

Dog and Cat Management (Miscellaneous) Amendment Act 2015

REPORT

Approximately two thirds of South Australians are pet owners. The way we manage dogs and cats as part of our community is a matter of concern for many organisations and community members and the issues involved can be complex and sometimes very emotive.

Since the Dog and Cat Management Act came into operation in 1995, best practice in dog and cat management has evolved and it is important that the Act is changed to reflect this. We are no longer willing to accept euthanasia rates of dogs and cats being in the thousands each year and the unacceptable practices of puppy and kitten farms. We also recognise that the way dog and cats are managed can have an impact on the community causing nuisance, financial costs and in some cases, injury.

This needs to be balanced with the benefits and the unique place that dogs and cats have as companion animals in the community. Community attitudes and our understanding of the role of dogs and cats in society has changed. We now acknowledge that dogs and cats are important family members and their welfare and protection is a concern for many South Australians.

I acknowledge the work of the late Bob Such in calling for the Select Committee on dogs and cats as companion animals that was convened in 2012. This was the first step in identifying the amendments that I bring forward today.

The government has conducted significant levels of consultation on the proposed amendments with the community and stakeholders including the RSPCA, Animal Welfare League, Local Government Association, the Australian Veterinary Association and dog and cat breeder associations. This consultation will continue as the proposed regulations and procedures are developed.

The Dog and Cat Management Board is the government's key partner in developing the proposed amendments and has been crucial in bringing the Bill to Parliament. I thank them for their commitment and conviction in bringing these amendments forward.

The Bill aims to contemporise the Dog and Cat Management Act and implement solutions to dog and cat management challenges that reflect the community's views.

Local councils will continue to have the task of administrating and enforcing the Act in the community. The Bill provides additional powers to authorised council employees that are consistent with powers afforded under the Local Government Act. These additional powers strengthen councils' ability to investigate breaches of the Act such as dog attacks and the keeping and sale of restricted dog breeds, and also includes the ability to sight, collect and test evidence.

Introducing consistency between the local government and dog and cat management legislation reduces red tape for councils.

Previously, council employees were required to be authorised as dog management officers to respond to a dog complaint, and as cat management officers to respond to a cat complaint, carrying an identification card for each role – this will now be a single form of identification.

A Council employee that administers the Local Government and Dog and Cat Management Act will now be referred to as an Authorised Person and have powers that are reasonably consistent.

The Bill provides councils with additional powers to manage cats that are broadly consistent with the existing powers to manage dogs. These powers have been provided, but not prescribed, and councils will continue to be the authority that determines the extent of cat management in their jurisdiction.

To protect the State's biodiversity and reduce predation of native animals, the Bill continues to permit an authorised person to destroy a cat if found in a national park or vulnerable environment.

The Bill introduces the first increase in expiations and penalties in ten years. This reform is necessary to maintain an adequate deterrence that seeks to reduce the number of irresponsible pet owners who allow their animals to impact on public safety, with appropriate penalties should they do so.

Local Government supports the increases so that compliance with the Act is strongly incentivised, which is not currently the case. For example, councils are permitted to set a dog registration fee at \$85 but the current expiation for failing to register is \$80, and therefore wholly ineffective.

During public consultation, it was identified that the increases proposed in the draft Bill, were considered excessive, particularly for wandering-at-large and administrative offences. The

Government has listened to this feedback and with the assistance of the Dog and Cat Management Board, has reviewed the expiation and penalty amounts to a level more reflective of community expectation. This review reduces the likelihood that owners would abandon animals to avoid payment.

The Bill further supports the reduction of red tape through simplification of the disability dog accreditation process.

Previously, the Dog and Cat Management Board was required to approve all accreditations. Powers will be extended to 'prescribed accreditation bodies' that fulfil the requirements of the Board. This means that organisations that train disability dogs will now be provided with the power to accredit dogs graduating from their own training courses.

The Dog and Cat Management Board as the body administering assistance dog accreditation, will retain the ability to revoke and place conditions on delegation of this power.

The terms 'disability dog', 'hearing dog' and 'guide dog' will be retired in favour of the nationally consistent term 'assistance dog' and a consequential amendment made to the Equal Opportunities Act 1984 to reflect the change.

