

SOUTH AUSTRALIA

**DOG AND CAT MANAGEMENT ACT 1995**

**SUMMARY OF PROVISIONS****PART 1  
PRELIMINARY**

1. Short title
2. Commencement
3. Objects
4. Interpretation
5. Owner of dog
6. Person responsible for control of dog
7. Dog wandering at large
8. Effective control of dog
9. Application of Act to dogs owned by Crown

**PART 2  
DOG AND CAT MANAGEMENT BOARD AND FUND****DIVISION 1—ESTABLISHMENT OF BOARD**

10. Establishment of Board
11. Ministerial control

**DIVISION 2—MEMBERSHIP OF BOARD AND PROCEDURES**

12. Composition of Board
13. Deputies of members
14. Conditions of membership
15. Vacancies or defects in appointment of members
16. Remuneration
17. Proceedings
18. Disclosure of interest
19. Common seal and execution of documents
20. Immunity of members

**DIVISION 3—OPERATIONS OF BOARD**

21. Functions of Board
22. Powers of Board
23. Operational plans, budgets and information
24. Annual report

**DIVISION 4—DOG AND CAT MANAGEMENT FUND**

25. Dog and Cat Management Fund

**PART 3  
ADMINISTRATION OF PROVISIONS RELATING TO DOGS**

26. Council responsibility for management of dogs
27. Appointment of dog management officers
28. Identification of dog management officers
29. Area limitation on council dog management officers
30. General powers of dog management officers
31. Offence to hinder, etc., dog management officers
32. Offences by dog management officers

**PART 4  
REGISTRATION OF DOGS**

- 33. Dogs must be registered
- 34. Registration procedure for individual dogs
- 35. Registration procedure for businesses involving dogs
- 36. Duration and renewal of registration
- 37. Notifications to ensure accuracy of registers
- 38. Transfer of ownership of dog
- 39. Rectification of register
- 40. Collars and registration discs or other identification
- 41. Applications and fees
- 42. Records to be kept by approved boarding kennels

**PART 5  
MANAGEMENT OF DOGS**

**DIVISION 1—GENERAL OFFENCES**

- 43. Duties of owners and others responsible for control of dog
- 44. Dog attack not to be encouraged
- 45. Prescribed breed not to be sold or given away
- 46. Interference with dog in lawful custody
- 47. Court's power to make orders in criminal proceedings

**DIVISION 2—ACTION TO PROTECT PERSON OR PROPERTY AGAINST DOGS**

- 48. Power to protect persons or property from dogs
- 49. Laying of poison in baits for dogs

**DIVISION 3—DESTRUCTION AND CONTROL ORDERS**

- 50. Classes of orders
- 51. Grounds on which orders may be made
- 52. Procedure for making and revoking orders
- 53. Directions about how to comply with order
- 54. Application of orders and directions
- 55. Contravention of order
- 56. Notification to council
- 57. Notification of order to proposed new owner of dog
- 58. Appeal
- 59. Power of court to order destruction or control of dog on application

**DIVISION 4—SEIZURE AND DETENTION OF DOGS**

- 60. Power to seize and detain dogs
- 61. Procedure following seizure of dog
- 62. Limits on entitlement to return of dog
- 63. Destruction or disposal of seized dog
- 64. Recovery of costs of seizure, detention or destruction

**PART 6  
CIVIL ACTIONS RELATING TO DOGS**

- 65. Ownership and responsibility for control of dogs in civil actions
- 66. Liability for dogs
- 67. Court's power to make orders relating to dogs in civil actions

**PART 7  
MANAGEMENT OF CATS****DIVISION 1—CAT MANAGEMENT OFFICERS**

- 68. Cat management officers appointed by Board or council
- 69. Identification of cat management officers
- 70. Area limitation on cat management officers
- 71. Offences by cat management officers

**DIVISION 2—CATS IN REMOTE OR FRAGILE AREAS**

- 72. Reserves and wilderness
- 73. Sanctuaries and other designated areas
- 74. Remote areas
- 75. Notification to owner of identified cat

