

South Australia

**Animal Welfare (Companion Animals)
Amendment Bill 2014**

A BILL FOR

An Act to amend the *Animal Welfare Act 1985*.

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Part 1—Transitional provisions

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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 *Animal Welfare (Companion Animals) Amendment Act 2014*.

5 2—Commencement

This Act will come into operation 12 months after the day on which it is assented to by the Governor.

3—Amendment provisions

10 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 *Animal Welfare Act 1985*

4—Insertion of Part 3A

After section 15A insert:

Part 3A—Companion animals

15 Division 1—Preliminary

15B—Interpretation

(1) In this Part—

approved animal welfare organisation means an animal welfare organisation holding a current approval under section 15D;

20 *breeder's licence* means a breeder's licence granted to a person or body under section 15G;

cat means an animal of the species *felis catus*;

code of practice means a code of practice made under section 15E, as in force from time to time;

25 *desex or desexed* means to wholly or partly remove the reproductive organs from an animal such that the animal is not capable of reproducing;

dog means an animal of the species *canis familiaris*;

Dogs SA means the SA Canine Association Inc trading as Dogs SA;

30 *first sale*, of a prescribed companion animal, means—

- (a) the sale of a prescribed companion animal by or on behalf of the breeder of the animal to a purchaser; or

(b) the sale of a prescribed companion animal by or on behalf of a person or body to a purchaser in the course of carrying on a business consisting of, or including, the sale of animals; or

(c) any other sale of a prescribed companion animal declared by the regulations to be included in the ambit of this definition,

but does not include—

(d) the sale of a prescribed companion animal to a person or body for the purposes of resale; or

(e) a sale of a prescribed companion animal, or class of prescribed companion animals, declared by the regulations not to be included in the ambit of this definition;

mate includes to mate by means of artificial insemination;

micro-chip means to implant into the body of an animal a micro-chip containing information identifying the owner of, or another person entitled to possession of, the animal;

owner of a prescribed companion animal—see subsection (2);

prescribed companion animal means—

(a) a dog; or

(b) a cat; or

(c) any other animal of a class prescribed by the regulations for the purposes of this definition,

but does not include a dog, cat or other animal of a class declared by the regulations not to be included in the ambit of this definition;

prescribed peak bodies means—

(a) the Society; and

(b) the Animal Welfare League of South Australia Inc; and

(c) the Local Government Association; and

(d) Dogs SA; and

(e) the Feline Association of South Australia Inc; and

(f) any other body prescribed by the regulations for the purposes of this definition.

purchase includes—

(a) barter or exchange; or

(b) offer to purchase, barter or exchange,

and *purchaser* has a corresponding meaning;

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, and *seller* has a corresponding meaning.

5 (2) For the purposes of this Part, the following people are presumed, in the absence of proof to the contrary, to be owners of a prescribed companion animal:

- 10 (a) in the case of a prescribed companion animal that is a dog that is registered under the *Dog and Cat Management Act 1995*—a person in whose name the dog was last registered in the relevant register under that Act;
- 15 (b) in the case of a prescribed companion animal to which paragraph (a) does not apply but that is micro-chipped (whether as required by this Act or otherwise)—a person last recorded on a record relating to the micro-chip as being an owner of the prescribed companion animal;
- 20 (c) in the case of a prescribed companion animal to which neither paragraph (a) nor (b) applies, but that is habitually in the apparent ownership of a person—that person.

20 **15C—Application of Part**

This Part is in addition to, and does not derogate from, the provisions of any other Act or law.

25 **15D—Approved animal welfare organisations**

- 25 (1) The Minister may, on application, approve a specified person or body as an approved animal welfare organisation for the purposes of this Part.
- (2) An application under subsection (1)—
 - 30 (a) must be made in a manner and form determined by the Minister; and
 - (b) must be accompanied by such information as the Minister may reasonably require; and
 - (c) must be accompanied by the prescribed fee.
- (3) An approval—
 - 35 (a) must be in writing; and
 - (b) may be conditional or unconditional.
- (4) The Minister may, by notice in writing, vary or revoke an approval.

