

South Australia

Dog and Cat Management Act 1995 (with Amendments)

For ease of reading and understanding this copy of the Dog and Cat Management Act has been adjusted to show the amendments as programmed in the *Dog and Cat Management (Miscellaneous) Amendment Bill 2015*. To read the document all items for deletion in the Amendment Bill have been deleted and all insertions have been inserted in Green.

An Act to provide for the management of dogs and cats; and for other purposes.

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Legislative history

DRAFT

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Dog and Cat Management Act 1995*.

3—Objects

The objects of this Act are—

- (a) to encourage responsible dog and cat ownership;
- (b) to reduce public and environmental nuisance caused by dogs and cats;
- (c) to promote the effective management of dogs and cats (including through encouragement of the desexing of dogs and cats).

4—Interpretation

In this Act, unless the contrary intention appears—

accredited means accredited by the Board under section 21A;

animal welfare organisation means—

- (a) the Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated; or
- (b) the Animal Welfare League of South Australia Inc; or
- (c) any other person or body declared by the regulations to be an animal welfare organisation;

area of a council, means—

- (a) in relation to a municipal or district council—the area in relation to which the council is constituted;
- (b) in relation to a body declared by regulation to be a council (or part of a council) for the purposes of this Act—the area specified by regulation in relation to the body;
- (c) in relation to the *Outback Areas Community Development Trust*—the area in relation to which the *Outback Areas Community Development Trust* is constituted;

assistance dog means a dog trained and used for the purpose of assisting a person who is wholly or partially disabled and includes a dog undergoing training of a kind approved by the Board for the purposes of this definition;

attack trained dog means a dog trained, or undergoing training, to attack a person on command;

authorised person means—

- (a) a police officer; or
- (b) a person appointed as an authorised person under section 25A;

Board means the *Dog and Cat Management Board* established under Part 2;

corresponding law means a law of another State or a Territory of the Commonwealth that provides for the registration of dogs;

council means—

- (a) a municipal council;
- (b) a district council;
- (c) the *Outback Areas Community Development Trust*;

(d) a body declared by regulation to be a council for the purposes of this Act;

dangerous dog means a dog in relation to which—

(a) a council or the Board has made a Control (Dangerous Dog) Order; or

(b) a court has made an order the terms of which generally correspond to a Control (Dangerous Dog) Order;

desex means to castrate or spay an animal so as to permanently render the animal incapable of reproducing (and **desexed** has a corresponding meaning);

dispose of includes sell or give away;

dog means an animal of the species *canis familiaris* but does not include a dingo or cross of a dingo;

effective control of a dog—see section 8;

Fund means the *Dog and Cat Management Fund* established under Part 2;

guard dog means a dog that is kept on premises primarily for the purpose of guarding or protecting a person or property at those premises;

identified cat means a cat identified in the manner set out in the regulations;

LGA means the *Local Government Association of South Australia*;

Magistrates Court means the *Magistrates Court of South Australia*;

microchip means an electronic device that is capable of being permanently implanted in an animal and that is designed to record information in a manner that can be electronically retrieved;

microchipped or **to microchip**—an animal is microchipped if a microchip is implanted in the animal;

occupier, in relation to premises, means a person who has, or is entitled to, possession or control of the premises;

own a dog—see section 5;

park means a park, garden, reserve or other similar public open space, or a foreshore area, within the area of a council;

patrol dog means a dog that, under the control of a person, patrols premises for the purpose of guarding or protecting a person or property at those premises;

premises includes—

(a) land;

(b) a part of any premises or land;

prescribed breed means any of the following breeds:

(a) American Pit Bull Terrier;

(b) Fila Brasileiro;

(c) Japanese Tosa;

(d) Dogo Argentina;

(e) Presa Canario;

private place means a place that is not a public place;

public place means a place to which the public has access (whether an admission fee is charged or not);

public passenger vehicle means a vehicle or vessel used for the purpose of carrying passengers for hire or reward;

registered veterinary surgeon means a person registered under the *Veterinary Practice Act 2003*;

registration disc means a disc, badge, tag or other device issued or to be issued in respect of a dog registered under this Act;

registration fee—see section 26(6);

responsible for the control of a dog—see section 6;

sale or **sell** includes—

(a) auction, barter or exchange; or

(b) offer for sale, auction, barter or exchange; or

(c) cause or permit to be offered for sale, auction, barter or exchange; or

(d) possess for the purposes of sale, auction, barter or exchange;

stock inspector means a person appointed as an inspector under the *Livestock Act 1997*;

unidentified cat means a cat that—

(a) is not microchipped; and

(b) is not identified in the manner set out in the regulations;

wandering at large in relation to a dog—see section 7.

5—Owner of dog or cat

(1) In proceedings for an offence against this Act, if it appears from a register under this Act or a corresponding law that a dog or cat was registered at or before the time of the alleged offence, the person in whose name the dog or cat was last registered in that register will be taken to have owned the dog or cat at the time of the alleged offence unless it is proved that the dog or cat was subsequently (but before that time) registered in the name of another person in another register under this Act or a corresponding law.

(2) In proceedings for an offence against this Act, if a dog or cat (whether registered or unregistered) is shown to have been habitually in the apparent ownership of a person, that person will, in the absence of proof to the contrary, be taken to have owned and to continue to own the dog or cat.

6—Person responsible for control of dog or cat

(1) For the purposes of this Act, a person is responsible for the control of a dog or cat while the person has possession or control of the dog or cat.

(2) In proceedings for an offence against this Act, if it is proved that immediately before the alleged offence the dog or cat was in company with or had been seen continuously and closely following a person, the person will, in the absence of proof to the contrary, be taken to have had possession or control of the dog or cat at the time of the alleged offence.

(3) In proceedings for an offence against this Act, an occupier of premises in which a dog or cat was kept or permitted to live at the time of the alleged offence will be taken to have had possession or control of the dog or cat at that time unless it is proved that another person of or over 16 years of age had possession or control of the dog or cat at that time.

7—Dog wandering at large

(1) For the purposes of this Act, a dog will be taken to be wandering at large while—

(a) the dog is in a public place (other than a park) or a private place without the consent of the occupier, and no person is exercising effective control of the dog by means of physical restraint; or

(b) the dog is in a park and no person is exercising effective control of the dog either—

(i) by means of physical restraint; or

(ii) by command, the dog being in close proximity to the person and the person being able to see the dog at all times.

(2) However a dog will not be taken to be wandering at large while—

(a) the dog is being used in the droving or tending of stock or is going to or returning from a place where it will be, or has been, so used; or

- (b) the dog is being trained for, or participating in, an organised activity being a race, trial, class or show or in retrieving, hunting or other sporting exercise customarily involving the running of one or more dogs; or
- (c) the dog is in a vehicle.

8—Meaning of effective control of dog by means of physical restraint

For the purposes of this Act, a person is exercising *effective control of a dog by means of physical restraint* if—

- (a) the person is exercising effective control of the dog by means of a chain, cord or leash that does not exceed 2 metres in length restraining the dog; or
- (b) the person has effectively secured the dog—
 - (i) by placing it in a cage, vehicle or other object or structure; or
 - (ii) by tethering it to a fixed object by means of a chain, cord or leash that does not exceed 2 metres in length.

9—Non-application of Act to certain dogs owned by Crown

This Act does not apply in relation to a dog owned by or on behalf of the Crown (in right of the Commonwealth or the State) and used for security, emergency or law enforcement purposes.

Part 2—Dog and Cat Management Board and Fund

Division 1—Establishment of Board

10—Establishment of Board

- (1) The *Dog and Cat Management Board* is established.
- (2) The Board is a body corporate.
- (3) The Board is an instrumentality of the Crown and holds its property on behalf of the Crown.
- (4) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

11—Ministerial control

- (1) Subject to subsection (2), the Board is subject to the control and direction of the Minister.
- (2) No Ministerial direction can be given to suppress information or recommendations from a report by the Board under this Act.
- (3) A direction given by the Minister under this section must be in writing and may only be given after consultation with the LGA.
- (4) If the Minister gives a direction under this section, the Board must cause a statement of the fact that the direction was given to be published in its next annual report.

Division 2—Membership of Board and procedures

12—Composition of Board

- (1) The Board consists of 9 members appointed by the Governor, of whom—
 - (a) 4 will be nominated by the LGA; and

- (b) 4 will be nominated by the Minister; and
 - (c) one, to chair the Board, will be jointly nominated by the LGA and the Minister.
- (2) The members of the Board nominated by the LGA under subsection (1)(a) must together have the following attributes:
- (a) practical knowledge of and experience in local government, including local government process
 - (b) experience in the administration of legislation;
 - (c) experience in financial management;
 - (d) experience in education and training.
- (2a) The members of the Board nominated by the Minister under subsection (1)(b) must together have the following attributes:
- (a) experience in state government processes and the administration of legislation;
 - (b) veterinary experience in the care and treatment of dogs or cats;
 - (c) a demonstrated interest in the welfare of dogs or cats;
 - (d) a demonstrated interest in the keeping and management of dogs or cats;
 - (e) experience in community health or medicine.
- (2b) The person nominated to chair the Board must, in the opinion of the LGA and the Minister, have the abilities and experience required to promote the effective performance of the Board and its functions.
- (3) If the LGA fails to nominate a person within 8 weeks of a written request for the nomination from the Minister, the Governor may appoint a person nominated by the Minister and that person will be taken to have been duly appointed as a member of the Board.
- (4) At least one member of the Board must be a woman and one a man.

13—Deputies of members

- (1) The Governor may appoint a person to be the deputy of a member of the Board and to act as a member of the Board during any period of absence of the member (and a reference in this Act to a member of the Board will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a member of the Board).
- (2) The appointment of a deputy is subject to the same nomination requirements as the appointment of the member.

14—Conditions of membership

- (1) A member of the Board—
- (a) is appointed on conditions determined by the Governor; and
 - (b) is appointed for a term, not exceeding 3 years, specified in the instrument of appointment; and
 - (c) is, at the expiration of a term of appointment, eligible for reappointment.
- (2) The Governor may remove a member of the Board from office on the recommendation of the Minister (after consultation with the LGA).
- (3) The office of a member of the Board becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or

(e) is removed from office under subsection (2).

(4) If the office of a member of the Board becomes vacant for some reason other than the expiry of the term of office of the member, a person nominated for appointment to the office under section 12 will be appointed to fill the vacancy and to hold office, subject to this Act, for the remainder of the term.

15—Vacancies or defects in appointment of members

An act of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

16—Remuneration

A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

17—Proceedings

- (1) A quorum of the Board consists of 5 members.
- (2) The member appointed to chair the Board will preside at meetings of the Board at which he or she is present.
- (3) If the member appointed to chair the Board is absent from a meeting of the Board, the following provisions apply:
 - (a) if another person has been appointed as that member's deputy and is present at the meeting—the deputy will preside at the meeting;
 - (b) in any other case—a member chosen by the members present at the meeting will preside at the meeting.
- (4) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Board.
- (5) Each member present at a meeting of the Board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (6) The Board must cause accurate minutes to be kept of its proceedings.
- (7) Subject to this Act, the Board may determine its own procedures.