The Bill meets an election commitment to introduce mandatory microchipping. South Australia is the only state not to have introduced this measure to return lost animals home and trace the ownership of dogs that threaten public safety.

The Bill requires mandatory microchipping of all dogs and cats by an age set by regulation. This is proposed to be 3 months and will commence for all dogs and cats from a specific date. The reform requires an animal's microchip number to be provided to the purchaser at point of sale whether it be through a pet shop, shelter, or online.

Penalties will be imposed for owning a un-microchipped dog or cat and for failing to keep details up to date with a microchip registry. To facilitate microchipping state-wide, the bill provides a framework for approval of microchip implanters by the Dog and Cat Management Board providing for animals to only be microchipped by an appropriately trained person.

The Bill provides a framework for the Board to regulate and administer a state-wide microchipping database. The government has produced a business case on a state-wide database and is working with the Board and the Local Government Association to explore its implementation.

The Bill introduces mandatory desexing of dogs and cats. Desexing has been defined as ‘to castrate or spay an animal so as to permanently render the animal incapable of reproducing’. It is proposed that the requirement to desex will apply to new animals from a prescribed date.

The issue of mandatory desexing arose during the Government’s public consultation despite none of the proposed amendments containing any provision for desexing. The Government received over 1800 submissions via the Your SAY website, and of these, 155 gave support for desexing.

Mandatory desexing has also been recommended to the government by the Citizens’ Jury on unwanted dogs and cats, the Dog and Cat Management Board, the RSPCA and the Animal Welfare League. The Select Committee on dogs and cats as companion animals supported mandatory desexing for cats.

The Bill provides for this requirement to be administered through council dog and cat registration and exemptions will be available. These are envisaged as certification by a veterinary surgeon, plus working, greyhounds and security dogs and consideration will be given to appropriate arrangements for rural and remote communities including Aboriginal communities.

This reform will be aimed at reducing cat over-population and the subsequent impact on animal welfare shelter admission rates and may also reduce hormone related nuisance behaviours that include aggression and wandering.

The schemes that provide for mandatory microchipping and desexing are contingent upon the making of regulations. Due to the importance of these regulations in implementing the schemes, there will be further community and stakeholder consultation during their preparation. This consultation will work through the issues of the appropriate age for desexing, details of the exemptions and the interaction of the sale of dogs and cats and the appropriate age for desexing.

The Bill also introduces changes to dog registration that supports introduction of mandatory microchipping and desexing by providing a discount to owners of existing dogs that have voluntarily complied with the requirements. This reform further reduces red tape for council as registration categories that must be administered moves from a minimum of eight, to two.

Following the introduction of the prescribed date after which the requirement to desex new animals will apply, dogs born before that date that are not desexed will be categorised as ‘non-standard’ and their owners will pay a higher registration fee than those who have

voluntarily desexed. As the existing dog population dies, and the requirement to desex comes into effect, registration categories will reduce to one – ‘standard dog’ which is a microchipped and desexed dog or an exempted dog.

The Bill removes the council requirement to provide a registration rebate for trained dogs. This rebate was ineffective in encouraging training and was difficult to administer for councils and the Dog and Cat Management Board.

The Bill introduces breeder registration to improve oversight of breeders without unnecessarily increasing red tape. Breeders will be required to register with the Dog and Cat Management Board disclose their location and comply with requirements.

This will assist to locate and eradicate operations where dog and cat management and welfare is a secondary concern to profit. These puppy or kitten farms have no place in South Australia.

Councils will be able to utilise breeder registration to enforce bylaws such as animal limits, trace the breeders of aggressive dogs in the community, understand animal density and incorporate the needs of breeders into animal management plans.

The Bill requires that breeders register individually and will be allocated a unique breeder registration number. This number must be included in any advertisements, including online, for the sale of a dog or cat. The streamlining of process requirements for members of breeder organisations will be considered.

It will also be a requirement that the registration number of the breeder is provided to consumers at the point of sale so they can identify where their pet originated. This provides a means for consumers to enforce their rights if sold a dog or cat that has a behavioural, medical or genetic condition.