Division 2—Codes of practice

15E—Codes of practice

- 5
- (1) The Governor may, on the recommendation of the Minister, make regulations establishing codes of practice for the purposes of this Part.
 - (2) Before making a recommendation for the purposes of subsection (1), the Minister—
 - 10 (a) must consult with the prescribed peak bodies; and
 - (b) must call for public submissions in accordance with a scheme determined by the regulations.
 - (3) The Minister must cause a code of practice to be reviewed at least once in each 5 year period.

15F—Offence to contravene codes of practice

- 15
- (1) A person who, in relation to the breeding of prescribed companion animals pursuant to a breeder's licence, contravenes a provision of a code of practice that applies to the person is guilty of an offence.
Maximum penalty: \$10 000.
 - (2) A person who, in relation to the sale of a prescribed companion animal, contravenes a provision of a code of practice that applies to the person is guilty of an offence.
20
Maximum penalty: \$10 000.

Division 3—Breeding of prescribed companion animals

15G—Minister may grant breeder's licence

- 25
- (1) The Minister may, on application, grant a licence (a *breeder's licence*) to a person authorising the person to—
 - 25 (a) breed from, or mate, a female prescribed companion animal of a specified class;
 - (b) own or possess a prescribed companion animal of a specified class that is not desexed.
 - 30 (2) Subject to this Act, a breeder's licence has effect according to its terms.
 - (3) A breeder's licence—
 - 35 (a) is subject to a condition requiring the holder of the breeder's licence to comply with each relevant code of practice; and
 - (b) must identify the class or classes of prescribed companion animal to which the breeder's licence relates.

- 5 (4) Without limiting subsection (3), a breeder's licence may be granted subject to such conditions as the Minister thinks fit and specifies in the breeder's licence (including, without limiting the generality of this subsection, a condition limiting the number of prescribed companion animals that can be bred pursuant to the breeder's licence).
- 10 (5) An application for a breeder's licence—
- (a) must be made in a manner and form approved by the Minister; and
 - (b) must include such information as the Minister may reasonably require; and
 - (c) must be accompanied by the prescribed fee.
- 15 (6) In determining whether or not to grant a breeder's licence, the Minister must have regard to—
- (a) the suitability of the applicant to be granted the breeder's licence; and
 - (b) the adequacy of the applicant's premises and facilities for the care and handling of prescribed companion animals of the relevant class; and
 - (c) such other matters as may be prescribed,
- 20 and may have regard to any other matter that the Minister thinks relevant.
- 25 (7) The Minister may, by notice in writing, vary or revoke a condition of, or impose further conditions on, a breeder's licence for any reason the Minister thinks fit.
- (8) A breeder's licence has effect for the term specified in the breeder's licence and may be renewed in accordance with the regulations.

15H—Revocation and suspension of breeder's licences

- 30 (1) If the Minister is satisfied that the holder of a breeder's licence—
- (a) has been found guilty of an offence against this Act; or
 - (b) has contravened a relevant code of practice; or
 - (c) has failed to comply with a condition of the breeder's licence; or
 - (d) has obtained the breeder's licence improperly,
- 35 the Minister may, by notice in writing—
- (e) suspend the breeder's licence—
 - (i) for a period specified in the notice; or
 - (ii) until the holder of the breeder's licence causes such action as may be specified in the notice to be taken
- 40 to the satisfaction of the Minister; or

(f) revoke the breeder's licence.

(2) The Minister may, if he or she considers it appropriate to do so, by notice in writing, disqualify (either permanently or for a specified period) a person from holding or obtaining a breeder's licence.

(3) If the Minister revokes a breeder's licence, the Minister may, by notice in writing, direct the person who held the licence to desex or dispose of any prescribed companion animal owned by the person within the period specified by the Minister.

(4) A person who, without reasonable excuse, refuses or fails to comply with a direction of the Minister under subsection (3) is guilty of an offence.

Maximum penalty: \$10 000.

(5) If the Minister gives a direction under subsection (3), section 15K of this Act will be taken to apply to the person to whom the direction is given from the day following the end of the period specified in the direction.