18—Conflict of interest under Public Sector (Honesty and Accountability) Act

A member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with the other Board members, or persons engaged in or associated with dog or cat management generally, or a substantial section of those engaged in or associated with dog or cat management.

19—Common seal and execution of documents

- (1) The common seal of the Board must not be affixed to a document except in pursuance of a decision of the Board, and the affixing of the seal must be attested by the signatures of 2 members.
- (2) The Board may, by instrument under the common seal of the Board, authorise a person (whether or not a member or employee of the Board and whether nominated by name or by office or title) to execute documents on behalf of the Board subject to conditions and limitations (if any) specified in the instrument of authority.

- (3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of the Board.
- (4) A document is duly executed by the Board if—
 - (a) the common seal of the Board is affixed to the document in accordance with this section; or
 - (b) the document is signed on behalf of the Board by a person or persons in accordance with an authority given under this section.

Division 3—Operations of Board

21—Functions of Board

- (1) The Board has the following functions:
 - (a) to plan for, promote, and provide advice about, the effective management of dogs and cats throughout South Australia;
 - (b) to oversee the administration and enforcement of the provisions of this Act relating to dogs or cat, including—
 - (i) monitoring the administration and enforcement of this Act by councils; and
 - (ii) issuing guidelines and providing advice to councils about—
 - (A) planning for the effective management of dogs or cat;
 - (B) training for dog or cat authorised person;
 - (C) the appropriate level of administration and enforcement in the circumstances prevailing in the area;
 - (D) the issuing of orders or related directions under this Act;
 - (E) the standard of facilities used for the detention of dogs or cat under this Act;
 - (F) the keeping and inspection of registers under this Act and the issuing of certificates of registration and registration discs;
 - (G) any other matter related to the administration or enforcement of the provisions of this Act relating to dogs or cat; and
 - (iii) otherwise providing support and assistance to councils;
 - (ba) to accredit dogs as assistance dogs;
 - (bb) to keep and maintain registers for the purposes of this Act;
 - (c) to inquire into and consider all proposed by-laws referred to it under this Act, with a view to promoting the effective management of dogs and cats, and, to the extent that the Board considers it appropriate, the consistent application of by-laws throughout South Australia;
 - (d) to advise the Minister or the LGA, either on its own initiative or at the request of the Minister or the LGA, on the operation of this Act or issues directly relating to dog or cat management in South Australia;
 - (e) to undertake or facilitate research relating to dog or cat management;
 - (f) to undertake or facilitate educational programs relating to dog or cat management;
 - (g) to keep this Act under review and make recommendations to the Minister with respect to the Act and regulations made under the Act;
 - (ga) to fix fees and charges for the purposes of this Act;
 - (h) to carry out any other function assigned to the Board by the Minister or by or under this Act.

- (2) The Board's functions may extend to providing the following services as the Board thinks fit:
- (a) the accreditation of training programs for dogs and owners;
 - (b) the accreditation of procedures for testing the behaviour of dogs;
 - (c) the carrying out of any other function relating to responsible dog and cat ownership or the effective management of dogs and cats.
- (3) The Board may fix a fee for providing a service under subsection (2).

21A—Accreditation of Assistance dogs

- (1) Subject to this section, a prescribed accreditation body may, on application, accredit a dog, or renew the accreditation of a dog, as an assistance dog.
- (1a) A prescribed accreditation body (other than the Board) may only accredit a dog, or renew the accreditation of a dog, of a kind approved by the Board in respect of the prescribed accreditation body.
- (2) An application for accreditation must—
- (a) be made to a prescribed accreditation body in the manner and form determined by the prescribed accreditation body; and
 - (b) be accompanied by the fee fixed by the Board.
- (3) An applicant must provide a prescribed accreditation body with any information required by the prescribed accreditation body for the purpose of determining the application.
- (4) Accreditation of a dog remains in force for the life of the dog
- (a) it is revoked by the Board or the prescribed accreditation body that accredited the dog; or
 - (b) it is surrendered by the owner of the dog.
- (5) The Board must maintain a register of dogs accredited under this section (which may be kept in the form of a computer record) that is to be readily available for public inspection without fee
- (6) The accreditation of a dog may only be revoked if the Board or the prescribed accreditation body that accredited the dog is satisfied that—
- (a) the dog's ill-health, injury or advanced age prevents the dog from carrying out its functions as a assistance dog (as the case may be); or
 - (b) the dog is temperamentally unsuitable to continue to be accredited as a assistance dog (as the case may be); or
 - (c) the owner of the dog is unable to maintain effective control of the dog (whether by command or by means of physical restraint).
- (7) In this section—
prescribed accreditation body—the following are prescribed accreditation bodies:
- (a) the Board;
 - (b) The Royal Society for the Blind of SA Inc;
 - (c) the Guide Dogs Association of South Australia and Northern Territory Inc;
 - (d) Lions Hearing Dogs Inc;
 - (e) any other person or body declared by the regulations to be a prescribed accreditation body.

22—Powers of Board

- (1) The Board has the powers necessary or incidental to the performance of its functions.
- (2) The Board may, for example—
- (a) enter into any form of contract or arrangement; and

- (b) acquire, hold, deal with and dispose of real and personal property; and
- (c) employ staff or make use of the services of staff employed in the public or private sector; and
- (d) engage consultants or other contractors; and
- (e) establish committees (consisting of members, other persons or a combination of members and others) and assign to the committees advisory functions; and
- (f) require councils to provide information relating to the administration or enforcement of this Act.

23—Operational plans, budgets and information

- (1) The Board must, from time to time, prepare and submit to the Minister—
 - (a) a budget setting out estimates of the income of, and expenditure from, the Fund for the next financial year or for some other period determined by the Minister; and
 - (b) a plan of the Board's proposed operations for the next financial year or for some other period determined by the Minister; and
 - (c) a report on any matter relevant to the administration of this Act.
- (2) The plan, budget or report must conform with any requirements of the Minister as to its form and the information that it is to contain.
- (3) The Minister may, after consulting the LGA, approve a budget submitted under this section with or without modification.
- (4) The Board may not expend money unless provision for the expenditure is made in a budget approved under this section or unless the expenditure is approved by the Minister after consultation with the LGA.

23A—Delegation

- (1) Subject to this section, the Board may delegate functions or powers (other than a prescribed function or power) to any person or body of persons that is, in the Board's opinion, competent to perform or exercise the relevant functions or powers.
- (2) A delegation under this section—
 - (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

24—Annual report

- (1) The Board must, on or before 30 September in every year, forward to the Minister, the LGA and each council a report on the Board's operations for the preceding financial year.
- (2) The report must contain—
 - (a) the audited statements of account of the Fund for the preceding financial year; and
 - (b) a report on the status of dog and cat management in South Australia; and
 - (c) any other information required by or under the provisions of this Act or any other Act.
- (3) The Minister must, within 6 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

Division 4—Dog and Cat Management Fund

25—Dog and Cat Management Fund

- (1) The *Dog and Cat Management Fund* is established.
- (2) The Fund is to be kept and administered by the Board.
- (3) The Fund consists of—
 - (a) the money held in the *Dog Control Statutory Fund* immediately before the commencement of this Act; and
 - (b) money required to be paid into the Fund under this Act (representing a proportion of dog registration fees received by councils);¹ and
 - (c) any other money received by the Board; and
 - (d) interest accruing from investment of the Fund.
- (4) The Fund may be applied by the Board in making payments—
 - (a) towards the cost of establishing or maintaining facilities used for the detention of dogs under this Act; and
 - (b) towards the cost of research or educational programs relating to dog or cat management; and
 - (c) for the administrative expenses associated with the operations of the Board; and
 - (d) for any other purpose in furtherance of the objects of this Act.
- (5) The Fund may be invested as approved by the Treasurer.
- (6) The Board must keep proper accounts of the receipts and payments from the Fund.
- (7) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

Note—

¹ See section 26(5).

Part 3—Administration and enforcement

Division 1—Authorised persons

25A—Appointment of authorised persons

- (1) The Board or a council may appoint suitable persons (other than members of the council) to be authorised persons for the purposes of this Act.
- (2) An appointment may be made subject to conditions specified in the instrument of appointment.
- (3) The appointment of an authorised person by the Board or a council may, at any time, be revoked, or the conditions of appointment varied or revoked, by—
 - (a) if the authorised person was appointed by the Board—the Board; or
 - (b) if the authorised person was appointed by a council—the council.

25B—Identification of authorised persons

- (1) An authorised person appointed by the Board or a council must be issued with an identity card in a form approved by the Board.
- (2) If the powers of the authorised person have been limited by conditions, the identity card issued to the person must contain a statement of those conditions.

- (3) An authorised person appointed by the Board or a council must, at the request of a person in relation to whom the person intends to exercise powers under this Act, produce for the inspection of the person his or her identity card.

25C—Area limitation on authorised persons appointed by councils

An authorised person appointed by a council may (subject to any conditions of the appointment of the person) exercise powers under this Act—

- (a) within the area of the council; or
- (b) outside the area of the council for the purposes of—
 - (i) seizing or destroying a dog or cat under this Act that has been pursued from within the area of the council; or
 - (ii) investigating an offence against this Act committed, or suspected to have been committed, within the area of the council; or
- (c) within the area of another council pursuant to an arrangement between the councils or at the request of an authorised person appointed by the other council.

Note—

This section does not apply to authorised persons appointed by the Board.