**DIVISION 3—UNIDENTIFIED CATS IN OTHER AREAS**

- 76. Other areas

**DIVISION 4—MISCELLANEOUS**

- 77. Unlawful entry on land
- 78. Offence to hinder
- 79. Offence to interfere with cat identification
- 80. No liability for lawful action against cat

**PART 8  
MISCELLANEOUS**

- 81. Guide dogs
- 82. False or misleading statements
- 83. No liability for lawful action against dog
- 84. Immunity from personal liability
- 85. Continuing offences
- 86. General defences
- 87. Service of notices and documents
- 88. Evidence
- 89. Appropriation of penalties
- 90. By-laws
- 91. Regulations

**SCHEDULE 1***Repeal and Transitional Provisions*

- 1. Repeal
- 2. Transitional provisions

**SCHEDULE 2***Amendment of Local Government Act 1934***APPENDIX  
DIVISIONAL PENALTIES AND EXPIATION FEES**

# **DOG AND CAT MANAGEMENT ACT 1995**

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Dog and Cat Management Act 1995 No. 15 of 1995  
[Assented to 6 April 1995]<sup>1</sup>

<sup>1</sup> Came into operation 1 July 1995: *Gaz.* 15 June 1995, p. 2884.

**An Act to provide for the management of dogs and cats; to repeal the Dog Control Act 1979; to make a consequential amendment to the Local Government Act 1934; and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

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

**Commencement**

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

**Objects**

3. 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).

**Interpretation**

4. In this Act, unless the contrary intention appears—

"**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 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*—those parts of the State that do not lie within an area referred to in paragraph (a) or (b);

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

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

"**cat management officer**" means a person holding office as a cat management officer under Part 7;

"**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;

"**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;

"**dog management officer**" means—

(a) a member of the police force; or

(b) a person holding office as a dog management officer under Part 3;

"**effective control**" of a dog—*see section 8*;

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

"**guide dog**" means a dog trained and used for the purpose of—

(a) guiding a person who is wholly or partially blind; or

(b) assisting a person who is wholly or partially deaf;

"**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*;

"**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*;

"**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;

"**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 Surgeons Act 1985*;

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

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

"**stock inspector**" means a person appointed as an inspector under the *Stock Act 1990*;

"**unidentified cat**" means a cat that is not identified in the manner set out in the regulations;

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

*Note: For definition of divisional penalties (and divisional expiation fees) see Appendix.*

### **Owner of dog**

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

(2) In proceedings for an offence against this Act, if a dog (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.

### **Person responsible for control of dog<sup>1</sup>**

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

(2) In proceedings for an offence against this Act, if it is proved that immediately before the alleged offence the dog 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 at the time of the alleged offence.

(3) In proceedings for an offence against this Act, an occupier of premises in which a dog 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 at that time unless it is proved that another person of or over 18 years of age had possession or control of the dog at that time.

<sup>1</sup> A person responsible for the control of a dog generally has the same responsibilities under this Act as the owner of the dog: see especially sections 33 and 43.

**Dog wandering at large**

7. (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 or is in a private place without the consent of the occupier; and

(b) no person is exercising effective control over the dog.<sup>1</sup>

(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 despite the fact that it is not effectively secured.<sup>2</sup>

<sup>1</sup> See section 8.

<sup>2</sup> For example, a dog in the open tray of a utility or like vehicle will not be taken to be wandering at large.

**Effective control of dog**

8. For the purposes of this Act, a dog is under the effective control of a person only while—

(a) the person is exercising effective control of the dog—

(i) by means of a chain, cord or leash that does not exceed 2 metres in length restraining the dog; 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; 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.

**Application of Act to dogs owned by Crown**

9. 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 is not required to be registered under this Act and cannot be made subject to an order under this Act.

**PART 2  
DOG AND CAT MANAGEMENT BOARD AND FUND**

**DIVISION 1—ESTABLISHMENT OF BOARD**

**Establishment of Board**

**10.** (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.

**Ministerial control**

**11.** (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**

**Composition of Board**

**12.** (1) The Board consists of 7 members appointed by the Governor, of whom—

(a) six will be persons nominated by the LGA; and

(b) one will be a person nominated by the Minister.

