

NSW Animal Management legislation — a progress and change: what the new deal specifically requires of local authorities throughout NSW

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ABSTRACT

In presenting this paper the intent is to provide an overview of the process of the development of the NSW Companion Animals Act as well as to outline the key provisions of the legislation.

INTRODUCTION

Australia has one of the highest rates of pet ownership in the world. Studies have shown that four out of every five Australians have had a pet at some point in their lives. It is estimated that there are some two million companion animals in NSW, comprising 800,000 cats and 1.2 million dogs.

HISTORY

The first act in New South Wales relating to the control of dogs was passed in 1830. The Dog and Goat Act 1898 authorised every person, and required every police constable, to kill or destroy any unidentified dog found at large. The Dog Act 1966 repealed the 1896 Act and transferred the control of stray dogs and the registration of dogs to local councils.

Since the passage of the Dog Act in 1966 community attitudes to dogs and patterns of pet ownership have changed significantly. Changes in urban development and workforce participation have had a significant impact on urban animal management issues.

Changes in community attitudes to dogs and to the responsibilities of dog ownership have been reflected in amendments to the Dog Act over time. For example, since 1981 there has been a requirement for dogs in public places to be on a leash and in 1993 measures were introduced to make irresponsible dog owners more accountable for their actions, especially where their dogs had been proven to be dangerous to persons or animals.

THE COMPANION ANIMALS ACT 1998

The Companion Animals Act 1998 provides a sound framework for the management of companion cats, as well as dogs, into the next century and reflects current community values and expectations about animal welfare. The term 'companion animal' was chosen to reflect the animal and community welfare focus of the new Act.

While the new legislation specifically covers dogs and cats, in the future it could be extended to cover any other species which might be kept as companion animals.

Animal shelters in NSW handle around 100,000 cats and dogs every year. Many of these animals are given to shelters because their owners don't know how to look after them properly and can't control them. A large number of animals are destroyed because their owners cannot be identified.

A companion animal is one that is kept for the welfare and benefit of both the animal and its owner. The new legislation is intended to encourage responsible care for our animals. If they are to be truly our companions, they need our time, attention, care and control. When animals become a problem for neighbours or wildlife it is often because they are not being given the care they deserve.

The Act reflects a community view that while people have a right to own a cat or dog as a pet, this ownership brings with it responsibilities to ensure that the benefits of ownership are not outweighed by costs imposed on the wider community.

The new legislation aims to actively promote the welfare of companion animals through responsible ownership. It is also intended to strike a balance between the needs of the people in the community who own companion animals and those who do not. Responsible ownership means considering the interests of other community members in relation to noise and the impact our companion animals may have on neighbours and in public places.

The new legislation takes into account the environment and attacks on native wildlife by cats and dogs. Damage is being done to the environment by companion animals which are not well managed and as well as by unowned animals.

THE PROCESS

The Companion Animals Act was some three and a half years in development and is the result of an extended consultation process.

In January 1996 the Minister for Local Government appointed a working party to assist in the development of the new legislation. The twelve members of the working party represented a wide range of animal welfare and environmental groups as well as local and state government agencies.

A Green Paper was released for public comment in May 1996. While it did not try to identify all the issues or solutions, this Paper explored some of the key issues about companion animals. The intention at this stage of the process was to promote debate so that all members of the community were informed and could contribute to the development of the new legislation.

The Green Paper achieved its aim of promoting debate: response to the Green Paper was so great that the closing date for submissions was extended from 15 July to the end of August 1996. Some 5,000 written submissions were received — double the number of submissions received by the Government for the review of the child protection regulations which was taking place at roughly the same time. These submissions were analysed and majority community opinions were incorporated into the specific proposals for the legislation. At the conclusion of this process the working party submitted to the Minister their recommendations for the new legislation.

The working party recommendations formed the basis of the specific proposals put forward in the White Paper in December 1997. The aim of the White Paper was to ensure that all issues were fully considered before a Bill was drafted and introduced to the New South Wales Parliament. Again due to the level of community interest, the closing date for submissions was extended — from early February to the beginning of March 1998. Again, nearly 5,000 written submissions were received.

A draft Bill was prepared in light of the community response to the Green and White Papers and introduced at the beginning of the Autumn 1998 session of Parliament. The level and extent of Parliamentary debate of the Bill reflected the general community interest in the issue. Media interest continued during the Parliamentary debate — unfortunately not all of the media coverage was particularly accurate in relation to the contents of the Bill. Debate on the Bill was extensive and there were a large number of amendments made: in the Upper House alone there were over 90 amendments proposed and some 50 of these were passed.