25D—General powers of authorised persons

(1) An authorised person may (subject to any conditions of the appointment of the person) for the purposes of the administration or enforcement of this Act—

- (a) subject to subsection (2), enter and inspect any place or vehicle and use such force as may be reasonably necessary to gain entry; or
- (b) require a person to produce a dog or cat in the person's possession or control for inspection; or
- (c) require a person who owns or is responsible for the control of a dog or cat to produce evidence that the dog or cat is desexed or microchipped; or
- (d) require a person to produce documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process) as reasonably required in connection with the administration or enforcement of this Act; or
- (e) examine, copy or take extracts from documents or information so produced or require a person to provide a copy of any such document or information; or
- (f) carry out tests, make measurements or take photographs, films or video recordings as reasonably necessary in connection with the administration or enforcement of this Act; or
- (g) subject to Part 5 Division 4, seize and retain anything that the authorised person reasonably suspects may constitute evidence of a contravention of this Act; or
- (h) require a person whom the authorised person reasonably suspects to have committed, or to be committing or about to commit, any breach of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; or
- (i) require a person whom the authorised person reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters; or

- (j) give expiation notices to persons alleged to have committed 30 expiable offences under this Act; or
 - (k) give any directions reasonably required in connection with the exercise of a power conferred above or otherwise in connection with the administration or enforcement of this Act.
- (2) An authorised person cannot exercise the power conferred by subsection (1)(a) except—
- (a) with the consent of the owner or occupier of the place or the owner or person in charge of the vehicle; or
 - (b) on the authority of a warrant issued by a justice; or
 - (c) to seize a dog found wandering at large; or
 - (d) to seize a dog under this Act in circumstances in which the authorised person believes on reasonable grounds that urgent action is required.
- (3) A justice must not issue a warrant under subsection (2) unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.
- (4) An application for a warrant under this section cannot be made to a justice who is a member, officer or employee of a council.
- (5) In the exercise of powers under this Act, an authorised person may be assisted by such persons, and may use such equipment or materials, as he or she considers necessary in the circumstances

Division 2—Council responsibility for administration and enforcement

26—Council responsibility for management of dogs

- (1) Subject to this Act, each council is required to administer and enforce the provisions of this Act relating to dogs and cats within its area and for that purpose must—
- (a) maintain a register of dogs containing the information required by the Board (which may be kept in the form of a computer record); and
 - (ab) ensure that the Board is provided with information contained in the register as required by the Board from time to time; and
 - (ac) maintain such other registers as may be required by the Board; and
 - (ad) make the registers kept under the Act available for inspection by members of the public in accordance with any guidelines issued by the Board; and
 - (b) appoint a suitable person to be Registrar; and
 - (c) make satisfactory arrangements for issuing and replacing certificates of registration and registration discs; and
 - (d) 1 full-time authorised person or make other satisfactory arrangements for the exercise of the functions and powers of authorised persons; and
 - (e) make satisfactory arrangements for the detention of dogs and cats seized under this Act; and
 - (f) make satisfactory arrangements for fulfilling other obligations under this Act.
- (2) The arrangements made by a council under this section must be satisfactory to the Board.

(3) Money received by a council under this Act must be expended in the administration or enforcement of the provisions of this Act relating to dogs and cats.

(4) Each council must keep separate accounts of money received under this Act and of money expended in the administration and enforcement of the provisions of this Act relating to dogs and cats.

(5) A council must pay into the Fund the percentage fixed by regulation of the dog registration fees received by the council.

(6) Councils may charge—

(a) fees for the provision of extracts from registers kept under this Act; and

(ab) fees for the receipt and management of information relating to a register contemplated by subsection (1)(ac); and

(b) fees (which may be differential) but which must not exceed an amount prescribed by the regulations for the purposes of this paragraph —

(i) for the registration of dogs or businesses under Part 4; and

(ii) for late payment of registration fees; and

(iii) for meeting any other requirement imposed on councils under this Act.

(7) Without otherwise limiting a council's ability to set registration fees, a council must, in the case of a standard dog or cat, provide for a percentage rebate of a fee that would otherwise be charged for the registration of a dog or cat under this Act

(8) In this section—

standard dog or cat means a dog or cat (as the case requires) of 1 of the following kinds:

(a) a dog or cat that is both desexed and microchipped in accordance with this Act;

(b) a dog or cat that is exempt from any requirement under this Act to be both desexed and microchipped;

(c) a dog or cat that is exempt from a requirement under this Act to be desexed but is microchipped;

(d) a dog or cat that is exempt from a requirement under this Act to be microchipped but is desexed.

26A—Plans of management relating to dogs and cats

(1) Each council must, in accordance with this section, prepare a plan relating to the management of dogs and cats within its area.

(2) A plan of management must include provisions for parks where dogs may be exercised off-leash and for parks where dogs must be under effective control by means of physical restraint, and may include provisions for parks where dogs are prohibited.

(3) A plan of management must cover 5 year periods and each plan must be prepared and presented to the Board at least 6 months before it is to take effect.

(4) A plan of management must be approved by the Board before it takes effect.

(5) A council may, with the approval of the Board, amend a plan of management at any time during the course of the 5 year period covered by the plan.

31—Offence to hinder etc authorised person

(1) A person who—

(a) hinders or obstructs a *authorised person*, or a person assisting a *authorised person*, in the exercise of powers conferred by this Act; or

- (b) uses abusive, threatening or insulting language to a **authorised person**, or a person assisting a **authorised person**; or
- (c) refuses or fails to comply with a requirement of a **authorised person** under this Act; or
- (d) falsely represents, by words or conduct, that he or she is a **authorised person** is guilty of an offence.

Maximum penalty: \$5 000.

- (2) A person who assaults a **authorised person**, or a person assisting a **authorised person**, in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

31A—Medical practitioner must notify Board of certain injuries resulting from dog attacks

- (1) A registered medical practitioner who treats a victim of a dog attack for physical injury must, if of the opinion that the injury is one that should, because of the nature of the injury, be brought to the attention of the Board, notify the Board of the injury and the circumstances surrounding the injury.
- (2) The Board must include a report of information received under this section in its annual report.

32—Offences by **authorised person**

A **authorised person**, or a person assisting **authorised person**, who—

- (a) addresses offensive language to another person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person,

is guilty of an offence.

Maximum penalty: \$5 000.

32A—Failure on part of council to discharge responsibilities

- (1) If, in the opinion of the Board, a council fails to discharge its responsibilities under this Act, the Board may refer the matter to the Minister to whom the administration of the *Local Government Act 1999* has been committed (with a view to that Minister taking action in relation to the council under that Act).
- (2) If a matter is referred to the Minister under subsection (1), the Minister must ensure that a written response, setting out the action that the Minister has taken or proposes to take, is provided to the Board within 28 days after the referral of the matter to the Minister.

Part 4—Registration

33—Dogs must be registered

- (1) Every dog of or over 3 months of age must be registered under this Act.
- (2) If a dog of or over 3 months of age is unregistered, any person who owns or is responsible for the control of the dog is guilty of an offence.

Maximum penalty:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$5 000;
- (b) in any other case—\$2 500.

Expiation fee:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;
- (b) in any other case—\$315.

(3) If a person is guilty of an offence by reason of a dog being unregistered, the person is guilty of a further offence for each 14 days that the offence continues.

Maximum penalty:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$5 000;
- (b) in any other case—\$2 500.

Expiation fee:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;
- (b) in any other case—\$315

(4) A person is not guilty of an offence against this section by reason of the fact that the dog is unregistered if—

(a) less than 14 days has elapsed since the person first owned or became responsible for the control of the dog; or

(b) the dog—

- (i) is travelling with the person; and
- (ii) is not usually kept within the State; and
- (iii) is registered under a corresponding law or is usually kept outside Australia (but a person may not rely on this exception unless he or she has produced, at the request of a **authorised person**, satisfactory evidence of the matters specified in this subparagraph); or

(c) the person is responsible for the control of the dog only by reason of the dog being temporarily boarded at a boarding kennel approved by the council in whose area the kennel is situated.

(5) This section does not apply—

(a) to a dog that has not been kept in any one area for more than 14 days in aggregate; or

(b) to a dog while held in the custody of—

- (i) a police officer acting in that capacity; or
- (ii) a person acting under this or any other Act; or
- (iii) a person or body, or a person or body of a class, specified by 25 the regulations.

34—Registration procedure for individual dogs

(1) An application for registration of a dog—

- (a) must be made to the Registrar for the area in which the dog is (or is to be) usually kept in the manner and form approved by the Board; and
- (b) must nominate a person of or over 16 years of age who consents to the dog being registered in his or her name.

(2) Subject to subsection (3), on application and payment of the registration fee and any fee for late payment of the registration fee, the Registrar must register the dog in the name of the person nominated and issue to that person a certificate of registration, and a registration disc, conforming with the requirements of the Board or the regulations.

(3) The Registrar may refuse to register a dog under this section if satisfied that the dog is (or is to be) kept in a kennel or used for a purpose in connection with a business that should, in the opinion of the Registrar, be registered under section 35.

(4) A dog registered in the name of a particular person must, on application to the

Registrar of the area in which the dog is kept, be registered in the name of some other person who is of or over 16 years of age and consents to the dog being registered in his or her name.

35—Registration procedure for businesses involving dogs

- (1) The owner or operator of a business consisting of or involving—
 - (a) a kennel at which dogs are bred or trained; or
 - (b) the provision of security or other services involving the use of dogs, may apply, in the manner and form approved by the Board, to the Registrar of the area in which the business is (or is to be) situated or from which the business is (or is to be) operated for registration of the business.
- (2) On application and payment of the registration fee and any fee for late payment of the registration fee, the Registrar must, if satisfied that the applicant genuinely owns or operates a business as referred to in subsection (1), register the business and issue to the applicant a certificate of registration conforming with the requirements of the Board.
- (3) If a business is registered under this section, all dogs bred or trained at the kennel or used in connection with the business that are of or over 3 months of age will, while kept at the kennel or used in the business, be taken to be registered.

36—Duration and renewal of registration

- (1) Registration under this Act remains in force until 30 June next ensuing after registration was granted and may be renewed from time to time for further periods of 12 months.
- (2) If an application for renewal of registration is made before 31 August of the year in which the registration expired, the renewal operates retrospectively from the date of expiry.
- (3) Registration of a dog under this Act expires if the dog is removed from the area in which it is registered with the intention that it will be usually kept at a place outside that area and 14 days have elapsed since it was removed from that area.¹

Note—

¹ In that event the dog must be re-registered in the new area.

37—Notifications to ensure accuracy of registers

- (1) The person in whose name a dog is individually registered must inform the Registrar of the area in which the dog is registered as soon as practicable after any of the following occurs:
 - (a) the dog is removed from the place recorded in the register as the place at which the dog is usually kept with the intention that it will be usually kept at some other place (whether in the same area, in a different area or outside the State);
 - (b) the dog dies;
 - (c) the dog has been missing for more than 72 hours;
 - (d) the ownership of the dog is transferred to another person.

Maximum penalty: \$1 250.

Expiation fee: \$210.

- (2) The owner or operator of a business registered under this Part must inform the Registrar of the area in which the business is registered as soon as practicable after any of the following occurs:

- (a) the business is transferred to another person; or

- (b) the owner or operator ceases to carry on the business; or
- (c) any other circumstances of a kind specified in the regulations.

Maximum penalty: \$1 250.

Expiation fee: \$210.

(3) Information given to the Registrar under this section must include such details as may be reasonably required for the purposes of ensuring the accuracy of registers kept under this Act.

38—Transfer of ownership of dog

If ownership of a dog is transferred from the person in whose name the dog is individually registered, the person must give to the new owner the certificate of registration and registration disc last issued in respect of the dog.

Maximum penalty: \$1 250.

Expiation fee: \$210.

39—Rectification of register

A person aggrieved by an entry in a register under this Act may apply to the council for the rectification of the register.

40—Repealed

41—Applications and fees

- (1) An application under this Part—
 - (a) must be made in the manner and form required by the Board; and
 - (b) must be accompanied by any document or certificate required by the Board; and
 - (c) must be accompanied by the fee fixed by the relevant council.
- (2) No fee is payable for the registration of an accredited assistance dog.
- (3) For the purpose of determining an application under this Part or the fee to accompany the application, the Registrar to whom the application is made may require the applicant to produce satisfactory evidence supporting the application.

