

South Australia

Dog and Cat Management (Miscellaneous) Amendment Act 2004

An Act to amend the *Dog and Cat Management Act 1995*.

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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 (Miscellaneous) Amendment Act 2004*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

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

4—Amendment of section 4—Interpretation

- (1) Section 4—before the definition of *area* of a council insert:

accredited means accredited by the Board under section 21A;
- (2) Section 4, definition of *area* of a council, paragraph (b)—after "council" insert:

(or part of a council)
- (3) Section 4, definition of *area* of a council, paragraph (c)—delete paragraph (c) and substitute:
 - (c) in relation to the *Outback Areas Community Development Trust*—the area in relation to which the *Outback Areas Community Development Trust* is constituted;
- (4) Section 4—after the definition of *area* of a council insert:

attack trained dog means a dog trained, or undergoing training, to attack a person on command;
- (5) Section 4—after the definition of *cat management officer* insert:

corresponding law means a law of another State or a Territory of the Commonwealth that provides for the registration of dogs;
- (6) Section 4—after the definition of *council* insert:

dangerous dog means a dog in relation to which—

 - (a) a council 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;

disability dog means a dog trained and used, or undergoing training to be used, for the purpose of assisting a person who is wholly or partially disabled;
- (7) Section 4, definition of *guide dog*—delete the definition and substitute:

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;

guide dog means a dog trained and used, or undergoing training to be used, for the purpose of guiding a person who is wholly or partially blind;

hearing dog means a dog trained and used, or undergoing training to be used, for the purpose of assisting a person who is wholly or partially hearing disabled;
- (8) Section 4—after the definition of *own* a dog insert:

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;

(9) Section 4, definition of *prescribed breed*—after paragraph (d) insert:

(e) Presa Canario;

(10) Section 4—after the definition of *registration disc*—insert:

registration fee—see section 26(6);

5—Amendment of section 5—Owner of dog

(1) Section 5(1)—after "if it appears from a register under this Act" insert:

or a corresponding law

(2) Section 5(1)—after "in another register under this Act" insert:

or a corresponding law

6—Amendment of section 6—Person responsible for control of dog

Section 6(3)—delete "18" and substitute:

16

7—Amendment of section 7—Dog wandering at large

(1) Section 7(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(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) Section 7(2)(c)—delete "despite the fact that it is not effectively secured"

8—Substitution of section 8

Section 8—delete the section and substitute:

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—Substitution of section 9

Section 9—delete the section and substitute:

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.

10—Amendment of section 12—Composition of Board

(1) Section 12(1) and (2)—delete subsections (1) and (2) and substitute:

- (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 processes, community consultation and the law as it applies to local government;
 - (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.

(2) Section 12(5)—delete subsection (5)

11—Amendment of section 17—Proceedings

Section 17(1)—delete "4" and substitute:

5

12—Amendment of section 21—Functions of Board

(1) Section 21—after paragraph (b) insert:

(ba) to accredit dogs as disability dogs, guide dogs or hearing dogs;

(2) Section 21—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(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).

13—Insertion of section 21A

After section 21 insert:

21A—Accreditation of disability dogs, guide dogs etc

- (1) The Board may, on application, accredit a dog, or renew the accreditation of a dog, as—
 - (a) a disability dog; or
 - (b) a guide dog; or
 - (c) a hearing dog.
- (2) An application for accreditation must—
 - (a) be made to the Board in the manner and form approved by the Board; and
 - (b) be accompanied by the fee fixed by the Board.
- (3) An applicant must provide the Board with any information required by the Board for the purpose of determining the application.
- (4) Accreditation of a dog remains in force for the life of the dog unless it is earlier revoked by the Board or surrendered by the owner of the dog.
- (5) The Board must maintain a register of dogs accredited under this section by the Board (which may be kept in the form of a computer record) that is to be readily available for public inspection without fee.

- (6) The Board may only revoke the accreditation of a dog if the Board is satisfied that—
- (a) the dog's ill-health, injury or advanced age prevents the dog from carrying out its functions as a disability dog, guide dog or hearing dog (as the case may be); or
 - (b) the dog is temperamentally unsuitable to continue to be accredited as a disability dog, guide dog or hearing 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).