15I—Offence to breed or mate certain companion animals without breeder's licence

(1) A person must not knowingly breed from, or mate, a female prescribed companion animal (whether for the purposes of sale or otherwise) unless the person holds a breeder's licence in respect of prescribed companion animals of the relevant class.

Maximum penalty: \$10 000.

(2) A person must not possess a female prescribed companion animal for the purposes of breeding unless the person holds a breeder's licence in respect of prescribed companion animals of the relevant class.

Maximum penalty: \$10 000.

(3) For the purposes of subsection (2)—

(a) the owner of a female prescribed companion animal will be presumed, in the absence of proof to the contrary, to possess the animal for the purposes of breeding if the animal (being an animal that is required to be desexed under section 15K) is not so desexed; and

(b) a reference to a breeder's licence includes a reference to a breeder's licence that has been suspended under section 15H.

15J—Employees of breeder's licence holder not required to hold breeder's licence

(1) An employee of a person who holds a breeder's licence is not required to hold a breeder's licence in respect of anything done in the course of his or her employment.

(2) For the purposes of this section, a reference to an employee of a person who holds a breeder's licence includes a reference to a person who undertakes voluntary work for the breeder's licence holder.

Division 4—Desexing of certain companion animals

15K—Certain companion animals to be desexed

- 5
- (1) The owner of a prescribed companion animal must ensure that the animal is desexed in accordance with any requirements set out in the regulations.
- (2) Without limiting the regulations that may be made under subsection (1) or section 44, the regulations may—
- 10
- (a) prescribe a period (whether by reference to the sale of an animal or otherwise) within which a prescribed companion animal must be desexed; and
- (b) prescribe a minimum or maximum age at which a prescribed companion animal may be required to be desexed; and
- (c) exempt a person or prescribed companion animal of a specified class from the operation of this section (whether conditionally or unconditionally).
- 15
- (3) An owner of a prescribed companion animal who contravenes subsection (1) is guilty of an offence.
Maximum penalty: \$10 000.
- (4) This section does not apply to—
- 20
- (a) a person who holds a breeder's licence (including a breeder's licence that has been suspended) in respect of prescribed companion animals of the relevant class; or
- (b) the owner of a prescribed companion animal, or class of prescribed companion animals, declared by the regulations to be included in the ambit of this subsection.
- 25

Division 5—Sales of certain companion animals

15L—Sale or purchase of certain companion animals prohibited

- 30
- (1) A person must not sell a prescribed companion animal if he or she knows, or ought reasonably to know, that the animal was bred in contravention of Division 3.
Maximum penalty: \$10 000.
- (2) A person must not purchase a prescribed companion animal if he or she knows, or ought reasonably to know, that the animal was bred in contravention of Division 3.
Maximum penalty: \$10 000.
- 35
- (3) This section does not apply—
- (a) to the following persons or bodies:
- (i) an approved animal welfare organisation;
- (ii) any other person or body prescribed by the regulations for the purposes of this paragraph; or
- 40

(b) in the following circumstances:

- (i) a sale that is not the first sale of the prescribed companion animal;
- (ii) a sale or purchase of a prescribed companion animal occurring in circumstances prescribed by the regulations for the purposes of this paragraph.

15M—Offences relating to sale of certain companion animals

(1) A person must not sell a prescribed companion animal unless the animal—

- (a) has been vaccinated in accordance with any requirements set out in the regulations; and
- (b) has been treated for worms and parasites in accordance with any requirements set out in the regulations; and
- (c) has been micro-chipped in accordance with any requirement set out in the regulations.

Maximum penalty: \$10 000.

(2) A person who sells a prescribed companion animal must give to the purchaser a written notice setting out—

- (a) the information required by the regulations relating to the identity of the breeder of the prescribed companion animal; and
- (b) the information required by the regulations relating to vaccinations and other treatments given to the prescribed companion animal; and
- (c) the information required by the regulations relating to the prescribed companion animal's micro-chip; and
- (d) any other information required by the regulations in respect of a sale of the relevant kind.

Maximum penalty: \$10 000.