The Bill allows the Board to set a fee for breeder registration. This revenue will be paid into the Dog and Cat Management Fund and used to administer the breeder register and conduct compliance activities as the Board sees fit.

I recognise that the broad majority of dog and cat breeders in South Australia raise their animals in appropriate conditions. These measures are aimed at locating unethical breeders and planning for the inclusion of humane breeders that produce healthy, sociable dogs in our communities.

The government is serious about clamping down on unethical practices and reducing the number of animals’ euthanised in animal welfare shelters. The government is also serious

about preventing serious dog attacks that have caused fatalities interstate, and addressing the cat over-population issue that impacts on the state biodiversity.

I note that the Companion Animals Amendment Bill introduced by the Honourable Michelle Lensink MP included many of the reforms I have brought forward today however, by legislating these changes under the Dog and Cat Management Act, instead of the Animal Welfare Act, we are utilising the existing statewide compliance framework that exists through the Dog and Cat Management Board and the sixty-nine metropolitan and rural councils. It is the Government's view that this approach is more effective as it utilises the current, established system of local government councils and provides a focus on safe communities in addition to protecting dogs and cats.

The Dog and Cat Management Board will also work with all of the stakeholders on a community awareness campaign and support for implementation of the reforms.

This Bill deserves the support of all parties as the reforms received significant support from the community and stakeholders during the 10-week consultation period from April—June this year.

We must take this opportunity to contemporise dog and cat management and address issues that are increasingly in the forefront of the community's mind.

I commend the Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Dog and Cat Management Act 1995*

4—Amendment of section 3—Objects

This clause makes a consequential amendment to section 3 of the principal Act.

5—Amendment of section 4—Interpretation

This clause amends section 4 of the principal Act, inserting definitions of key terms used in the measure, making consequential amendments and correcting obsolete references.

6—Amendment of section 5—Owner of dog or cat

This clause amends section 5 of the principal Act to extend the operation of the relevant parts of that section to include cats as well as dogs.

7—Amendment of section 6—Person responsible for control of dog or cat

This clause amends section 6 of the principal Act to extend the operation of the relevant parts of that section to include cats as well as dogs.

8—Amendment of section 21—Functions of Board

This clause amends section 21(1)(b) of the principal Act to extend the operation of that paragraph to include cats as well as dogs, as well as making consequential amendments to the remainder of the section.

9—Amendment of section 21A—Accreditation of assistance dogs

This clause amends section 21A of the principal Act to allow certain prescribed bodies to accredit assistance dogs, previously referred to as guide dogs, hearing dogs or disability dogs.

10—Insertion of section 21B

This clause inserts new section 21B into the principal Act. The new section empowers the Board to keep a register in respect of dogs and cats microchipped and/or desexed under the Act.

11—Insertion of section 23A

This clause inserts new section 23A into the principal Act, conferring on the Board a standard power of delegation.

12—Amendment of heading to Part 3

This clause amends the heading to Part 3 of the principal Act.

13—Insertion of Part 3 Division 1

This clause inserts new Part 3 Division 1 into the principal Act, with that Division allowing for the appointment of authorised persons under the Act, and related provisions setting their powers as well as requirements relating to their identification and limitations on their powers. The clause also inserts a heading to the remaining provisions of Part 3, which now becomes Division 2.

14—Amendment of section 26—Council responsibility for management of dogs and cats

This clause amends section 26 of the principal Act to extend the operation of the relevant parts of that section to include cats as well as dogs. The clause also sets out additional responsibilities of councils in respect of registers, and simplifies the arrangements relating to rebates of dogs or cats that are desexed etc, providing that a

standard dog or cat (ie one eligible for the rebate) is one that is both desexed and microchipped.

15—Amendment of section 26A—Plans of management relating to dogs and cats

This clause makes a technical amendment to section 26A(3) of the principal Act.

16—Repeal of sections 27 to 30

This clause repeals sections 27 to 30 of the principal Act, consequent upon the amendments made by this measure.

17—Amendment of section 31—Offence to hinder etc authorised person

This clause makes a consequential amendment to section 31 of the principal Act.

18—Amendment of section 32—Offences by authorised persons

This clause makes a consequential amendment to section 32 of the principal Act.