The Companion Animals Act was passed by the NSW Parliament on 3 July 1998 and was assented to by the Governor on 15 July 1998.

COMMENCEMENT OF THE LEGISLATION

The Act came into effect on 1 September 1998 with the following exceptions:

- Part 2 (compulsory identification and registration)
- Section 13(6) (establishment of off-leash exercise areas by councils)
- Section 20(2) (provision of dog waste bins by councils)
- Section 29 (identification of cats)
- Part 8 (identification and registration procedures)
- Any sections dealing with the seizing and holding of cats

The following Provisions came into effect on 1 December 1998:

- Section 13(6) (establishment of off-leash exercise areas by councils)
- Section 20(2) (provision of dog waste bins by councils)

The final provisions came into effect on 1 July 1999, namely:

- Part 2 (compulsory identification and registration)
- Section 29 (identification of cats)
- Part 8 (identification and registration procedures)
- Any sections dealing with the seizing and holding of cats

As part of the staged commencement provisions, an interim Companion Animals Regulation, which was purely machinery in nature came into effect on 1 September 1998. The full Regulation, dealing with the details of the new lifetime registration system, was drafted and released for public comment with a Regulatory Impact Statement (RIS) in May 1999. The Companion Animals Regulation 1999, which also repealed the 1998 Regulation, came into effect on 1 July 1999.

KEY FEATURES OF THE ACT

The Companion Animals Act 1998 builds on and updates the Dog Act 1966. It also introduces registration and control measures for cats. There are four key components to the Act:

- Permanent identification by microchip.
- Lifetime registration for cats and dogs.
- A single statewide register.
- On-going community education.

Microchipping

The Act requires animals to be microchipped from 12 weeks of age or at time of sale, whichever ever occurs sooner. The new microchipping requirements apply to new puppies and kittens and animals which change owner from 1 July 1999.

The Act does not regulate the cost of microchipping, this remains a commercial exchange. Owners and sellers of cats and dogs may choose where to have their animals microchipped and the cost will vary accordingly. The average cost of microchipping animals has dropped significantly during the time of the development of the legislation. At the time the new microchipping and lifetime registration system commenced the cost of microchipping ranged from \$15 to \$80, with the average cost being around \$35.

There is no need for animals microchipped before 1 July 1999 to be re-chipped. The legislation recognises microchips which have been commonly in use in NSW over the past several years and requires councils and authorised identifiers to have facilities to read any of these chips for the lifetime of the animals — in practice, for the next 20 years.

From 1 October 1999 any microchip inserted in a cat or dog must be of the International Standard Organisation (ISO) standard. Should an Australian standard be adopted at any future time, the legislation will be amended to refer to the Australian standard.

In NSW a person does not have to be a veterinary surgeon to microchip an animal. To ensure the welfare of animals and the integrity of the registration system, the Companion Animals Act provides for a system of authorised identifiers.

All veterinarians registered with the NSW Veterinary Surgeons Boards are automatically authorised identifiers. Other persons must complete an approved training course. At present the approved training courses are those offered by TAFE NSW, the Animal Welfare League and the Royal NSW Canine Council. Other courses which are assessed as being equivalent to the TAFE course may be approved in the future. It is expected that staff of animal welfare organisations, pet shops, councils and breeders will become authorised identifiers.

Lifetime registration

The Companion Animals Act replaces the old system of annual registration under the Dog Act with a lifetime registration system. Owners of cats and dogs now only have to pay a single registration fee for the lifetime of their animals. Lifetime registration fees are roughly equivalent to what dog owners would have paid over the lifetime of their pet under the Dog Act.

All dogs and any cat which changes owner after 1 July 1999 must be registered from 6 months of age. This allows owners time to have their animals desexed before registration, thereby taking advantage of the discounted registration fees for desexed animals. Microchipping is a condition of registration — no animal can be registered unless it is already microchipped.

Cats owned prior to 1 July 1999, farm working dogs and Greyhounds registered with the Greyhound Racing Authority are exempt from the new registration requirements. Owners of dogs already registered under the Dog Act have up to three years to transfer to the new system as long as they maintain their annual Dog Act registration during this period.