(2) The members of the Board nominated by the LGA must include—

(a) three persons who together have, in the LGA's opinion, the abilities and experience required for the effective performance of the Board's functions; and

(b) three persons—

(i) who together have the following attributes:

(A) veterinary experience in the care and treatment of dogs or cats;

(B) a demonstrated interest in the welfare of dogs or cats;

**Dog and Cat Management Act 1995**

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- (C) a demonstrated interest in the keeping and management of dogs or cats; and
- (ii) who have been selected from a panel of persons nominated, in accordance with the directions of the Minister, by associations or bodies that, in the opinion of the Minister, have a relevant interest.

(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.

(5) One member (who must be one of the members representing the LGA) will be appointed by the Governor to chair the Board.

**Deputies of members**

**13.** (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.

**Conditions of membership**

**14.** (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.

#### **Vacancies or defects in appointment of members**

**15.** 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.

#### **Remuneration**

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

#### **Proceedings**

**17.** (1) A quorum of the Board consists of 4 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.

#### **Disclosure of interest**

**18.** (1) A member of the Board who has a direct or indirect pecuniary or personal interest in a matter under consideration by the Board—

- (a) must disclose the nature of the interest to the Board; and
- (b) must not take part in any deliberations or decision of the Board in relation to that matter.

Penalty: Division 6 fine.

**Dog and Cat Management Act 1995**

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(2) A member will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in a matter that is shared in common with the other members.

(3) It is a defence to a charge of an offence against subsection (1) if it is proved that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(4) A disclosure under this section must be recorded in the minutes of the Board and reported to the Minister.

(5) If, in the Minister's opinion, a particular interest or office is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of a member, the Minister may (after consultation with the LGA) direct the member either to divest himself or herself of the interest or office or to resign from the Board.

(6) If a member discloses an interest in a proposed contract under this section and takes no part in any deliberations or decision of the Board on the contract—

- (a) the contract is not liable to be avoided by the Board; and
- (b) the member is not liable to account for profits derived from the contract.

(7) The annual report must include any disclosure made during the relevant financial year by a member of the Board of an interest in a matter under consideration or decided by the Board.

**Common seal and execution of documents**

**19.** (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.

**Immunity of members**

**20.** (1) A member of the Board incurs no civil liability for an honest act or omission in the performance or purported performance of functions or duties under this Act.

(2) A civil liability that would, but for this section, attach to a member attaches instead to the Crown.

**DIVISION 3—OPERATIONS OF BOARD**

**Functions of Board**

21. 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, 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;
    - (B) training for dog management officers;
    - (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 under this Act;
    - (F) the keeping 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; and
  - (iii) otherwise providing support and assistance to councils;
- (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;

- (h) to carry out any other function assigned to the Board by the Minister or by or under this Act.

### **Powers of Board**

**22.** (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.

(3) An employee of the Board is not, as such, a member of the Public Service.

### **Operational plans, budgets and information**

**23.** (1) The Board must, from time to time at the request of the Minister, 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.

### **Annual report**

**24.** (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**

##### **Dog and Cat Management Fund**

**25.** (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);<sup>1</sup> 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.

<sup>1</sup> See section 26(5).

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**PART 3**  
**ADMINISTRATION OF PROVISIONS RELATING TO DOGS**

**Council responsibility for management of dogs**

**26.** (1) Each council is required to administer and enforce the provisions of this Act relating to dogs within its area and for that purpose must—

- (a) maintain a register of dogs (containing the information required by the Board and kept readily available for public inspection); 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) appoint at least one full-time dog management officer or make other satisfactory arrangements for the exercise of the functions and powers of dog management officers; and
- (e) make satisfactory arrangements for the detention of dogs 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.

(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.

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

(6) A council may charge a fee for provision of an extract from a register kept under this Act.

**Appointment of dog management officers**

**27.** (1) A council may appoint suitable persons (other than members of the council) to be dog management officers for the purposes of this Act.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The council may, at any time, revoke an appointment of a dog management officer or vary or revoke a condition of appointment or impose a further condition of appointment.

**Identification of dog management officers**

**28.** (1) A dog management officer appointed by a council must be issued with an identity card in a form approved by the Board.