42—Repealed

Part 4A—Microchipping and other identification

42A—Dogs and cats to be microchipped

- (1) The owner of a dog or cat must ensure that the dog or cat is microchipped in accordance with any requirements set out in the regulations.
- (2) An owner of a dog or cat who contravenes subsection (1) is guilty of an offence.

Maximum penalty:

- (a) if the dog is a dog of a prescribed breed, or an attack trained dog, guard dog or patrol dog—\$5 000;
- (b) in any other case—\$2 500.

Expiation fee:

- (a) if the dog is a dog of a prescribed breed, or an attack trained dog, guard dog or patrol dog—\$750;

- (b) in any other case—\$315.
- (3) Subsection (1) does not apply to, or in relation to—
 - (a) an animal welfare organisation (other than in relation to a guard dog or patrol dog owned by an animal welfare organisation); or
 - (b) a person or body detaining a dog or cat that has been seized under this Act; or
 - (c) a dog or cat that is not usually kept within the State.
- (4) In proceedings for an offence against this section it is a defence for the defendant to prove that he or she believed on reasonable grounds that the dog or cat had, in fact, been microchipped.
- (5) Without limiting the regulations that may be made for the purposes of this section, the regulations may—
 - (a) prescribe a period or periods (whether by reference to the age of an animal or the sale of an animal or otherwise) within which dogs and cats must be microchipped; and
 - (b) prescribe a minimum or maximum age at which dogs and cats may be required to be microchipped; and
 - (c) prescribe requirements relating to who can microchip a dog or cat; and
 - (d) exempt a person or body, or dogs or cats, of a specified class from the operation of this section (whether conditionally or unconditionally).
- (6) Nothing in this section limits the operation of section 42D.

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

- (1) If—
 - (a) a person is found guilty of, or expiates, an offence against section 42A; and
 - (b) the person refuses or fails without reasonable excuse to have the dog or cat that was the subject of the offence microchipped, the person is guilty of a further offence for each period of 3 months after the day on which the person is found guilty or expiates the offence (as the case requires) during which the dog or cat is not microchipped.

Maximum penalty:

- (a) if the dog is a dog of a prescribed breed—\$5 000;
- (b) in any other case—\$2 500.

Expiation fee:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;
- (b) in any other case—\$315.

- (2) Subsection (1) does not apply to a person to the extent that they are complying with an order of a court that is inconsistent with that subsection, or that the refusal or failure to microchip is otherwise authorised under this or any other Act.

42C—Board may keep register relating to desexed and microchipped dogs and cats

- (1) The Board may keep a register relating to the microchipping of dogs and cats in accordance with this or any other Act.
- (2) The Register may—
 - (a) contain such information as the Board thinks fit; and

(b) subject to this Act, be kept in any manner the Board thinks appropriate (including in an electronic form) and may be combined with another register.

(3) The regulations may make further provision in relation to a register under this section (including, without limiting the generality of this subsection, provisions requiring the provision of such information to the Board as the Board may reasonably require and provisions regulating access to the register by members of the public).

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

(1) This section applies to—

- (a) a dog or cat that is not required to be microchipped under this Act; and
- (b) a dog or cat that is required to be microchipped under this Act once it reaches a specified age or has been owned for a specified period, but has not yet reached that age or been owned for that period, but does not apply to a dog or cat, or dog or cat of a class, declared by the regulations to be excluded from the operation of this section.

(2) The owner of a dog or cat to which this section applies must ensure that the dog or cat (as the case requires), at all times while the dog or cat is not effectively confined to premises of which the person is the occupier, wears a collar around its neck to which is attached—

- (a) if the dog or cat is required to be registered under this Act—the registration disc last issued for the dog or cat; and
- (b) in any case—a tag legibly setting out—
 - (i) the name of the owner of the dog or cat, or of a person entitled to possession of the dog or cat; and
 - (ii) either—
 - (A) the address of the owner or other person; or
 - (B) the telephone number of the owner or other person.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(3) In proceedings for an offence against subsection (2), it is a defence for the defendant to prove that the dog or cat was, at the relevant time, suffering from injury, disease or sickness to the extent that the wearing of a collar would be injurious to its health.

Part 5—Management of dogs and cats

Division 1—Offences relating to duties of owners and others responsible for control of dog

43—Dogs not to be allowed to wander at large

(1) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog is wandering at large.

Maximum penalty:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—
 - (i) for a first offence—\$5 000;

(ii) for a subsequent offence—\$10 000.

(b) in any other case—\$2 500.

Expiation fee:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;

(b) in any other case—\$315.

(2) It is a defence to a charge of an offence against this section if it is proved that the defendant had taken all reasonable steps to prevent the dog from wandering at large.

(3) If a person is found guilty of a subsequent offence, the court should, unless it is of the opinion that the circumstances of the particular case are exceptional, make one or more of the following orders in addition to imposing the penalty:

(a) that the dog be disposed of in a specified manner within a specified period;

(b) that the order for disposal be remitted in specified circumstances;

(c) any other order (including an order as to costs and for compensation) that the court thinks fit.

44—Dogs not to be allowed to attack etc

(1) A person who sets on or urges a dog to attack, harass or chase a person or an animal or bird owned by or in the charge of another person is guilty of an offence (whether or not actual injury is caused).

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog attacks, harasses or chases or otherwise endangers the health of a person or an animal or bird owned by or in the charge of another person (whether or not actual injury is caused).

Maximum penalty:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—

(i) for a first offence—\$5 000;

(ii) for a subsequent offence—\$10 000.

(b) in any other case—\$2 500.

Expiation fee:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;

(b) in any other case—\$315.

(3) A person who is guilty of an offence against this section is guilty of an aggravated offence if the offence relates to a dog that is a dangerous dog or a dog of a prescribed breed and, on conviction, the person is liable to a monetary penalty not exceeding double the monetary penalty, or imprisonment for a term not exceeding double the term, that would otherwise apply under this section for that offence.

(4) It is a defence to a charge of an offence against this section if it is proved that the dog was at the time of the offence being genuinely used in the reasonable defence of a person or property, or for driving or removing an animal found trespassing.

45—Transporting unrestrained dogs in vehicles

(1) If a dog is not physically restrained while being transported in the open tray of a utility, truck or other similar vehicle, the driver of the vehicle is guilty of an offence.

Maximum penalty: \$1 250.

Expiation fee: \$210.

(2) If an authorised person reasonably suspects that a vehicle has been used to transport a dog contrary to this section, the authorised person may apply to the Registrar of Motor Vehicles for the name and address of the registered owner of the vehicle.

(3) For the purposes of this section, a dog is *physically restrained* while being transported in the open tray of a utility, truck or other similar vehicle if—

(a) the dog is being transported within a cage or other like enclosure; or

(b) the dog is securely tethered to the vehicle so that the dog cannot fall or escape from the vehicle.

(4) This section does not apply to the transport of—

(a) an accredited assistance dog; or

(b) a dog that is being used in the droving or tending of stock or is going to or returning from a place where it will be, or has been, so used

45A—Miscellaneous duties relating to dogs

(1) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog is on premises and causes injury to a person or property of a person lawfully entering those premises.

Maximum penalty:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$5 000;

(b) in any other case—\$2 500.

Expiation fee:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;

(b) in any other case—\$315.

(2) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog (not being an accredited assistance dog) is in, or in the grounds of, a school, kindergarten, child care centre or pre-school centre without the permission of the person in charge of that place.

Maximum penalty:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$5 000;

(b) in any other case—\$2 500.

Expiation fee:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;

(b) in any other case—\$315.

(3) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog (not being an accredited assistance dog) is in a shop, not being a pet shop, grooming parlour or premises used for the purposes of the practice of a registered veterinary surgeon, without the permission of the shopkeeper.

Maximum penalty:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$5 000;

(b) in any other case—\$2 500.

Expiation fee:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;

(b) in any other case—\$315.

(4) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog rushes at or chases a vehicle (other than on premises of which the person is the occupier).

Maximum penalty:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$5 000;
- (b) in any other case—\$2 500.

Expiation fee:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$750;
- (b) in any other case—\$315.

(5) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog (either alone or together with other dogs, whether or not in the same ownership) creates a noise, by barking or otherwise, which persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of a person.

Maximum penalty: \$1 250.

Expiation fee: \$210.

(6) A person who owns or is responsible for the control of a dog (not being an accredited assistance dog) is guilty of an offence if the dog defecates in a public place and the person responsible for the control of the dog does not immediately remove the faeces and dispose of them in a lawful and suitable manner.

Maximum penalty: \$125.

Expiation fee: \$55.

Division 1A— Provisions relating to certain breeds etc of dogs

45B—Specific duties relating to dogs of prescribed breed

(1) A person who owns or is responsible for the control of a dog of a prescribed breed must ensure that, at any time the dog is not confined in premises of which that person is the occupier—

- (a) the dog has a muzzle securely fixed on its mouth capable of preventing it from biting any person or animal; and
- (b) the dog is under the effective control of a person by means of physical restraint.

Maximum penalty: \$5 000.

Expiation fee: \$750.

(2) A person who owns or is responsible for the control of a dog of a prescribed breed is guilty of an offence if the dog is not desexed.

Maximum penalty: \$5,000.

(3) It is a defence to a charge of an offence against subsection (2) if it is proved that the defendant believed on reasonable grounds that the dog was desexed.

(4) A person who sells or gives away, or advertises for sale or to give away, a dog of a prescribed breed is guilty of an offence.

Maximum penalty: \$2 500.

45C—Specific duties relating to greyhounds

(1) A person who owns or is responsible for the control of a greyhound must ensure that, at any time the greyhound is not confined in premises of which that person is the occupier—

(a) in the case of a greyhound exempted from the requirement to wear a muzzle—the greyhound is under the effective control of a person by means of physical restraint; or

(b) in any other case—

(i) the greyhound has a muzzle securely fixed on its mouth capable of preventing it from biting any person or animal; and

(ii) the greyhound is under the effective control of a person by means of physical restraint.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) Subsection (1) does not apply if the greyhound—

(a) is being raced, exercised or trained on land (not being a public dog park provided by a council) with the consent of the owner or occupier of the land; or

(b) is participating in an organised activity (being a show, trial or class) and is under the effective control of a person by command, the greyhound being in close proximity to the person and the person being able to see the greyhound at all times.

45D—Specific duties relating to attack trained dogs, guard dogs and patrol dogs

(1) A person who owns, or is responsible for the control of an attack trained dog, a guard dog or a patrol dog is guilty of an offence if, after the day declared for the purpose under this section, any of the following requirements is not complied with:

(c) the dog, while on premises of which the person who is responsible for the control of the dog is the occupier, must be kept indoors or in an enclosure that is constructed so as to prevent the dog escaping from it;

(d) the dog must, at all times, wear a collar that complies with the requirements of the Board (except while the dog is suffering from injury, disease or sickness to the extent that the wearing of a collar would be injurious to the health of the dog);

(e) the dog must, except while confined to premises of which the person who is responsible for the control of the dog is the occupier, be under the effective control of a person by means of physical restraint;

(f) warning signs (complying with the requirements of the Board) must be prominently displayed at all entrances to premises where the dog is usually kept warning people that an attack trained dog, a guard dog or patrol dog (as the case may be) is kept on the premises.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) Subsection (1) does not apply while the dog is participating in an organised activity (being a show, trial or class) and is under the effective control of a person by command, the dog being in close proximity to the person and the person being able to see the dog at all times.