14—Amendment of section 22—Powers of Board

Section 22(3)—delete subsection (3)

15—Amendment of section 23—Operational plans, budgets and information

Section 23(1)—delete "at the request of the Minister"

16—Amendment of section 26—Council responsibility for management of dogs

- (1) Section 26(1)(a)—delete "(containing the information required by the Board and kept readily available for public inspection)" and substitute:
- containing the information required by the Board (which may be kept in the form of a computer record) that is to be readily available for public inspection
- (2) Section 26(1)—after paragraph (a) insert:
- (ab) ensure that the Board is provided with information contained in the register as required by the Board from time to time; and
- (3) Section 26(6)—delete subsection (6) and substitute:
- (6) Councils may charge—
 - (a) fees for the provision of extracts from registers kept under this Act; and
 - (b) fees (which may be differential) approved by the Minister—
 - (i) for the registration of dogs or businesses under Part 5; and
 - (ii) for late payment of registration fees; and
 - (iii) for meeting any other requirement imposed on councils under this Act.
- (7) Without limiting the matters that may be taken into account when setting fees to be approved by the Minister, councils must provide for a percentage rebate of the fee that would otherwise be charged for the registration of a dog in the following cases:
- (a) if the dog is desexed;
 - (b) if—

- (i) the dog has been implanted with a microchip for the purposes of identification; and
 - (ii) the information contained in the microchip is up-to-date;
 - (c) if the dog has passed a specified training program accredited by the Board,
- (and, if more than one rebate applies in respect of a particular dog, the rebates are to be aggregated and deducted from the registration fee that would otherwise be charged).

17—Insertion of section 26A

After section 26 insert:

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 be prepared and presented to the Board as follows:
 - (a) the first plan must cover a 5 year period and be prepared and presented within 3 years after the commencement of this section;
 - (b) subsequent plans must cover subsequent 5 year periods and each plan must be prepared and presented 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.

18—Amendment of section 30—General powers of dog management officers

Section 30(1)—after paragraph (c) insert:

- (ca) require a person who owns or is responsible for the control of a dangerous dog or a dog of a prescribed breed to produce evidence that the dog is desexed; or

19—Insertion of section 31A

After section 31 insert:

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.

20—Insertion of section 32A

After section 32 insert:

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.

21—Amendment of section 33—Dogs must be registered

- (1) Section 33(2), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty:

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

Expiation fee:

 - (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$210;
 - (b) in any other case—\$80.
- (2) Section 33(3), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty:

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

Expiation fee:

 - (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$210;

(b) in any other case—\$80.

(3) Section 33(4)(b)(iii)—delete "of another State or a Territory of the Commonwealth"

22—Amendment of section 34—Registration procedure for individual dogs

(1) Section 34(1)(a)—after "kept" insert:

in the manner and form approved by the Board

(2) Section 34(1)(b)—delete "18" and substitute:

16

(3) Section 34(2)—after "on application" insert:

and payment of the registration fee and any fee for late payment of the registration fee,

(4) Section 34(2)—after "Board" insert:

or the regulations

(5) Section 34(4)—delete "18" and substitute:

16

23—Amendment of section 35—Registration procedure for businesses involving dogs

(1) Section 35(1)—after "apply" insert:

, in the manner and form approved by the Board,

(2) Section 35(2)—after "On application" insert:

and payment of the registration fee and any fee for late payment of the registration fee,

24—Substitution of section 40

Section 40—delete the section and substitute:

40—Dog to be properly identified

If a dog is not identified as prescribed by the regulations, the person who owns or is responsible for 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—\$2 500;

(b) in any other case—\$250.

Expiation fee:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$210;

(b) in any other case—\$80.

25—Amendment of section 41—Applications and fees

- (1) Section 41(1)(c)—delete "fee fixed by regulation" and substitute:
appropriate fee
- (2) Section 41(2)—delete "a guide dog" and substitute:
an accredited disability dog, guide dog or hearing dog

26—Amendment of section 42—Records to be kept by approved boarding kennels

- (1) Section 42—delete "a copy" and substitute:
extracts from the records
- (2) Section 42, penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:
Maximum penalty: \$250.
Expiation fee: \$80.

27—Substitution of heading to Part 5 Division 1

Heading to Part 5 Division 1—delete the heading to Division 1 and substitute:

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

28—Substitution of sections 43 to 45

Sections 43, 44 and 45—delete the sections and substitute:

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) for a first offence—
 - (i) if the dog is a dangerous dog or a dog of a prescribed breed—\$2 500;
 - (ii) in any other case—\$250;
- (b) for a subsequent offence—
 - (i) if the dog is a dangerous dog or a dog of a prescribed breed—\$5 000;
 - (ii) in any other case—\$750.

Expiation fee:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$210;
- (b) in any other case—\$80.

- (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: \$2 500.
Expiation fee: \$210.
- (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: \$750.
Expiation fee: \$105.

- (2) If a dog management officer reasonably suspects that a vehicle has been used to transport a dog contrary to this section, the officer 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 guide 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: \$2 500.

Expiation fee: \$210.

- (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 disability dog, guide dog or hearing 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—\$2 500;
- (b) in any other case—\$250.