(2) If the powers of the dog management officer have been limited by conditions, the identity card issued to the officer must contain a statement of those conditions.

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

**Area limitation on council dog management officers**

**29.** A dog management officer appointed by a council may (subject to any conditions of the appointment of the officer) 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 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 a dog management officer appointed by the other council.

**General powers of dog management officers**

**30.** (1) A dog management officer may (subject to any conditions of the appointment of the officer) 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 in the person's possession or control for inspection; or
- (c) require a person who has been issued a certificate or document under this Act, or who is required to keep records under this Act, to produce the certificate, document or records for inspection; or
- (d) require a person who the officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity.

(2) A dog management officer 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;<sup>1</sup> or
- (d) to seize a dog under this Act in circumstances in which the dog management officer 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, a dog management officer may be assisted by such persons as the officer considers necessary in the circumstances.

<sup>1</sup>. See section 7.

### **Offence to hinder, etc., dog management officers**

**31.** (1) A person who—

- (a) hinders or obstructs a dog management officer, or a person assisting a dog management officer, in the exercise of powers conferred by this Act; or
- (b) uses abusive, threatening or insulting language to a dog management officer, or a person assisting a dog management officer; or
- (c) refuses or fails to comply with a requirement of a dog management officer under this Act; or
- (d) falsely represents, by words or conduct, that he or she is a dog management officer,

is guilty of an offence.

Penalty: Division 6 fine.

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

Penalty: Division 5 fine or division 5 imprisonment or both.

### **Offences by dog management officers**

**32.** A dog management officer, or a person assisting a dog management officer, 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.

Penalty: Division 6 fine.

**PART 4  
REGISTRATION OF DOGS**

**Dogs must be registered**

**33.** (1) Every dog of or over 3 months of age must be registered under this Act.<sup>1</sup>

(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.

Penalty:           (a)     If the dog is of a prescribed breed—division 7 fine;  
                          (b)     In any other case—division 10 fine.  
Expiation fee:   (a)     If the dog is of a prescribed breed—division 7 fee;  
                          (b)     In any other case—division 10 fee.

(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.

Penalty:           (a)     If the dog is of a prescribed breed—division 7 fine;  
                          (b)     In any other case—division 10 fine.  
Expiation fee:   (a)     If the dog is of a prescribed breed—division 7 fee;  
                          (b)     In any other case—division 10 fee.

(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 of another State or a Territory of the Commonwealth 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 dog management officer, 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.<sup>2</sup>

(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) 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) the *Guide Dogs Association of South Australia & Northern Territory (Inc.)*; or
- (iv) the *Lions Hearing Dogs Incorporated*; or
- (v) a member of the police force acting in that capacity; or
- (vi) a registered veterinary surgeon acting in that capacity; or
- (vii) a person acting under this Act or any other Act; or
- (viii) a body, or a person, or a body or person of a class, specified by regulation.

<sup>1</sup> A dog is to be registered in the area in which it is usually kept (see section 34). If the dog is removed from that area with the intention that it will be usually kept in another area, the registration of the dog in the old area expires and the dog must be re-registered in the new area (see section 36(3)).

<sup>2</sup> The operator of the boarding kennel is required to keep records of dogs kept at the kennel, and to provide a copy to the council, as required by the Board (see section 42).

#### **Registration procedure for individual dogs**

**34.** (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; and
- (b) must nominate a person of or over 18 years of age who consents to the dog being registered in his or her name.<sup>1</sup>

(2) Subject to subsection (3), on application 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.

(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 18 years of age and consents to the dog being registered in his or her name.

<sup>1</sup> For the purposes of this Act, the person in whose name a dog is, or has most recently been, registered is the owner of the dog: see section 5. The owner has various responsibilities under this Act.

#### **Registration procedure for businesses involving dogs**

**35.** (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 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 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.<sup>1</sup>

<sup>1</sup> If the business is not registered, any person who owns or is responsible for the control of the dogs will be guilty of an offence in respect of each dog kept at the kennel or used in connection with the business that is not individually registered and that would apart from this section be required to be registered: see section 33.