(3) For the purposes of this section, the Board may—

(a) by notice in the Gazette, declare a day to be the day from which the

provisions of this section apply in respect of dogs within the area of the council specified in the notice; and
(b) by further notice in the Gazette, vary such a declaration.

45E—**Repealed**

Division 1B—Court's power to make orders in criminal proceedings

47—Court's power to make orders in criminal proceedings

(1) If a person is found guilty of an offence against Division 1 or 1A, the court may, in addition to, or instead of, imposing a penalty, make one or more of the following orders:

- (a) that the dog **or cat** be destroyed or disposed of in a specified manner within a specified period;
- (b) that the order for destruction or disposal be remitted in specified circumstances;
- (c) that the dog be registered under this Act;
- (ca) that the dog **or cat** be identified in a specified manner;
- (cb) that the dog **or cat** be seized and detained for a period specified in the order or until further order of the court;
- (d) that the dog **or cat** be controlled in a specified manner;
- (e) that specified action be taken within a specified period to abate any danger or nuisance posed by the dog **or cat**;
- (ea) that the dog **or cat** be desexed;
- (eb) that any other dog **or cat** owned by the person, or for the control of which the person is responsible, be destroyed or disposed of in a specified manner within a specified period;
- (f) that the person not acquire another dog **or cat** for a specified period or until further order of the court;
- (g) that the person pay compensation for injury, damage or loss suffered by a person as a result of the actions of the dog;
- (h) any other order that the case requires.

(2) An order must state to whom it is directed.

(3) A person who fails to comply with an order made against the person under this section is guilty of an offence.

Maximum penalty: \$5 000.

(4) An order under this section binds the person against whom it is made despite the fact that the ownership or control of the dog **or cat** has changed or is not known, or that the dog **or cat** is no longer being kept in the same place, unless, on application to the Magistrates Court, the Court is satisfied that the changed circumstances are such that the order should be varied.

(5) If an order under this section is contravened, a **authorised person** may take reasonable steps to give effect to the order and the council within the area of which the dog **or cat** subject to the order is kept may recover the cost of that action as a debt from a person who owns or is responsible for the control of the dog **or cat**.

Division 2—Repealed

Division 3—Destruction and control orders

50—Destruction and control orders

(1) A council or the Board may, in accordance with this Division, make an order of any of the

following classes in relation to a specified dog:

- (a) a Destruction Order;
- (b) a Control (Dangerous Dog) Order;
- (c) a Control (Menacing Dog) Order;
- (d) a Control (Nuisance Dog) Order;
- (e) a Control (Barking Dog) Order.

(2) A Destruction Order requires—

- (a) the dog to be destroyed within the period specified in the order (but not less than one month after the date the order takes effect); and
- (b) the dog, until destroyed, to be kept or detained at a place specified in the order (or at some other place subsequently approved by the council or the Board).

(3) A Control (Dangerous Dog) Order requires—

- (a) if the dog has not been desexed the dog to be desexed within the period specified in the order; and
- (b) if the dog has not been microchipped—the dog to be microchipped within the period specified in the order; and
- (c) the dog, while on premises of which the person who is responsible for the control of the dog is the occupier, to be kept indoors or in an enclosure that is constructed so as to prevent the dog escaping from it; and
- (d) the dog, at all times, to wear a collar that complies with the requirements of the Board (except while the dog is suffering from injury, disease or sickness to the extent that the wearing of a collar would be injurious to the health of the dog); and
- (e) the dog, except while confined to premises of which the person who is responsible for the control of the dog is the occupier—
 - (i) to have a muzzle securely fixed on its mouth capable of preventing it from biting any person or animal; and
 - (ii) to be under the effective control of a person by means of physical restraint; and
- (f) warning signs (complying with the requirements of the Board) to be prominently displayed at all entrances to premises where the dog is usually kept warning people that a dangerous dog is kept on the premises; and
- (g) the dog or the person or both to undertake such approved training courses as may be specified in the order; and
- (h) all reasonable steps to be taken to prevent the dog repeating the behaviour that gave rise to the order.

(4) A Control (Menacing Dog) Order requires—

- (a) if the dog has not been microchipped—the dog to be microchipped within the period specified in the order; and
- (b) the dog, while on premises of which the person who is responsible for the control of the dog is the occupier, to be kept indoors or for the premises to be fenced so as to prevent the dog escaping from the premises; and
- (ba) the dog or the person or both to undertake such approved training courses as may be specified in the order; and

- (c) the dog, at all times, to wear a collar that complies with the requirements of the Board (except while the dog is suffering from injury, disease or sickness to the extent that the wearing of a collar would be injurious to the health of the dog); and
 - (d) the dog, except while confined to premises of which the person who is responsible for the control of the dog is the occupier—
 - (i) to have a muzzle securely fixed on its mouth capable of preventing it from biting any person or animal; and
 - (ii) to be under the effective control of a person by means of physical restraint; and
 - (da) the dog or the person or both to undertake such approved training courses as may be specified in the order; and
 - (e) all reasonable steps to be taken to prevent the dog repeating the behaviour that gave rise to the order.
- (5) A Control (Nuisance Dog) Order requires—
- (a) the dog, while on premises of which the person who is responsible for the control of the dog is the occupier, to be kept indoors or for the premises to be fenced so as to prevent the dog escaping from the premises; and
 - (b) the dog, except while confined to premises of which the person who is responsible for the control of the dog is the occupier, to be under the effective control of a person by means of physical restraint; and
 - (c) all reasonable steps to be taken to prevent the dog repeating the behaviour that gave rise to the order.
- (6) A Control (Barking Dog) Order requires—
- (a) all reasonable steps to be taken to prevent the dog repeating the behaviour that gave rise to the order; and
 - (b) the dog or the person or both to undertake such approved training courses as may be specified in the order.
- (7) In this section—
- approved training course** means a training course approved for the time being by the Board for the purposes of this section.

51—Grounds on which orders may be made

A council or the Board may make an order in relation to a dog under this Division if satisfied that—

- (a) in the case of a Destruction Order—
 - (i) the dog is unduly dangerous; and
 - (ii) the dog has attacked, harassed or chased a person or an animal or bird owned by or in the charge of a person in circumstances that would constitute an offence against this Act; or
- (b) in the case of a Control (Dangerous Dog) Order—
 - (i) the dog—
 - (A) is dangerous; and
 - (B) has attacked, harassed or chased a person or an animal or bird, or is likely to do so, in circumstances that would constitute an offence against this or any other Act; or
 - (ii) the dog is subject to an order made under a law of another jurisdiction that corresponds with a Control (Dangerous Dog) Order; or
- (c) in the case of a Control (Menacing Dog) Order—

- (i) the dog—
 - (A) is menacing; and
 - (B) has attacked, harassed or chased a person 15 or an animal or bird, or is likely to do so, in circumstances that would constitute an offence against this or any other Act; or
- (ii) the dog is subject to an order made under a law of another jurisdiction that corresponds with a Control (Menacing Dog) Order; or
- (d) in the case of a Control (Nuisance Dog) Order—
 - (i) the dog—
 - (A) is a nuisance; and
 - (B) has attacked, harassed or chased a person or an animal or bird, or is likely to do so, in circumstances that would constitute an offence against this or any other Act; or
 - (ii) the dog is subject to an order made under a law of another jurisdiction that corresponds with a Control 30 (Nuisance Dog) Order; or
- (e) in the case of a Control (Barking Dog) Order—
 - (i) the dog is a nuisance; and
 - (ii) the dog has created noise by barking or otherwise in circumstances that would constitute an offence against this or any other Act.

52—Procedure for making and revoking orders

- (a1) A council or the Board may make an order under this Division on its own initiative or on an application made in a manner and form determined by the council or the Board (as the case requires)
- (1) Before making an order under this Division in relation to a dog, the council or the Board (as the case requires) must take reasonable steps—
 - (a) to ascertain all persons who own or are responsible for the control of the dog; and
 - (b) to give each of the persons so ascertained at least 7 days written notice—
 - (i) identifying the dog in relation to which it is proposed that the order be made; and
 - (ii) setting out the terms of the proposed order; and
 - (iii) inviting the owner or other person to make submissions to the council (within 7 days or such longer period as is allowed by the council) with respect to the matter or the Board (as the case requires) in respect of the matter within 7 days or such longer period as is allowed by the council or the Board (as the case requires).
- (2) An order made by a council—
 - (a) must be made in the manner and form required by the Board; and
 - (b) must be noted in the register kept by the council under this Act; and
 - (c) takes effect when the council first gives a copy of the order to a person who owns or is responsible for the control of the dog.
- (3) The council or the Board (as the case requires) must take reasonable steps to give a copy of the order to each person who owns or is responsible for the control of the dog.

(4) An order made by a council may be revoked by the council by written notice to a person who owns or is responsible for the control of the dog.

(5) A note of the revocation must be entered in the register kept by the council under this Act.

(6) An order made by the Board—

(a) takes effect when the Board first gives a copy of the order to a person who owns or is responsible for the control of the dog; and

(b) may be revoked by the Board by written notice to a person who owns or is responsible for the control of the dog; and

(c) must, at the request of the Board, be noted in the register kept under this Act by the council in whose area the dog is usually kept.

53—Directions about how to comply with order

(1) A council may, from time to time, issue written directions to a person who owns or is responsible for the control of a dog subject to an order under this Division about how the order may be complied with in the area of the council.

(2) If directions issued under this section are complied with, a person who owns or is responsible for the control of the dog is not liable to prosecution for contravention of the order as it applies in the area of the council to which the directions relate.

54—Application of orders and directions

(1) An order under this Division binds any person who, for the time being, owns or is responsible for the control of the dog.

(2) If a dog is usually kept in an area other than the area of the council that imposed the order, the order continues to apply as if it were an order of the council of the area in which the dog is usually kept.

(3) Directions given by a council only apply in relation to the area of the council.

55—Contravention of order

(1) If an order under this Division is contravened, any person who owns or is responsible for the control of the dog is guilty of an offence.

Maximum penalty:

(a) in the case of a contravention of a Destruction order, a Control (Dangerous Dog) Order or a Control (Menacing Dog) Order—\$10 000;

(b) in the case of a contravention of a Control (Nuisance Dog) Order—\$2 500;

(c) in the case of a contravention of a Control (Barking Dog) Order—\$1 250.

Expiation fee:

(a) in the case of a contravention of a Destruction order, a Control (Dangerous Dog) Order or a Control (Menacing Dog) Order—\$750;

(b) in any other case—\$315.

(2) It is a defence to a charge of an offence against this section if it is proved that the defendant was not, at the time of the alleged offence, aware that the order was in force.