Expiation fee:

- (a) if the dog is a dangerous dog or a dog of a prescribed breed—\$210;
- (b) in any other case—\$80.

- (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 disability dog, guide dog or hearing 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—\$2 500;

(b) in any other case—\$250.

Expiation fee:

(a) if the dog is a dangerous dog or a dog of a prescribed breed—\$210;

(b) in any other case—\$80.

- (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: \$750.

Expiation fee: \$105.

- (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: \$750.

Expiation fee: \$105.

- (6) A person who owns or is responsible for the control of a dog (not being an accredited guide 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—Offences relating to specific duties of owners and others responsible for control of certain 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 is guilty of an offence if, while not effectively confined to premises of which that person is the occupier, the dog—

(a) does not have a muzzle securely fixed on its mouth so as to prevent it from biting any person or animal; or

- (b) is not under the effective control of a person by means of physical restraint.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (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: \$2 500.
- (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 is guilty of an offence if, while not effectively confined to premises of which the person is the occupier, the greyhound—
- (a) does not have a muzzle securely fixed on its mouth so as to prevent it from biting any person or animal; or
- (b) is not under the effective control of a person by means of physical restraint.
- Maximum penalty: \$250.
Expiation fee: \$80.
- (2) Subsection (1) does not apply if the greyhound—
- (a) is being raced, exercised or trained on land 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:
- (a) the dog must be implanted with a microchip;
- (b) the dog must be branded in a manner approved by the Board;

- (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: \$2 500.

- (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—Board may exempt persons from specific duties under this Division

- (1) The Board may, on application or of its own motion, exempt a person or class of persons from having to comply with a specified specific duty under this Division.
- (2) An exemption is subject to the conditions (if any) imposed by the Board.
- (3) The Board may, at the Board's discretion, vary or revoke an exemption.
- (4) The Board must give written notice of a grant, or a variation or revocation, of an exemption to the applicant.

29—Amendment and redesignation of section 46—Interference with dog in lawful custody

- (1) Section 46, penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$2 500.
- (2) Section 46—redesignate the section as amended by this section as section 81A and relocate the section so that it follows section 81

30—Insertion of new divisional heading

Before section 47 insert:

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

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

- (1) Section 47(1)—delete "this Division" and substitute:
Division 1 or 1A
- (2) Section 47(1)—after paragraph (c) insert:
 - (ca) that the dog be identified in a specified manner;
 - (cb) that the dog be seized and detained for a period specified in the order or until further order of the court;
- (3) Section 47(1)—after paragraph (e) insert:
 - (ea) that the dog be desexed;
 - (eb) that any other dog 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;
- (4) Section 47(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$5 000.
- (5) Section 47—after subsection (4) insert:
 - (5) If an order under this section is contravened, a dog management officer may take reasonable steps to give effect to the order and the council within the area of which the dog 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.

32—Repeal of section 49

Section 49—delete the section

33—Substitution of heading to Part 5 Division 3

Heading to Part 5 Division 3—delete the heading to Division 3 and substitute:

Division 3—Council powers to make destruction and control orders

34—Substitution of section 50

Section 50—delete the section and substitute:

50—Destruction and control orders

- (1) A council 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).
- (3) A Control (Dangerous Dog) Order requires—
 - (a) the dog to be desexed within the period specified in the order; and
 - (b) the dog to be identified by means of an implanted microchip; 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 so as to prevent 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 and the person who is responsible for the control of the dog to successfully complete an approved training course 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) the dog to be identified by means of an implanted microchip; 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
 - (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 so as to prevent it from biting any person or animal; and
 - (ii) to be under the effective control of a person by means of physical restraint; 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 in an enclosure that is constructed so as to prevent the dog escaping from it; 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 all reasonable steps to be taken to prevent the dog repeating the behaviour that gave rise to 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 subsection (3).

35—Amendment of section 51—Grounds on which orders may be made

- (1) Section 51(2)—delete "or a Control (Nuisance Dog) Order" and substitute:
 , a Control (Menacing Dog) Order or a Control (Nuisance Dog) Order
- (2) Section 51(2)(a)—delete "or a nuisance" and substitute:
 , a menacing or a nuisance

36—Amendment of section 55—Contravention of order

Section 55(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of a Control (Barking Dog) Order—\$250;
(b) in any other case—\$2 500.

37—Insertion of Part 5 Division 3A

After section 59 insert:

Division 3A—Prohibition orders

59A—Prohibition orders

- (1) A council 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).

- (3) A council 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.
- (4) However, a council may not make a Prohibition Order if the person satisfies the council 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—
- (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 order may be revoked by a 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.

59B—Contravention of Prohibition Order

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

Maximum penalty: \$2 500.

