are available for local community comment. At the State level, a Companion Animals Advisory Board will be funded through the Act. This Board will have assist in:

- overseeing implementation of the Act;
- developing a Statewide education and advertising program so that everyone is aware of the new provisions of the Act as they come into force;
- acting as a resource for local councils in developing their local plans;
- liaising with the Department of Local Government and with other State Government Departments which have complementary legislation (Parks and Wildlife, Agriculture, Land and Water Conservation etc); and
- developing those sections of the new legislation which will be the subject of further consultation (Trained Assistance Animals, Security Dogs).

Police and local courts will also have powers, especially in relation to orders for nuisance and dangerous animals and destruction orders, and the Act will make greater use of 'on-the-spot' penalties.

## **6 Other Jurisdictions**

Victoria and South Australia have introduced companion animal legislation in the last two years and Tasmania is in the process of reviewing its legislation.

In Victoria in 1984 and 1987 the Government's Animal Welfare Advisory Committee received extensive public comment after the release of two papers on initiatives to develop companion animal legislation. In 1987 the matter was referred to the Social Development Committee of Parliament to inquire into the role and welfare of companion animals in society. This Committee reported to the Parliament in May 1989, making extensive and detailed recommendations.<sup>87</sup> The government response, tabled in November 1989, supported the development of companion animal legislation with the objectives as recommended by the Committee. Subsequently the Companion Animals Bill was introduced into the Legislative Assembly in November 1991 and passed in May 1992. However, it only proceeded as far as the second reading stage in the Legislative Council. Similar legislation was not re-introduced into the Parliament until the Domestic (Feral and Nuisance) Animals Bill in September 1994, which essentially mirrored the earlier Bill. In the Second Reading speech accompanying the Bill, the Minister for Agriculture, Hon W McGrath stated that:

the introduction of the Bill implements the policy of the government to introduce workable urban animal management legislation in conjunction with public awareness and education programs ... A responsible approach to domestic animals legislation ... must reflect current community values and expectations with regard to domestic animal welfare; must reward responsible owners for their behaviour; must motivate and educate all owners to behave responsibly; and must penalise irresponsible owners. The Bill adopts a middle of the road position that addresses the concerns of the community relating to nuisance animals, attacks by dangerous dogs and damage to the environment while simultaneously protecting the rights of animal owners.<sup>88</sup>

The *Domestic (Feral and Nuisance) Animals Act 1994* was passed in November 1994.

The South Australian Dog and Cat Management Bill was introduced in November 1994 and passed in March 1995. In his Second Reading Speech, the Minister for the Environment and Natural Resources, the Hon D Wotton stated that the purpose of the Bill was to implement the following changes:

a transfer of the full administrative responsibility for dog control from State Government to Local Government; amend existing regulatory provisions and include additional provisions relating to the management of dogs; and to include new provisions for the identification, control and regulation of cats.<sup>89</sup>

The New South Wales White Paper describes the main features of the Victorian and the

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<sup>87</sup> Parliament of Victoria Social Development Committee, *Report upon the Inquiry into the Role and Welfare of Companion Animals in Society*, 1989.

<sup>88</sup> VPD, LA, 8 September 1994, p187.

<sup>89</sup> SAPD, LA, 17 November 1994, p1128.

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South Australian legislation as follows:

- responsible care and community education have been central to the development of the new legislation in each of these States. Both Victoria and South Australia provide a proportion of registration fees to be used for community education.
- cats now have a legal status in Victoria and South Australia, which gives protection to both cats and their owners. It is an offence to unlawfully seize or destroy a cat. Victoria has introduced compulsory registration for cats and given local councils the power to introduce local cat curfews. South Australia has introduced a voluntary scheme of cat registration but any unidentified cat caught in areas such as national parks may be destroyed.
- both Victoria and South Australia have retained annual registration systems being administered by local councils, with discounts available for permanently identified and desexed animals.
- South Australia has not limited the number of companion animals an individual can own, while in Victoria councils can introduce local orders.
- in addressing the issue of dangerous dogs, both Victoria and South Australia focus on the actions of individual dogs rather than particular breeds. For dogs declared dangerous, there are strict measures and severe penalties.

## **7 Conclusion**

As can be seen from the discussion above, the keeping of domestic animals raises a myriad of issues. The proposed legislation will introduce a number of measures to deal with these. On the one hand it seeks to promote the welfare of companion animals by encouraging more responsible ownership, and on the other it takes into account the impact cats and dogs can have on the environment and on native wildlife. In addressing these issues the legislation attempts to strike a balance between the needs of the people in the community who own companion animals and those who do not.