(3) If an order under this Division is contravened, an authorised person may take reasonable steps to give effect to the order and the cost of that action may be recovered as a debt from a person who owns or is responsible for the control of the dog.

56—Notification to council

- (1) A person who owns or is responsible for the control of a dog subject to an order under this Division must inform the council of the area in which the dog is usually kept as soon as practicable if—
- (a) the dog attacks a person or an animal or bird owned by or in the charge of a person; or
 - (b) the dog is missing; or
 - (c) the dog dies; or
 - (d) the ownership of the dog changes.

Maximum penalty:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$2 500;
- (b) in any other case—\$1 250.

Expiation fee:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$315;
- (b) in any other case—\$210.

- (2) If the place at which a dog subject to an order under this Division is usually kept changes, a person who owns or is responsible for the control of the dog must, as soon as practicable, inform—

- (a) the council of the area from which or within which the dog is moved; and
- (b) if the dog is moved into another council area—the council of that area.

Maximum penalty:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$2 500;
- (b) in any other case—\$1 250.

Expiation fee:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$315;
- (b) in any other case—\$210.

- (3) In the case of an order made by the Board, the Registrar must notify the Board of any information received under this section.

- (3) Information given to the Registrar under this section must include such details as the Registrar may reasonably require.

57—Notification of order to proposed new owner of dog

Before ownership of a dog subject to an order under this Division changes, the person proposing to transfer ownership must inform the person to whom ownership is to be transferred about the order.

Maximum penalty: \$1 250.

Expiation fee: \$210.

58—Repealed

59—Power of court to order destruction or control of dog on application

If a dog is shown to be unduly dangerous, the Magistrates Court may, on application, make any order in relation to the dog that a court could have made if the proceedings had been criminal proceedings under this Act (and the order takes effect as if it had been made in such proceedings).

Division 3A—Prohibition orders

59A—Prohibition orders

- (1) A council **or the Board** may, in accordance with this Division, make a Prohibition Order against a person.
- (2) A Prohibition Order—
 - (a) prohibits the person from acquiring or becoming responsible for the control of any dog for the period specified in the order; and
 - (b) requires each dog owned by the person, or for the control of which the person is responsible, at the time the order takes effect—
 - (i) to be destroyed or, if the order so allows, disposed of in a specified manner, within a specified period (but not less than one month after the order takes effect); and
 - (ii) until destroyed or disposed of, to be kept or detained at a place specified in the order (or at some other place subsequently approved by the council **or the Board** (as the case requires)).
- (3) A council **or the Board** may, on its own initiative or on application, make a Prohibition Order against a person if satisfied that—
 - (a) while the person owned or was responsible for the control of a dog, the dog attacked, harassed or chased a person or an animal or bird owned by or in the charge of a person in circumstances that would constitute an offence against this Act; and
 - (b) —
 - (i) the dog was already subject to a Destruction Order or a Control (Dangerous Dog) Order; or
 - (ii) during the 5 years preceding the event referred to in paragraph (a), a Destruction Order or a Control (Dangerous Dog) Order was made in relation to some other dog on grounds that arose while the person owned or was responsible for the control of that other dog.
- (3a) A council **or the Board** may, on its own initiative or on application, make a Prohibition Order against a person if satisfied that the person is subject to a supervision order under section 269O of the *Criminal Law Consolidation Act 1935*.
- (4) However, a council **or the Board** may not make a Prohibition Order if the person satisfies the council **or the Board** that—
 - (a) the person did not intend the event referred to in subsection (3)(a) to occur and the event did not result from any failure on the part of the person to take all reasonable steps to avoid the occurrence of the event; or
 - (b) the event referred to in subsection (3)(a) occurred while the dog was, without the person's consent, in the possession or control of another person.
- (5) An order **made by a council** —
 - (a) must be made in the manner and form required by the Board; and
 - (b) must be recorded by the council in a manner and form approved by the Board and the record kept readily available for public inspection; and
 - (c) takes effect when the council gives a copy of the order to the person against whom it is made.
- (6) An **made by a council order may be revoked by the council** by written notice to the person against whom the order was made.
- (7) A note of the revocation must be entered in the record kept by the council under this section.
- (8) An order **made by the Board**—

- (a) takes effect when the Board gives a copy of the order to the person against whom it is made; and
- (b) may be revoked by the Board by written notice to a person who owns or is responsible for the control of the dog; and
- (c) must, at the request of the Board, be noted in the register kept under this Act by the council in whose area the dog is usually kept.

59B—Contravention of Prohibition Order

- (1) A person who contravenes a Prohibition Order is guilty of an offence.

Maximum penalty: \$5,000.

- (2) It is a defence to a charge of an offence against this section if it is proved that the defendant was not, at the time of the alleged offence, aware that the order was in force.
- (3) If a Prohibition Order is contravened, an authorised person may take reasonable steps to give effect to the order and the cost of that action may be recovered as a debt from the person subject to the order.

59C—Repealed

Division 4— Destruction and seizure etc of dogs and cats

59D—Power to destroy etc dogs and cats

- (1) A person may lawfully destroy or injure a dog in the following circumstances:
 - (a) if that action is reasonable and necessary for the protection of life or property;
 - (b) if the person is the owner or occupier of land, or a person acting under the authority of the owner or occupier of land, and the dog, accompanied by a person, is found in an enclosed paddock or other enclosed place in which an animal that is being farmed is confined;
 - (c) if the person is a warden under the *National Parks and Wildlife Act 1972* and—
 - (i) the dog is attacking or harassing a protected animal within the meaning of that Act on a reserve within the meaning of that Act; and
 - (ii) there is no other way of protecting the protected animal.

Note—

See also section 63.

- (2) A person may lawfully destroy or injure a cat in the following circumstances:
 - (a) if that action is reasonable and necessary for the protection of property;
 - (b) if the person is a warden under the *National Parks and Wildlife Act 1972* or the *Wilderness Protection Act 1992* and the cat is in a reserve or sanctuary (within the meaning of the *National Parks and Wildlife Act 1972*) or a wilderness protection area or zone (within the meaning of the *Wilderness Protection Act 1992*);
 - (c) if the person is the owner or occupier of a designated area, or a person authorised for the purpose by the owner or occupier of a designated area and the cat is found in the designated area;
 - (d) if the cat is found in a place that is more than 1 kilometre from any place genuinely used as a place of residence;
 - (e) if the cat is unidentified and—

- (i) the person is an authorised officer under the *Crown Land Management Act 2009* and the cat is found in an area in respect of which the authorised officer is authorised to exercise powers under that Act; or
- (ii) the person is an authorised officer under the *Natural Resources Management Act 2004* and—
 - (A) the cat is found by a State authorised officer under that Act; or
 - (B) the cat is found by a regional authorised officer under that Act in the region in which the regional authorised officer is authorised to act; or
- (iii) the person is an inspector under the *Prevention of Cruelty to Animals Act 1985* and the cat is found while the person is acting in the ordinary course of his or her duties under that Act; or
- (iv) the person is a registered veterinary surgeon acting in the ordinary course of his or her profession; or
- (v) the person is acting for or on behalf of 1 of the following bodies or persons in respect of a cat that has been delivered to a facility operated by the person or body:
 - (A) the *Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated*;
 - (B) the *Animal Welfare League of South Australia, Incorporated*;
 - (C) a body or person specified by the regulations.

(3) Without limiting subsection (1) or (2), an authorised person may lawfully destroy or injure a dog or cat in any of the circumstances specified in those subsections.

(4) Nothing in this section limits the operation of section 34B of the *Animal Welfare Act 1985*.

60—Power to seize and detain dogs

(1) A **authorised person** may seize and detain a dog in any of the following circumstances:

- (a) if the dog is wandering at large;
- (b) if the **authorised person** reasonably believes it necessary to seize the dog in order to prevent or stop the dog attacking, harassing or chasing a person or an animal or bird owned by or in the charge of a person (whether or not actual injury has been or may be caused);
- (c) if the **authorised person** reasonably believes that the dog is unduly dangerous;
- (ca) if the dog is the subject of an order under Division 3 and the authorised person reasonably suspects that the person who owns
- (cb) if the person who owns or is responsible for the control of the dog is subject to a Prohibition Order under Division 3A
- (d) if the **authorised person** reasonably believes it necessary to detain the dog in order to ensure that an order under this Act for the destruction or disposal of the dog is carried out.

(1a) A person may seize and detain a cat in any of the following circumstances:

- (a) the circumstances set out in section 59D(2);
- (b) any other circumstances set out in the regulations.

(1b) A person may seize and detain an unidentified cat for the purpose of delivering it within 12 hours to—

- (a) a registered veterinary surgeon; or
 - (b) an authorised person; or
 - (c) a facility for the care of cats operated by—
 - (i) the *Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated*; or
 - (ii) the *Animal Welfare League of South Australia, Incorporated*; or
 - (iii) a body or person specified by the regulations, 20 however nothing in this subsection authorises the person to destroy the cat.
- (2) If a authorised person reasonably believes that it is dangerous or impracticable to seize a dog because of its savagery or other sufficient cause, the dog may be injured or destroyed.
- (3) If a dog is injured or destroyed under subsection (2), the authorised person must take reasonable steps to inform a person who owns or is responsible for the control of the dog.
- (4) An inspector under the *Animal Welfare Act 1985* may exercise the powers of an authorised person under this Division in relation to a dog found wandering at large while the inspector is acting in the ordinary course of his or her duties under that Act.

61—Procedure following seizure of dog or cat

- (1) If a dog or cat is seized under this Division, it must either—
 - (a) be returned to a person who owns or is responsible for the control of the dog or cat; or
 - (b) be detained in a facility approved by the Board for the purpose of detaining dogs or cats.
- (2) If a dog is detained, the person causing it to be detained must—
 - (a) cause notice of the detention to be given to members of the public by causing a notice to be displayed at the office of the council for the area in which the dog was seized (or if the dog was seized outside municipal and district council areas, at the police station nearest to where the dog was seized) containing—
 - (i) a general description of the dog; and
 - (ii) the day and time it was seized; and
 - (iii) the place at which the dog is being detained; and
 - (b) if a person who owns or is responsible for the control of the dog is known to the dog management officer or is readily ascertainable—cause notice of the detention to be given, as soon as practicable, to the owner or other person in the manner and form required by the Board.
- (3) A notice under subsection (2)(a) must remain displayed for at least 72 hours.
- (4) If a dog is seized in order to prevent or stop it attacking, harassing or chasing a person or an animal or bird or because it is unduly dangerous—
 - (a) the council must, as soon as practicable, proceed to consider making an order in relation to the dog or applying to the Magistrates Court for an order in relation to the dog; and
 - (b) if notice of an intention to make an order in relation to the dog has not been given, or an application to the Magistrates Court has not been made, within 7 days after the dog was seized, the dog must be returned to a person entitled to its return under this Division.
- (4a) If a Control (Dangerous Dog) Order is made or in force in respect of a dog detained under this section, the person responsible for the dog while so detained may—

(a) in the case of a dog that is required to be, but is not, microchipped—cause the dog to be microchipped

;

(b) in the case of a dog not desexed—cause the dog to be desexed.