#### **Duration and renewal of registration**

**36.** (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.<sup>1</sup>

<sup>1</sup> In that event the dog must be re-registered in the new area.

#### **Notifications to ensure accuracy of registers**

**37.** (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.

Penalty: Division 10 fine.  
Expiation fee: Division 10 fee.

(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

**Dog and Cat Management Act 1995**

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

Penalty: Division 10 fine.

Expiation fee: Division 10 fee.

(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.

**Transfer of ownership of dog**

**38.** 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.

Penalty: Division 10 fine.

Expiation fee: Division 10 fee.

**Rectification of register**

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

**Collars and registration discs or other identification**

**40.** (1) If a dog does not have a collar around its neck that—

- (a) in the case of a dog that is individually registered—
  - (i) has securely attached to it the registration disc last issued for that dog; and
  - (ii) complies with the regulations;
- (b) in the case of a dog usually kept at a kennel or used in connection with a business registered under this Part—
  - (i) has marked on it, or on a disc or tag securely attached to it, the name and phone number of the owner or operator of the business or other mark identifying the business as approved by the council of the area in which the business is registered; and
  - (ii) complies with the regulations,

any person who owns or is responsible for the control of the dog is guilty of an offence.

Penalty: (a) If the dog is of a prescribed breed—division 7 fine;

(b) In any other case—division 10 fine.

Expiation fee: (a) If the dog is of a prescribed breed—division 7 fee;

(b) In any other case—division 10 fee.

(2) This section does not apply—

- (a) to a dog that is not required to be registered under this Act; or

- (b) to a dog while effectively confined to premises occupied by a person who owns or is responsible for the control of the dog; or
- (c) to a dog while under the effective control<sup>1</sup> of a person or in close proximity to, and responsive to the commands of, a person and—
  - (i) being used in the droving or tending of stock or going to or returning from a place where it will be, or has been, so used; or
  - (ii) 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
- (d) in any case or circumstances of a kind specified in the regulations.

(3) It is a defence to a charge of an offence against subsection (1) if it is proved that at the time of the alleged offence the dog was suffering from injury, disease or sickness to the extent that the wearing of a collar would have been injurious to the health of the dog.

<sup>1</sup> See section 8.

#### **Applications and fees**

**41.** (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 regulation.

(2) No fee is payable for the registration of a guide 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.

#### **Records to be kept by approved boarding kennels**

**42.** The operator of a boarding kennel approved by a council for the purposes of this Part<sup>1</sup> must keep records of all dogs kept at the kennel, and provide a copy to the council, as required by the Board.

Penalty:                      Division 10 fine.  
Expiation fee:              Division 10 fee.

<sup>1</sup> See section 33(4)(c).

**PART 5  
MANAGEMENT OF DOGS**

**DIVISION 1—GENERAL OFFENCES**

**Duties of owners and others responsible for control of dog**

**43.** (1) Any person who owns or is responsible for the control of a dog is guilty of an offence in any of the circumstances set out in column 1 of the table below (subject to the defences set out in that column).<sup>1</sup>

(2) The penalty for an offence described in column 1 of the table below is the penalty appearing opposite in column 2.

(3) The expiation fee for an offence described in column 1 of the table below is the fee appearing opposite in column 3.

<i>Offence</i>	<i>Maximum Fine</i>	<i>Expiation Fee</i>
<b>1.</b> If the dog is wandering at large. <sup>2</sup>	(a) If the dog is of a prescribed breed— Division 7 fine.  (b) In any other case— Division 10 fine.	(a) If the dog is of a prescribed breed— Division 7 fee.  (b) In any other case— Division 10 fee.
<b>2.</b> 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 some other person (whether or not actual injury is caused).	Division 7 fine.	Division 7 fee.
<i>Defence</i> It is a defence to a charge of an offence in these circumstances if it is proved that the dog was being genuinely used in the reasonable defence of a person or property.		
<b>3.</b> If the dog is on premises and causes injury to a person or property of a person lawfully entering those premises.	Division 7 fine.	Division 7 fee.
<b>4.</b> If—	Division 7 fine.	Division 7 fee.
(a) the dog is of a prescribed breed; and		
(b) while not effectively confined to premises of which the person who is responsible for the control of the dog is the occupier, the dog—		
(i) does not have a muzzle securely fixed on its mouth so as to prevent it from biting any person or animal; or		
(ii) is not under the effective control <sup>3</sup> of a person by means of a chain, cord or leash that is less than 2 metres in length restraining the dog.		