19—Amendment of heading to Part 4

This clause makes a consequential amendment to the heading to Part 4 of the principal Act.

20—Amendment of section 33—Dogs must be registered

This clause amends the penalties under section 33(2) and (3) of the principal Act as stated, and makes consequential amendments.

21—Amendment of section 37—Notifications to ensure accuracy of registers

This clause amends the penalties under section 37(1) and (2) of the principal Act as stated.

22—Amendment of section 38—Transfer of ownership of dog

This clause amends the penalties under section 38 of the principal Act as stated.

23—Repeal of section 40

This clause repeals section 40 of the principal Act.

24—Amendment of section 41—Applications and fees

This clause makes consequential amendments to section 41 of the principal Act.

25—Repeal of section 42

This clause repeals section 42 of the principal Act.

26—Insertion of Part 4A

This clause inserts new Part 4A into the principal Act as follows:

Part 4A—Microchipping and other identification

42A—Dogs and cats to be microchipped

This section requires dogs and cats to be microchipped in accordance with the regulations. The penalty for contravening the section is a fine of up to \$5 000. The clause also makes provision for exceptions to the requirement.

42B—Further offence if certain dogs and cats not microchipped following offence against section 42A

This section creates a cognate offence where a person who has been found guilty of an offence of not microchipping their dog or cat under new section 42A continues to fail to do so after being found guilty.

42C—Further requirements relating to identification of certain dogs and cats

This section requires certain dogs and cats (being animals that are not, or are not yet, required to be microchipped under the Act) to wear specified forms of identification in public.

Part 4B—Desexing

42D—Certain dogs and cats to be desexed

This section requires dogs and cats to be desexed in accordance with the regulations. The penalty for contravening the section is a fine of up to \$5 000. The clause also makes provision for exceptions to the requirement.

42E—Further offence if certain dogs and cats not desexed following offence against section 42D

This section creates a cognate offence where a person who has been found guilty of an offence of not desexing their dog or cat under new section 42D continues to fail to do so after being found guilty.

27—Amendment of section 43—Dogs not to be allowed to wander at large

This clause amends the penalties under section 43 of the principal Act as stated.

28—Amendment of section 44—Dogs not to be allowed to attack etc

This clause amends the penalties under section 44 of the principal Act as stated.

29—Amendment of section 45—Transporting unrestrained dogs in vehicles

This clause amends the penalties under section 45(1) of the principal Act as stated, and makes other consequential amendments.

30—Amendment of section 45A—Miscellaneous duties relating to dogs

This clause amends the penalties under section 45A of the principal Act as stated, and makes consequential amendments.

31—Substitution of heading to Part 5 Division 1A

This clause amends the heading to Part 5 Division 1A of the principal Act.

32—Amendment of section 45B—Dogs of prescribed breed

This clause amends section 45B of the principal Act to standardise the offence in subsection (1) by clarifying that dogs of prescribed breeds must be both muzzled and restrained in public. The clause also increases offence penalties, and makes consequential amendments in relation to desexing.

33—Amendment of section 45C—Greyhounds

This clause amends section 45C of the principal Act to standardise the offence in subsection (1) by clarifying that greyhounds (unless exempted from the muzzling requirement) must be both muzzled and restrained in public. The clause also increases offence penalties, and clarifies that the exceptions in current subsection (2) do not include council dog parks.

34—Amendment of section 45D—Attack trained dogs, guard dogs and patrol dogs

This clause amends the penalties under section 45D of the principal Act, and makes a consequential amendment.

35—Repeal of section 45E

This clause repeals section 45E of the principal Act.

36—Amendment of section 47—Court's power to make orders in criminal proceedings

This clause makes a consequential amendment to section 47 of the principal Act.

37—Repeal of Part 5 Division 2

This clause repeals Part 5 Division 2 of the principal Act.

38—Amendment of heading to Part 5 Division 3

This clause makes a consequential amendment to the heading to Part 5 Division 3 of the principal Act.

39—Amendment of section 50—Destruction and control orders

This clause amends section 50 of the principal Act. Some of the amendments are consequential, while the requirement that dogs or their owners or both undertake specified training is extended to the remaining control order categories. Most notably, the clause amends section 50 to enable the Board, as well as councils, to make the relevant orders.