(4b) The cost of taking action under subsection (4a) may be recovered from the person who owns or is responsible for the control of the dog as a debt due to the council incurring the cost.

61A—Animal welfare organisations etc may microchip and desex seized dogs and cats

(1) Despite any other provision of this Act, or any other Act or law, an animal welfare organisation or council that is detaining a dog or cat seized under this or any other Act may, in accordance with any guidelines determined by the Board for the purposes of this section, do 1 or more of the following:

(a) desex the dog or cat;

(b) microchip the dog or cat;

(c) cause the dog or cat to be desexed or microchipped.

(2) An animal welfare organisation or council (as the case requires) may recover the cost of taking action under this section as a debt from a person who owns or is responsible for the control of the dog or cat.

62—Limits on entitlement to return of dog or cat

A person is not entitled to the return of a dog or cat seized under this Division unless the person—

(a) provides satisfactory evidence that he or she owns or is responsible for the control of the dog, or is authorised to receive the dog by a person who owns or is responsible for the control of the dog; and

(b) pays—

(i) the charges that are payable under the regulations in relation to the seizure and detention of the dog; and

(ii) any other outstanding charges or fees payable under this Act in relation to the dog; and

(c) in the case of an unregistered dog—registers the dog if so requested by the person responsible for the dog while detained.

63—Destruction or disposal of seized dog or cat

(1) If—

(a) a dog found wandering at large and detained under this Division is not claimed by a person entitled to the return of the dog within 72 hours from when notice of its detention was last given under this Division; or

(b) a person in whose name a dog detained under this Division is registered declines to take possession of the dog; or

(c) money due in relation to a dog detained under this Division is not paid within 7 days after a request for payment, the person responsible for the dog while detained under this Division may cause the dog to be destroyed or otherwise disposed of.

(1a) If a cat is seized and detained under this Division, the person responsible for the cat while detained under this Division may cause the cat to be destroyed or otherwise disposed of.

(1b) If a dog or cat is destroyed or otherwise disposed of under this section then, for the purposes of the laws of this State—

- (a) ownership of the dog or cat will be taken to have vested in the operator of the facility at which the dog or cat had been detained immediately before the dog or cat was destroyed or 35 otherwise disposed of; and
- (b) no compensation will be payable to a previous owner of the dog or cat in respect of its destruction or disposal, (however, nothing in this section limits the operator of the facility from recovering charges or costs of taking action under this Act in accordance with section 64 or any other provision this Act).

Note—

Ownership of an animal does not vest in the operator of the facility or any other person merely because a period of time has elapsed after which the animal may be disposed of.

(2) If a dog or cat is disposed of under this section by sale, the proceeds of the sale are the property of the operator of the facility at which the dog or cat

(3) The operator of a facility at which a dog or cat is detained under this Division may cause the dog or cat to be destroyed—

(a) if satisfied on reasonable grounds—

- (i) that the dog or cat is suffering from injury, disease or sickness to the extent that it is impracticable to maintain the dog or cat; or
- (ii) that the dog or cat is suffering from a serious contagious or infectious disease or sickness; and

(b) —

- (i) the destruction is authorised in writing by a registered veterinary surgeon or stock inspector; or
- (ii) that neither a registered veterinary surgeon nor a stock inspector is reasonably available and that urgent action is required in the circumstances.

63A—Notification to owner of dog or cat destroyed etc under Division

(1) A person who destroys, injures, seizes or detains a dog or an identified cat under this Division must, as soon as practicable—

(a) take reasonable steps to inform the owner of the dog or cat of the action taken; and

(b) notify—

- (i) a police officer; and
- (ii) the council of the area in which the action was taken.

Maximum penalty: \$1 250.

Expiation fee: \$210.

(2) Subsection (1)(b) does not apply in the following circumstances:

- (a) if the person destroying, injuring, seizing or detaining a dog or cat is a prescribed person; or
- (b) any other circumstances prescribed by the regulations.

(3) In this section—

prescribed person means—

- (a) an authorised person; or
- (b) a warden under the *National Parks and Wildlife Act 1972* or the *Wilderness Protection Act 1992*; or
- (c) an authorised officer under the *Crown Land Management Act 2009*; or
- (d) an authorised officer under the *Natural Resources Management Act 2004*; or
- (e) an inspector under the *Prevention of Cruelty to Animals Act 1985*; or
- (f) a registered veterinary surgeon; or

(g) a person acting for or on behalf of 1 of the following bodies or persons in respect of a dog or cat that has been delivered to a facility operated by the person or body:

- (i) the *Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated*;
 - (ii) the *Animal Welfare League of South Australia, Incorporated*;
 - (iii) a body or person specified by the regulations; or
- (h) any other person prescribed by the regulations.

64—Recovery of costs of seizure, detention or destruction

The operator of a facility at which a dog or cat has been detained under this Division may recover the charges that are payable under the regulations in relation to the seizure, detention or destruction of the dog or cat from a person who owns or is responsible for the control of the dog or cat as a debt in a court of competent jurisdiction whether or not the dog or cat has been returned to the person.

Part 6—Civil actions relating to dogs

65—Ownership and responsibility for control of dogs in civil actions

In civil proceedings relating to injury, damage, loss or nuisance caused by a dog, questions of ownership or responsibility for the control of the dog will be determined as if the proceedings were criminal proceedings under this Act.

66—Liability for dogs

- (1) The keeper of a dog is liable in tort for injury, damage or loss caused by the dog.
- (2) It is not necessary for the plaintiff to establish—
 - (a) negligence; or
 - (b) knowledge of the dog's vicious, dangerous or mischievous propensity.
- (3) However, the keeper's liability is subject to the following qualifications:
 - (a) if the injury, damage or loss results from provocation of the dog by a person other than the keeper, the keeper's liability (if any) will be decided according to the *Civil Liability Act 1936* principles;
 - (b) if the injury, damage or loss results from an attack on the dog by an animal for the control of which the keeper is not responsible, the keeper's liability (if any) will be decided according to the *Civil Liability Act 1936* principles;
 - (c) if the injury, damage or loss is caused to a trespasser on land on which the dog is kept, the keeper's liability (if any) will be decided according to the *Civil Liability Act 1936* principles;
 - (d) if the injury, damage or loss is caused while the dog is being used in the reasonable defence of a person or property, the keeper's liability (if any) will be determined according to the *Civil Liability Act 1936* principles;
 - (e) if the injury, damage or loss is caused while the dog is in the possession or control of a person without the keeper's consent, the keeper's liability (if any) will be determined according to the *Civil Liability Act 1936* principles;
 - (f) the keeper's liability (if any) is subject to any other defence available under the law of tort.

(4) If the plaintiff's negligence contributed to the injury, damage or loss, the damages will be reduced to the extent the court thinks just and equitable having regard to the plaintiff's share in responsibility for injury, damage or loss.

(5) In this section—

keeper of a dog means the owner of the dog, or if the owner is under 18 years of age, the child's parents or guardians, and includes a person into whose possession the dog has been delivered;

provocation means—

- (a) teasing, tormenting or abusing the dog;
- (b) any act of cruelty towards the dog;
- (c) attacking the owner of the dog, or a person towards whom the dog could reasonably be expected to be protective, in front of the dog.

Note—

1 At common law, the keeper of an animal was strictly liable for injury caused by the animal if the animal was *ferae naturae* (ie an undomesticated animal). If the animal was *mansuetae naturae* (ie a domestic animal), liability was dependent on proof of *scienter* (ie knowledge of the animal's dangerous or mischievous propensity). These rules were abolished by Part 3 of the *Civil Liability Act 1936* which provides that negligence is the basis of liability. This section, however, qualifies the *Civil Liability Act 1936* principles by imposing strict liability in relation to dogs subject, however, to statutory qualifications.

67—Court's power to make orders relating to dogs in civil actions

In civil proceedings relating to injury, damage, loss or nuisance caused by a dog, the court may make any order that a court could make if the proceedings were criminal proceedings under this Act (and the order takes effect as if it had been made in such proceedings).

Part 7—Breeding and sale of dogs and cats

68—Registration of breeders

- (1) The Board may, on application, register a person as a breeder.
- (2) An application must—
 - (a) be made in a manner and form determined by the Board; and
 - (b) be accompanied by such documentation and information as the Board may reasonably require; and
 - (c) be accompanied by the fee fixed by the Board.
- (3) The Board may impose such conditions on a registration under this Part as the Board thinks fit (including, to avoid doubt, a condition requiring the breeder to comply with a code of practice under another Act).
- (4) The Board may, by notice in writing, vary, revoke or add a condition of registration.
- (5) The Board may, by notice in writing, revoke a registration under this Part for a contravention of a condition of registration or for any other reason it thinks fit.
- (6) The Board must keep and maintain a register for the purposes of this Part.

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

- (1) A person must not sell a dog or cat that he or she has bred unless—
 - (a) he or she is registered as a breeder under this Part; or
 - (b) he or she is registered (however described) as a breeder with an approved representative body; or
 - (c) he or she is registered as a breeder under a law of another jurisdiction dealing with the breeding of dogs or cats.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) Nothing in this section authorises a person to breed a dog of a prescribed breed.

(3) For the purposes of this section, a person will be taken to have bred a dog or cat if the person takes action of a kind prescribed by the regulations in relation to the breeding of the dog or cat.

(4) In this section—

approved representative body means a body declared by the regulations to be an approved representative body for the purposes of this section.

70—Offences relating to sale of certain dogs and cats

(1) A person must not sell a dog or cat unless the dog or cat has been micro-chipped in accordance with any requirement set out in the regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) Subsection (1) applies whether or not—

(a) the dog or cat is required to be microchipped under section 46A; or

(b) the person was the breeder of the dog or cat.

(3) This section does not apply to a sale of a dog or cat occurring in 35 circumstances prescribed by the regulations for the purposes of this section.

(4) Nothing in this section authorises a person to sell a dog of a prescribed breed.

71—Certain information to be given to buyers

(1) A person who sells a dog or cat must give to the new owner a written notice setting out—

(a) the information required by the regulations relating to the identity of the breeder or breeders of the dog or cat; and

(b) the information required by the regulations relating to vaccinations and other treatments given to the dog or cat; and

(c) the information required by the regulations relating to the dog's or cat's micro-chip; and

(d) any other information required by the regulations in respect of a sale of the relevant kind.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) A person who publishes an advertisement in relation to the sale of a dog or cat must ensure that the advertisement contains—

(a) the information required by the regulations relating to the identity of the breeder or breeders of the dog or cat; and

(b) the information required by the regulations relating to 20 vaccinations and other treatments given to the dog or cat; and

(c) the information required by the regulations relating to the dog's or cat's micro-chip; and

(d) any other information required by the regulations in respect of an advertisement of the relevant kind.

Maximum penalty: \$5 000.

Expiation fee: \$315.

Part 7A—Review of decisions by SACAT

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

(1) The South Australian Civil and Administrative Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of a reviewable decision.