- (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, a dog management officer may take reasonable steps to give effect to the order and the council concerned may recover the cost of that action as a debt from the person subject to the order.

59C—Appeal against Prohibition Order

- (1) A person against whom a Prohibition Order is made may appeal to the Administrative and Disciplinary Division of the District Court against the decision of the council to make the order or to refuse to revoke the order.
- (2) If the council does not give reasons in writing at the time of making the decision, the council must do so on request by the person affected by the decision within 14 days of the making of the decision.
- (3) An appeal must be instituted—
 - (a) within 14 days of the making of the decision appealed against; or
 - (b) if a request for reasons in writing for the decision has been made under subsection (2)—within 14 days after receipt of the reasons in writing.

38—Amendment of section 60—Power to seize and detain dogs

Section 60(1)(d)—after "destruction" insert:

or disposal

39—Amendment of section 61—Procedure following seizure of dog

Section 61—after subsection (4) insert:

- (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 not identified in the manner specified in the order—cause the dog to be so identified;
 - (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.

40—Amendment of section 81—Disability dogs, guide dogs etc

- (1) Section 81(a)—after "deaf" insert:
, or otherwise disabled,

- (2) Section 81(a)—delete "a guide dog" and substitute:
an accredited disability dog, guide dog or hearing dog
- (3) Section 81(b)—after "deaf" insert:
, or otherwise disabled,
- (4) Section 81(b)—delete "guide dog" and substitute:
disability dog, guide dog or hearing dog
- (5) Section 81, penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$250.
- (6) Section 81—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
 - (2) A person must not claim that a dog is a disability dog, guide dog or hearing dog unless the dog is accredited as such by the Board under section 21A.
Maximum penalty: \$250.

41—Insertion of section 88A

After section 88 insert:

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 officer 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.

42—Amendment of section 90—By-laws

Section 90(2)—after paragraph (d) insert:

- (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;

43—Amendment of section 91—Regulations

- (1) Section 91(2)—after paragraph (b) insert:
 - (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;
- (2) Section 91(2)(f)—delete paragraph (f) and substitute:
 - (f) prescribe fines, not exceeding \$2 500, for offences against the regulations.

44—Amendment of Schedule 1—Repeal and transitional provisions

- (1) Heading to Schedule 1—delete the heading and substitute:

Schedule 1—Transitional provisions

- (2) Clause 1—delete the clause
- (3) Clause 2(1), (2) and (3)—delete subclauses (1), (2) and (3)
- (4) After clause 2 insert:

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.

Schedule 1—Statute law amendments and amendment of penalty provisions

Provision Amended	How Amended
Long title	Delete "to repeal the Dog Control Act 1979; to make a consequential amendment to the Local Government Act 1934;".
Section 2	Delete the section.
Section 4 definition of <i>stock inspector</i>	Delete " <i>Stock Act 1990</i> " and substitute " <i>Livestock Act 1997</i> ".
Section 18(1) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 31(1) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 31(2) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 32 penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 37(1) penalty provision and expiation fee	Delete the penalty provision and expiation fee and substitute: Maximum penalty: \$250. Expiation fee: \$80.
Section 37(2) penalty provision and expiation fee	Delete the penalty provision and expiation fee and substitute: Maximum penalty: \$250. Expiation fee: \$80.
Section 38 penalty provision and expiation fee	Delete the penalty provision and expiation fee and substitute: Maximum penalty: \$250. Expiation fee: \$80.

No 18 of 2004—Dog and Cat Management (Miscellaneous) Amendment Act 2004
 Statute law amendments and amendment of penalty provisions—Schedule 1

Provision Amended	How Amended
Section 48(4) penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$250.
Section 56(1) penalty provision and expiation fee	Delete the penalty provision and expiation fee and substitute: Maximum penalty: \$250. Expiation fee: \$80.
Section 56(2) penalty provision and expiation fee	Delete the penalty provision and expiation fee and substitute: Maximum penalty: \$250. Expiation fee: \$80.
Section 57 penalty provision and expiation fee	Delete the penalty provision and expiation fee and substitute: Maximum penalty: \$750. Expiation fee: \$105.
Section 71 penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 75 penalty provision and expiation fee	Delete the penalty provision and expiation fee and substitute: Maximum penalty: \$250. Expiation fee: \$80.
Section 78 penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 79 penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 82 penalty provision	Delete the penalty provision and substitute: Maximum penalty: <ul style="list-style-type: none"> (a) if the person made the statement knowing that it was false or misleading—\$10 000; (b) in any other case—\$2 500.
Section 90(5)	Delete " <i>Local Government Act 1934</i> " and substitute " <i>Local Government Act 1999</i> ".
Schedule 2	Delete the Schedule.