40—Substitution of section 51

This clause substitutes section 51 of the principal Act, standardising the grounds on which orders may be made under section 50, and in particular including the grounds that the dog is subject to a similar order under the law of another jurisdiction.

41—Amendment of section 52—Procedure for making and revoking orders

This clause makes a consequential amendment to section 52 of the principal Act, in particular recognising that the Board may now make orders.

42—Amendment of section 55—Contravention of order

This clause amends the penalties under section 55 of the principal Act as stated.

43—Amendment of section 56—Notification to council

This clause amends the penalties under section 56 of the principal Act as stated.

44—Amendment of section 57—Notification of order to proposed new owner of dog

This clause amends the penalties under section 57 of the principal Act as stated.

45—Repeal of section 58

This clause repeals section 58 of the principal Act.

46—Amendment of section 59A—Prohibition orders

Consistent with clause 39, this clause amends section 59A of the principal Act to enable the Board to make prohibition orders.

47—Amendment of section 59B—Contravention of Prohibition Order

This clause amends the penalties under section 59B of the principal Act as stated.

48—Repeal of section 59C

This clause repeals section 59C of the principal Act.

49—Substitution of Part 5 Division 4

This clause inserts new Part 5A into the principal Act as follows:

Part 5A—Destruction, seizure and detention etc of dogs and cats

Division 1—Destruction, seizure and detention etc of dogs

59D—Power to destroy dogs

This section sets out the circumstances in which a person may lawfully destroy or injure a dog. This provision (along with new section 60) is essentially a rationalisation of various existing provisions in the principal Act.

60—Power to seize and detain dogs

This section sets out the circumstances in which a person may seize and detain a dog. Again, this provision (along with new section 59D) is essentially a rationalisation of various existing provisions in the principal Act.

61—Procedure following seizure of dog

This section sets out what is to happen to a dog once it is seized and detained under the Act.

62—Destruction or disposal of seized dog

This section sets out that a person detaining a dog may destroy, sell or otherwise dispose of the dog if it is not claimed within 72 hours, or its owner will not take possession or pay moneys owing.

Division 2—Destruction and seizure etc of cats

63—Power to destroy cats

This section sets out the circumstances in which a person may lawfully destroy or injure a cat. This provision (along with new section 64) is essentially a rationalisation of various existing provisions in the principal Act.

64—Power to seize and detain cats

This section sets out the circumstances in which a person may seize and detain a cat. Again, this provision (along with new section 63) is essentially a rationalisation of various existing provisions in the principal Act.

64A—Destruction or disposal of seized cat

This section sets out that a person detaining a cat may destroy, sell or otherwise dispose of the cat.

Division 3—Miscellaneous

64B—Certain bodies may microchip and desex detained dogs and cats

This section provides that an animal welfare organisation or council detaining a seized dog or cat (whether the animal was seized under the principal Act or any other Act) may microchip or desex (or both) the dog or cat. However, such an action must be done in accordance with guidelines developed by the Board.

64C—Limits on entitlement to return of dog or cat

This section sets out prerequisites to return of a dog or cat seized under this proposed Part.

64D—Notification to owner of dog or cat destroyed etc under Division

This section requires certain persons who destroy, injure, seize or detain a dog or an identified cat under this proposed Part to notify the animal's owner and the local council (or, if it is outside of council areas, a police officer).

64E—Recovery of costs

This section enables the operator of a facility at which a dog or cat has been detained under this proposed Part to recover (as a debt) charges payable under the regulations in relation to the seizure, detention or destruction of the dog or cat.

64F—Ownership of certain dogs and cats to vest in operator of facility

This section vests ownership of certain dogs or cats destroyed or otherwise disposed of under this proposed Part in the operator of the facility taking the action. The section also provides that no compensation is payable to a previous owner of the dog or cat in respect of its destruction or disposal.

50—Amendment of section 66—Liability for dogs¹

This clause corrects an obsolete reference in section 66 of the principal Act.