(2) An application for review of a reviewable decision may be made to 35 the South Australian Civil and Administrative Tribunal within 14 days after the applicant receives notice of the relevant decision (or such longer period as the Tribunal may allow).

(3) However, the South Australian Civil and Administrative Tribunal may only allow an extension of time under subsection (2) if satisfied 40 that—

- (a) special circumstances exist; and
- (b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

(4) In this section—

reviewable decision—the following are reviewable decisions:

- (a) a decision of a council or the Board to make an order under Part 5 Division 3 or 3A;
- (b) a decision of a person to refuse to allow the release of a dog or cat that is being detained under this Act;
- (c) any other decision under this Act of a kind declared by the regulations to be included in the ambit of this definition.

Part 8—Miscellaneous

80A—Board may grant exemptions from Act

(1) The Board may, by notice in writing, on application or on its own 15 initiative, exempt a person or body from the operation of a specified provision or provisions of this Act.

(2) An application must—

- (a) be made in a manner and form determined by the Board; and
- (b) be accompanied by such documentation and information as the Board may reasonably require; and
- (c) be accompanied by the fee fixed by the Board.

(3) An exemption—

- (a) may be granted or refused at the discretion of the Board; and
- (b) may operate indefinitely or for a period specified in the instrument of exemption; and
- (c) is subject to any conditions specified in the instrument of exemption.

(4) The Board may, by notice in writing, vary, revoke or add a condition of an exemption.

(5) The Board may, in its discretion, revoke an exemption for a contravention of a condition of the exemption, or for any other reason it thinks fit.

81—Assistance dogs etc

(1) Despite this Act or any other Act—

- (a) a person who is wholly or partially blind or deaf, or otherwise disabled, is entitled to be accompanied by an accredited assistance dog in a public place or public passenger vehicle; and
- (b) the occupier or person in charge of a public place or public passenger vehicle must not refuse access to the place or vehicle to a person who is wholly or partially blind or deaf, or otherwise disabled, on the ground that the person is accompanied by a assistance dog.

Maximum penalty: \$1 250.

Expiation fee: \$210.

- . (2) A person must not claim that a dog is an assistance dog unless the dog—
 - (a) is accredited as an assistance dog under section 21A; or
 - (b) is an assistance animal (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth).

Maximum penalty: \$1 250.

Expiation fee: \$210.

81A—Interference with dog or cat in lawful custody

A person who interferes with, releases, or removes from lawful custody a dog or cat seized or detained under this Act is guilty of an offence.

Maximum penalty: \$5,000.

81B—Offence to interfere with identification of dog or cat

A person must not, without reasonable excuse, interfere with or remove—

- (a) a microchip; or
- (b) any other form of identification worn by or attached to the dog or cat, (whether or not the microchip or other identification is required under this Act).

Maximum penalty: \$5 000.

Expiation fee: \$315.

82—False or misleading statements

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or a record kept, under this Act.

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading— \$10 000;
- (b) in any other case—\$2 500.

83—No liability action taken under the act

A person incurs no civil or criminal liability by reason only of action lawfully taken in respect of a dog or cat under this Act.

85—Continuing offences

- (1) A person convicted of an offence against a provision of this Act (except section 33, 42A, 42B or 42C) in respect of a continuing act or omission—

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
 - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for that offence.
- (2) Where an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

86—General defences

It is a defence to a charge of an offence against this Act if it is proved—

- (a) that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence; or
- (b) if the offence involves a dog—that the dog was at the time of the alleged offence in the possession or control of another person without the defendant's consent.

87—Service of notices and documents

A notice or document required or authorised by this Act to be given to a person may—

- (a) be served on the person personally; or
- (b) be posted in an envelope addressed to the person at the person's last known address; or
- (c) be left for the person at his or her place of residence or business with someone apparently of or over 16 years of age or in a letterbox to which it would have been delivered if sent by post.

88—Evidence

In proceedings for an offence against this Act—

- (a) an allegation in the complaint that—
 - (i) at a specified time a person owned or was responsible for the control of the a specified dog or cat ; or
 - (ii) a dog was a dog of a prescribed breed; or
 - (iia) a specified dog or cat was, or was not, at a specified time registered under this Act; or
 - (iib) a specified dog or cat was, at a specified time, less than a specified age; or
 - (iii) a specified dog or cat was not at a specified time desexed; or
 - (iiia) a specified dog or cat was not at a specified time microchipped; or
 - (iiib) a specified person was, or was not, at a specified time registered as a breeder under Part 7;
- (iv) that a person was at a specified time an authorised person, will be accepted as proved in the absence of proof to the contrary; and

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

(1) In this section—

owner, in relation to a vehicle, has the same meaning as in section 174A of the *Road Traffic Act 1961*;

prescribed offence means an offence against section 45(1).

(2) Without derogating from the liability of any other person, but subject to this section, if a vehicle is involved in a prescribed offence, the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee that is fixed for the principal offence applies in relation to an offence against this section.

(3) The owner and driver of a vehicle are not both liable through the operation of this section to be convicted of an offence arising out of the same circumstances, and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.

(4) An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged offence against this section involving the vehicle must be accompanied by a notice inviting the owner, if he or she was not the driver at the time of the alleged prescribed offence, to provide the council or **authorised person** specified in the notice, within the period specified in the notice, with a statutory declaration—

(a) setting out the name and address of the driver; or

(b) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).

(5) Before proceedings are commenced against the owner of a vehicle for an offence against this section involving the vehicle, the complainant must send the owner a notice—

(a) setting out particulars of the alleged prescribed offence; and

(b) inviting the owner, if he or she was not the driver at the time of the alleged prescribed offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subsection (6).

(6) Subsection (5) does not apply to—

(a) proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or

(b) proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the driver of the vehicle.

(7) Subject to subsection (8), in proceedings against the owner of a vehicle for an offence against this section, it is a defence to prove—

(a) that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged prescribed offence; or

(b) that the owner provided the complainant with a statutory declaration in accordance with an invitation under this section.

(8) The defence in subsection (7)(b) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.

(9) If—

- (a) an expiation notice is given to a person named as the alleged driver in a statutory declaration under this section; or
 - (b) proceedings are commenced against a person named as the alleged driver in such a statutory declaration, the notice or summons (as the case may be) must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.
- (10) In proceedings against a person named in a statutory declaration under this section for the offence to which the declaration relates, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the vehicle at the time at which the alleged offence was committed.
- (11) In proceedings against the owner or driver of a vehicle for an offence against this Act, an allegation in the complaint that a notice was given under this section on a specified day will be accepted as proof, in the absence of proof to the contrary, of the facts alleged.

89—Appropriation of penalties

A penalty for an offence against this Act that is recovered on the complaint of a council or an officer of a council must be paid to that council

90—By-laws

- (1) A district or municipal council may make by-laws for the control or management of dogs or cats within its area.
- (2) Without limiting the generality of subsection (1), the by-laws may—
- (a) limit the number of dogs or cats that may be kept on any premises;
 - (b) fix periods during which dogs or cats must be effectively confined to premises occupied by a person who is responsible for the control or entitled to the possession of the dog or cat;
 - (c) require dogs or cats to be identified in a specified manner or in specified circumstances;
 - (d) require dogs or cats to be effectively controlled, secured or confined in a specified manner or in specified circumstances;
 - (da) set aside specified areas where dogs are prohibited or for specified activities relating to dogs to be carried out in a specified manner or in specified circumstances;
 - (e) make provision for a registration scheme for cats (including payment of a fee for registration);
 - (f) exempt (conditionally or unconditionally) classes of persons or activities from the application of the by-laws or specified provisions of the by-laws.
- (3) By-laws under this Act—
- (a) may be of general application or limited application;
 - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
 - (c) may provide that a matter or thing in respect of which by-laws may be made is to be determined according to the discretion of the council.
- (4) However, a by-law limiting the number of dogs or cats that may be kept on premises does not apply in relation to a kennel in respect of which a development authorisation is in force under the *Development Act 1993* so as to prevent dogs or cats being kept as contemplated by that authorisation.
- (5) The *Local Government Act 1999* applies to by-laws made under this section subject to the following modifications:

- (a) a council must, at least 42 days before resolving to make the by-law (and consequently at least 21 days before public notice of the proposed by-law is given) refer the proposed by-law to the Board; and
- (b) at the same time the council must provide a report to the Board—
 - (i) outlining the objects of the proposed by-law; and
 - (ii) setting out how it is proposed to implement or enforce the proposed by-law; and
 - (iii) explaining the reasons for any difference in the proposed by-law from other by-laws about a similar subject matter applying or proposed to apply in other council areas; and
- (c) the council must consider any recommendations of the Board relating to the by-law.

91—Regulations

- (1) The Governor may, on the recommendation of the Board, make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) regulate the keeping and control of dogs or cats of a specified class;
 - (b) prohibit the keeping of dogs or cats of a specified class in specified places or areas;
 - (ba) set aside specified areas where dogs are prohibited or for specified activities relating to dogs to be carried out in a specified manner or in specified circumstances;
 - (c) regulate the detention of dogs or cats seized under this Act;
 - (d) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
 - (e) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
 - (f) prescribe fines, not exceeding \$5,000, for offences against the regulations.
 - (g) fix expiation fees, not exceeding \$750, for offences against this Act or the regulations; and
 - (h) provide for the facilitation of proof of the commission of offences against the regulations
- (3) Regulations under this Act—
 - (a) may be of general application or limited application;
 - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
 - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Board or a council or a specified person or body.
- (4) The regulations may refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time.
- (5) If a code, standard or other document is referred to or incorporated in the regulations—
 - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Schedule 1—Transitional provisions

2—Transitional provisions

(4) By-laws relating to dog management in force immediately before the commencement of this Act continue in force as if they were made under this Act and a licence in force under section 58 of the *Dog Control Act 1979* continues to have effect as if it were an exemption granted under a by-law.

3—Membership of Board vacated

The offices of the members of the Dog and Cat Management Board are vacated on the commencement of this clause.

4—Renewal of registration

Despite section 36(2), if an application for renewal of registration that expires on 30 June 2004 is made after the commencement of this clause but before 30 November 2004, the renewal operates retrospectively from 30 June 2004.

5—Control (Dangerous Dog) Orders

(1) If, immediately before the commencement of section 34 of the *Dog and Cat Management (Miscellaneous) Amendment Act 2004*, a dog is subject to a Control (Dangerous Dog) Order, the council of the area in which the dog is usually kept may reissue the order in the terms that would apply if the order were made after that commencement.

(2) Section 52 applies to the reissuing of an order under this clause as if it were the making of an order under Division 3 of Part 5 and a reissued order will be taken to be an order made under that Division.

(3) Section 58 does not apply to the reissuing of an order under this clause.

(4) A Control (Dangerous Dog) Order in force immediately before the commencement of section 34 of the *Dog and Cat Management (Miscellaneous) Amendment Act 2004* continues to have effect subject to this Act until it is reissued under this clause.