(3) A person who publishes an advertisement in relation to the sale of a particular prescribed companion animal must ensure that the advertisement contains—

- (a) the information required by the regulations relating to the identity of the breeder of the prescribed companion animal; and
- (b) the information required by the regulations relating to vaccinations and other treatments given to the prescribed companion animal; and
- (c) the information required by the regulations relating to the prescribed companion animal's micro-chip; and

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

Maximum penalty: \$10 000.

- (4) This section does not apply to—

- (a) a sale that is not the first sale of the prescribed companion animal; or
- (b) a sale of a prescribed companion animal occurring in circumstances prescribed by the regulations for the purposes of this paragraph.

15N—Cooling off period where written contract for sale

- (1) A written contract for the sale of a companion animal must comply with each of the following provisions:

- (a) the contract must contain a term that provides for the cooling off period contemplated by this section;
- (b) the contract must contain immediately above the place provided for the signature of the purchaser the statement "THIS CONTRACT IS SUBJECT TO A COOLING OFF PERIOD OF 10 DAYS" printed clearly and legibly;
- (c) the contract cannot purport to exclude or modify the cooling off period;
- (d) the contract must comply with any other requirements set out in the regulations for the purposes of this subsection.

- (2) If a written contract for the sale of a companion animal contravenes subsection (1), the seller of the companion animal to be sold pursuant to the contract is guilty of an offence.

Maximum penalty: \$10 000.

- (3) The purchaser of a companion animal may, during the cooling off period, for any reason, notify the seller of the animal that he or she wishes to avoid the written contract of sale relating to the animal.

- (4) If a purchaser notifies the seller of a companion animal that he or she wishes to avoid the written contract of sale relating to the animal, the seller must, within 24 hours of being so notified—

- (a) take custody of the companion animal; and
- (b) refund to the purchaser the full amount paid for the companion animal.

Maximum penalty: \$10 000.

- (5) However, nothing in this section requires a person to refund to a purchaser an amount paid for other goods or equipment sold to the purchaser in relation to the sale of the companion animal.

Note—

For example, a kennel, bedding or food for the companion animal.

(6) In this section—

companion animal means any animal, or animal of a class, kept primarily as a pet, or for a person's company or protection;

cooling off period, in relation to a written contract for the sale of a companion animal, means the period of 10 days commencing on and including the day on which the contract is made and during which the contract is voidable at the option of the purchaser.

15O—Cooling off period where no written contract for sale

(1) This section applies to a sale of a companion animal in relation to which there is no written contract.

(2) The purchaser of a companion animal may, during the cooling off period, for any reason, notify the seller of the animal that he or she wishes to return the animal.

(3) If a purchaser notifies the seller of the companion animal that he or she wishes to return the animal, the seller must, within 24 hours of being so notified—

(a) take custody of the companion animal; and

(b) refund to the purchaser the full amount paid for the companion animal.

Maximum penalty: \$10 000.

(4) However, nothing in this section requires a seller to refund to a purchaser an amount paid for other goods or equipment sold to the purchaser in relation to the sale of the companion animal.

Note—

For example, a kennel, bedding or food for the companion animal.

(5) In this section—

companion animal has the same meaning as in section 15N;

cooling off period, in relation to a sale of a prescribed companion animal to which this section applies, means the period of 10 days commencing on and including the day on which the sale is made.

15P—Offence to threaten etc person returning companion animal during cooling off period

(1) A person who, in relation to the return of a companion animal under section 15N or 15O, threatens, harasses or insults a purchaser who wishes to return the animal is guilty of an offence.

Maximum penalty: \$10 000.

(2) In this section—

companion animal has the same meaning as in section 15N.

Division 7—Miscellaneous

15Q—Exemptions

- 5
- (1) The Minister may, on application or on his or her own motion, exempt a specified person from this Part, or specified provisions of this Part.
- (2) Subject to this section, an exemption—
- (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) has effect for the period specified in the exemption.
- 10
- (3) The Minister—
- (a) must, unless the Minister is satisfied that good reasons exist for not doing so, by notice in writing, revoke an exemption of a person if the person—
 - 15 (i) has been found guilty of an offence against this Act; or
 - (ii) has obtained the exemption improperly; or
 - (iii) has failed to comply with a condition of the exemption; and
 - (b) may, by notice in writing, vary or revoke an exemption for 20 any other reason the Minister thinks fit.
- (4) An application for an exemption, or for the variation of an exemption—
- (a) must be made in a manner and form determined by the Minister; and
 - 25 (b) must include such information as the Minister may reasonably require; and
 - (c) must be accompanied by the prescribed fee.