51—Substitution of Part 7

This clause inserts new Parts 7 and 7A into the principal Act, in substitution for current Part 7, as follows:

Part 7—Breeding and sale of dogs and cats

68—Registration of breeders

This section provides for the registration by the Board of persons as a breeder of dogs or cats (as the case requires). The section also sets out procedural requirements in respect of registration.

69—Offence for breeder to sell dogs or cats unless registered

This section creates an offence for a person to sell a dog or cat that he or she has bred unless he or she is appropriately registered as a breeder under this Part, or registered with an approved representative body or under the law of another jurisdiction. The maximum penalty for an offence is a fine of \$5 000.

70—Offences relating to sale of certain dogs and cats

This section creates offences for a person to sell a dog or cat that has not been micro-chipped (in subsection (1)) or desexed (in subsection (2)) in accordance with the requirements to be set out in the regulations. The maximum penalty for an offence is a fine of \$5

000. The section also confers a regulation making power to disapply the section in respect of sales occurring in certain circumstances.

71—Certain information to be given to buyers

This section creates offences for a person who sells a dog or cat to fail to provide the information required by subsection (1). A similar offence is created by subsection (2) in respect of a person publishing an advertisement for the sale of a dog or cat. The maximum penalty for an offence is a fine of \$5 000. The section also confers a regulation making power to disapply the section in certain circumstances.

Part 7A—Review of decisions by SACAT

72—Review of certain decisions by South Australian Civil and Administrative Tribunal

This section confers jurisdiction on the SACAT to review certain decisions under the principal Act.

52—Insertion of section 80A

This clause inserts new section 80A into the principal Act. The new section allows the Board to exempt a person or body from the operation of a specified provision or provisions of the principal Act.

53—Amendment of section 81—Assistance dogs

This clause makes consequential amendments to section 81 of the principal Act, as well as aligning terms used in subsection (2) with those used in the *Disability Discrimination Act 1992* of the Commonwealth.

54—Amendment of section 81A—Interference with dog or cat in lawful custody

This clause makes a consequential amendment to section 81A of the principal Act, as well as increasing the maximum penalty for an offence under the section to a \$5 000 fine.

55—Insertion of section 81B

This clause inserts new section 81B into the principal Act. The new section creates an offence where a person, without lawful excuse, interferes with the identification carried by a dog or cat.

56—Amendment of section 83—No liability for action taken under Act

This clause makes a consequential amendment to section 83 of the principal Act.

57—Amendment of section 85—Continuing offences

This clause amends section 85 of the principal Act to include the provisions of new Parts 4A and 4B in the exceptions to the scope of the continuing offence provision.

58—Amendment of section 88—Evidence

This clause makes consequential amendments to section 88 of the principal Act.

59—Amendment of section 88A—Liability of vehicle owners in relation to transporting unrestrained dogs

This clause makes a consequential amendment to section 89 of the principal Act.

60—Amendment of section 90—By-laws

This clause makes a consequential amendment to section 90 of the principal Act.

61—Amendment of section 91—Regulations

This clause, in addition to inserting standard provisions relating to codes etc and expiation fees, amends section 91 of the principal Act so that regulations under the Act no longer need the recommendation of the Board before they can be made, rather the Board must now be given notice of proposed regulations, and consideration must be given to submissions made by the Board within the specified period.

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Criminal Law Consolidation Act 1935*

1—Amendment of section 83H—Interpretation

2—Amendment of section 83L—Evidentiary

These clauses make consequential amendments to the *Criminal Law Consolidation Act 1935*.

Part 2—Amendment of *Equal Opportunity Act 1984*

3—Amendment of section 5—Interpretation

This clause makes a consequential amendment to the *Equal Opportunity Act 1984*.

Part 3—Amendment of *Major Events Act 2013*

4—Amendment of section 26—Powers of authorised persons at major event venues

This clause makes a consequential amendment to the *Major Events Act 2013*.

Part 4—Transitional provisions

5—Accreditation of assistance dogs to continue

6—Certain exemptions under section 45E to continue

7—Dog management officers taken to be authorised persons

8—Cat management officers taken to be authorised persons

9—Designated areas

These transitional provisions continue appointments and other administrative acts made or done under the principal Act prior to the commencement of this measure.