Registration fees

The lifetime registration fees are set by regulation and are the same for cats and dogs. The lifetime registration fee for a desexed animal is \$35 and for an entire animal is \$100. The lifetime fee for desexed animals owned by pensioners is \$15. However, pensioners with entire animals still pay the \$100 registration fee. Recognised breeders will pay the same fee as for desexed animals — \$35. Assistance animals, while required to be microchipped and registered do not pay any registration fee.

NSW Companion Animals Register

Under the old Dog Act each of the state's 177 local councils maintained their own dog register. These individual council registers were not necessarily compatible and a council only had access to its own register. Unfortunately, this system sometimes resulted in owned animals being put down before owners could trace their animal to another council area which have been some distance from the council where the dog was registered.

To address this problem, the Companion Animals Act utilises modern technology in the establishment of a single statewide Companion Animals Register. Cats and dogs are now registered throughout the state, not just with their local council. A council seizing a stray animal has access to records statewide to enable the owners of an animal to be contacted.

The Register is accessible to authorised users 24 hours per day, 7 days per week.

While operation of the Register is provided by a contract operator, the information contained on the Register remains the property of the NSW State Government and is subject to the Government's strict privacy provisions. Information contained on the Register can only be accessed by authorised users for the purposes of enforcing the Companion Animals Act.

Effective control of dogs

Dog owners continue to be required to have their dog(s) under the effective control of some competent person by means of an adequate chain, cord or leash when in public places. A dog is not be considered to be under effective control if one person has more than 4 dogs in a public place. Greyhounds continue to be required to be muzzled in public places.

Councils are required to provide at least one off-leash exercise area and owner's using these areas are still expected to have control of their animals.

It is an offence if the owner does not remove their dog's faeces from any public place. Councils are required to provide dog waste bins in areas where dogs are usually exercised.

Prohibited places

Dogs are prohibited in food preparation and consumption areas; children's play areas; school grounds and child care centres and wildlife protection areas. Councils may also prohibit dogs in specified recreation, public bathing and shopping areas.

Dog attacks

It is an offence if a dog rushes at, attacks, bites, harasses or chases any person or animal, whether or not any injury is caused. It is an offence for a dog to attack in any public or private place, including the property where it is usually kept. However, it is not an offence if a dog attacks in reasonable defence of a person or property or is being teased or mistreated.

Authorised council officers have powers to seize a dog which has attacked within the previous 4 hours if the dog cannot be secured on its own property.

There are stronger penalties if a dog is encouraged to attack, or if the attacking dog is one which has been declared dangerous or is a restricted breed.

Restricted dogs

The Act has introduced provisions for restricted dogs which includes pit bull terriers, American Pit Bull Terriers, Japanese tosas, Argentinian fighting dogs, and Brazilian fighting dogs. Owners of restricted dogs are required to comply with similar provisions to those for dangerous dogs, including having the dogs muzzled when in public.

Dangerous dogs

There are higher penalties and more specific requirements of owners of dogs declared dangerous, including having the dog desexed, muzzling it in public and requiring it to be kept in a child-proof enclosure. A council dangerous dog order has effect throughout the state and council officers have powers to seize a dog where the owner does not comply with the conditions of keeping a dangerous dog.

Owners of dogs who are notified that their dog may be declared dangerous must ensure that their dog is on a leash and muzzled when away from the property where it is ordinarily kept until the matter is determined by council. If an owner does not comply with these conditions a council officer may seize the dog.

Owners have a right to appeal a dangerous dog declaration and can request a council to repeal a dangerous dog order. In extreme cases a court can impose a lifetime ban on a person owning a dog.

Nuisance orders

There are new provisions for nuisance orders where a dog or cat is repeatedly causing a problem. Nuisance orders remain in effect for 6 months and the owner must ensure that the behaviour which has created the nuisance does not continue.

The owner of a dog can be issued with a nuisance order if their dog is habitually at large; persistently makes a noise; repeatedly defecates on private property; repeatedly chases any person, animal or vehicle; repeatedly causes damage to property or endangers the health of any person or animal.

The owner of a cat can be issued with a nuisance order if their cat persistently makes a noise or causes damage to property.

Cat control

Kittens and cats which change owner from 1 July 1999 are required to be microchipped and registered. Any cat which leaves its owner's property is required to either wear a collar and tag or to be microchipped.

Cats are prohibited from food preparation and consumption areas and wildlife protection areas in the same way as dogs.

Cats which persistently make noise or repeatedly damage anything outside the property where they are kept may be subject to a nuisance order in the same way as dogs.

Seizing companion animals

Any person may lawfully seize a cat if that action is reasonable and necessary for the protection of any person or animal (other than vermin) from injury or death.