15R—General defence

30 It is a defence to a charge of an offence against this Part if the defendant proves that the alleged 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.

15S—Review of Minister's decisions by South Australian Civil and Administrative Tribunal

- 35
- (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 decision of the Minister under this Part.

(2) An application for review of a decision of the Minister under this Part may be made to the South Australian Civil and Administrative Tribunal within 1 month 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 that—

(a) special circumstances exist; and

(b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

15T—Dealing with seized prescribed companion animals

(1) The Governor may, on the recommendation of the Minister, make regulations setting out how prescribed companion animals seized in respect of a contravention of this Part must be dealt with.

(2) The Minister must consult with the prescribed peak bodies before making a recommendation for the purposes of subsection (1).

(3) A prescribed companion animal seized in respect of a contravention of this Part must be dealt with in accordance with any requirements set out in the regulations.

5—Amendment of section 31C—Dealing with seized animals and objects

Section 31C—after subsection (3) insert:

(3a) This section does not apply in relation to a prescribed companion animal seized in respect of a contravention of Part 3A.

Note—

See instead section 15T.

6—Amendment of section 38—Offences by bodies corporate

(1) Section 38(4), definition of *prescribed offence*—after paragraph (a) insert:

(ab) an offence against Part 3A; or

(2) Section 38(4), definition of *prescribed offence*, (b)—delete "such an offence" and substitute:

an offence referred to in a preceding paragraph

7—Amendment of section 42—Evidence

(1) Section 42(1)(a)—after "certificate" insert:

, exemption

(2) Section 42(2)—after paragraph (b) insert:

or

(c) a specified animal, or an animal of a specified class, was a prescribed companion animal; or

(d) a specified animal has, or has not, been desexed; or

- (e) a specified animal has, or has not, been micro-chipped; or
- (f) a specified animal has, or has not, been given a specified vaccination,

8—Substitution of section 43

Section 43—delete the section and substitute:

43—Act does not render unlawful practices that are in accordance with prescribed code of animal husbandry practice

- (1) Subject to this section, nothing in this Act renders unlawful anything done in accordance with a prescribed code of practice relating to animals.
- (2) This section does not apply to breeding a prescribed companion animal in accordance with a prescribed code of practice (other than a code of practice under Part 3A Division 2) to the extent that the code permits the breeding to be done in contravention of Part 3A.
- (3) This section does not apply to the sale of a prescribed companion animal in accordance with a prescribed code of practice (other than a code of practice under Part 3A Division 2) to the extent that the code permits the sale to occur in contravention of Part 3A.
- (4) In this section—

prescribed companion animal has the same meaning as in Part 3A.

9—Amendment of section 44—Regulations

- (1) Section 44(2)(f)—after "Act" insert:
 - and provide for the waiver or remission of the whole or part of such fees
- (2) Section 44(5)—after "Minister" insert:
 - or a specified person or body

Schedule 1—Transitional provisions

Part 1—Transitional provisions

1—Certain provisions of Act not to apply to certain companion animals

- (1) Section 15F of the *Animal Welfare Act 1985* (as enacted by this Act) does not apply in relation to an act or omission relating to a prescribed companion animal occurring before the commencement of that section.
- (2) Section 15I of the *Animal Welfare Act 1985* (as enacted by this Act) does not apply in relation to a prescribed companion animal conceived, or the product of a mating that occurred, before the commencement of that section.
- (3) Section 15L of the *Animal Welfare Act 1985* (as enacted by this Act) does not apply in relation to a prescribed companion animal born or conceived before the commencement of that section.

- 5
- (4) Section 15M(2) and (3) of the *Animal Welfare Act 1985* (as enacted by this Act) does not apply in relation to a prescribed companion animal born before the commencement of that section.
 - (5) Section 15N(2) of the *Animal Welfare Act 1985* (as enacted by this Act) does not apply in relation to a written contract entered into before the commencement of that section.