Similarly, any person may lawfully seize a dog if that action is reasonable and necessary. This includes stray dogs in public places; a dog which has attacked on private property occupied by the person who seizes the dog; dogs in prohibited places; or to stop an attack or protect livestock. Any animal which is seized must be returned to its owner or delivered to a council pound.

Holding animals in pounds

From 1 July 1999 councils are required to ensure that provisions are made for appropriate holding facilities for cats as well as for dogs.

The holding period remains the same as under the Dog Act — 14 days for owned animals and 7 days for unowned. The same periods apply to cats as to dogs.

A Code of Practice for Council Pounds is currently being developed and all councils will be required to comply with the provisions of this Code. The Code will be consistent with the existing provisions of the Code of Practice for the Care and Management of Dogs and Cats in Animal Boarding establishments under the Prevention of Cruelty to Animals Act with which councils are currently required to comply.

Council powers

Councils have a range of responsibilities including planning, service provision, community education and enforcement. Councils are being encouraged to develop Local Companion Animals Management Plans in consultation with their communities.

Councils have powers to seize animals, issue on-the-spot fines, nuisance orders and declare dogs dangerous. Councils are now required to provide at least one off-leash exercise area and install bins for the disposal of dog faeces. Pound facilities need to be provided for cats as well as dogs (however councils may contract out the provision of pound facilities).

Council income

A small proportion of lifetime registration fees will be used to meet administrative costs of the Act, such as the Register, and to produce community education resources. The bulk of registration fees will go to local councils. Initially, councils will receive around 85% of registration fees.

As under the Dog Act, other income for councils will come from fines and pound charges.

Penalties

Maximum penalties have increased as have levels for on-the-spot fines. There are higher penalties for offences by dogs declared dangerous.

Companion Animals Advisory Board, Fund and community education

The Act provides for the establishment of a Companion Animals Advisory Board to provide the Minister with advice on matters in relation to animal management and implementation of the Act. The 12 member Board was established in December 1998 and has been meeting regularly, providing advice to the Minister on a range of issues including the Code of Practice for Council Pounds, Guidelines for the Care and Handling of Cats and the development of community education campaigns.

There is also provision for the establishment of a Companion Animals Fund from a proportion of the registration fees which will be used for statewide education campaigns and resources. These will supplement those community education activities undertaken by councils at the local and regional levels.

Review

Consistent with the provisions of the Subordinate Legislation Act, the Companion Animals Act must be reviewed every 5 years.

CONCLUSION

The care and management of companion animals is an issue which affects all members of the community — both pet owners and non-pet owners. It is an issue about which most people feel strongly and many consider themselves 'experts'.

The NSW Companion Animals Act 1998 aims to strike a balance between the needs of animals and their owners; non-pet owners and the environment and wildlife. While there is widespread agreement on the basic aims and outcomes of the legislation, frequently opinions differ on how best to achieve these ends. Simply because it is an issue which affects all members of our society, any particular control measure is as likely to upset as many people as it pleases. This was clearly demonstrated during the extensive public consultation process during the development of the legislation where community opinion was evenly divided on issues such as compulsory desexing and cat curfews.

The level of interest and debate in the general community about the new legislation was reflected in the debate by the NSW Parliament where there was lengthy debate and many amendments to the original Bill. Such a large number of amendments has resulted in inconsistencies across various sections of the act and provisions where, while the intended outcome is clear, the specific wording creates implementation difficulties. Just one example of this is the change made to exempt 'working dogs' from microchipping and lifetime registration requirements. As many rural councils have pointed out, nearly every dog in the area is a 'Kelpie cross' and claimed to be a working dog. In its amended form the

Act provides that a 'working dog' cannot be required to be microchipped and lifetime registered, even if the dog is declared dangerous.

The Companion Animals Act is a substantial piece of legislation introducing a number of measures for the first time — registration of cats; compulsory microchipping; lifetime registration and a statewide register. It is inevitable that there will need to be some fine tuning to the legislation. The Department of Local Government will be closely monitoring the Act in its implementation over the next 12 months to determine what amendments may be required. Local councils and the Australian Institute of Local Government Law Enforcement Officers are working co-operatively with the Department to this end.

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Judith Hawkes has been the policy officer working on the development and of the NSW Companion Animals legislation since the commencement of the process in January 1996. She is currently working on the implementation of the legislation. Judith came to this project with extensive experience in legislative development and review, community consultation and community education processes in both the government and non-government sectors.

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