<i>Offence</i>	<i>Maximum Fine</i>	<i>Expiation Fee</i>
<b>5.</b> If the dog is of a prescribed breed and it is not desexed.	Division 7 fine.	
<i>Defence</i>		
It is a defence to a charge of an offence in these circumstances if it is proved that the defendant believed on reasonable grounds that the dog was desexed.		
<b>6.</b> If the dog (not being a guide 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.	(a) If the dog is of a prescribed breed— Division 7 fine. (b) In any other case— Division 10 fine.	(a) If the dog is of a prescribed breed— Division 7 fee. (b) In any other case— Division 10 fee.
<b>7.</b> If the dog (not being a guide 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.	(a) If the dog is of a prescribed breed— Division 7 fine. (b) In any other case— Division 10 fine.	(a) If the dog is of a prescribed breed— Division 7 fee. (b) In any other case— Division 10 fee.
<b>8.</b> If the dog rushes at or chases a vehicle (other than on premises of which a person who owns or is responsible for the control of the dog is the occupier).	Division 9 fine.	Division 9 fee.
<b>9.</b> If the dog (not being a guide dog) is in a place where a commodity used for human food or drink is sold or is prepared, exposed, or offered, for sale.	Division 10 fine.	Division 10 fee.
<b>10.</b> If—	Division 10 fine.	Division 10 fee.
(a) the dog is a greyhound; and		
(b) while not effectively confined to premises of which the person who is responsible for the control of the dog is the occupier, the dog—		
(i) does not have a muzzle securely fixed on its mouth so as to prevent it from biting any person or animal; or		
(ii) is not under the effective control <sup>3</sup> of a person by means of a chain, cord or leash that is less than 2 metres in length restraining the dog,		
but this does not apply while the dog—		
(d) is being raced, exercised or trained on land with the consent of the owner or occupier of the land; or		
(e) is participating in an organised activity being a show, trial or class and is under the effective control <sup>3</sup> of a person.		

<i>Offence</i>	<i>Maximum Fine</i>	<i>Expiation Fee</i>
<b>11.</b> 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.	Division 11 fine.	Division 11 fee.
<b>12.</b> If the dog (not being a guide 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.	Division 11 fine.	Division 11 fee.

<sup>1</sup>. Also see the general defences set out in section 86.

<sup>2</sup>. See section 7.

<sup>3</sup>. See section 8.

### **Dog attack not to be encouraged**

**44.** (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 some other person is guilty of an offence (whether or not actual injury is caused).

Penalty: Division 5 fine or division 5 imprisonment.

(2) 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.

### **Prescribed breed not to be sold or given away**

**45.** 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.

Penalty: Division 7 fine.

### **Interference with dog in lawful custody**

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

Penalty: Division 7 fine.

### **Court's power to make orders in criminal proceedings**

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

- (a) that the dog 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;
- (d) that the dog 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;
- (f) that the person not acquire another dog 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.

Penalty: Division 6 fine.

(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 has changed or is not known, or that the dog 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.

## **DIVISION 2—ACTION TO PROTECT PERSON OR PROPERTY AGAINST DOGS**

### **Power to protect persons or property from dogs**

**48.** (1) A person may lawfully injure or destroy a dog if that action is reasonable and necessary for the protection of life or property.

(2) If a dog, unaccompanied by a person, is found in an enclosed paddock or other enclosed place in which an animal that is being farmed is confined, the owner or occupier of the place, or a person acting under the authority of the owner or occupier, may lawfully injure or destroy the dog.

(3) A warden under the *National Parks and Wildlife Act 1972*, or a dog management officer, who finds a dog attacking or harassing a protected animal within the meaning of that Act on a reserve within the meaning of that Act may lawfully injure or destroy the dog if there is no other way of protecting the animal.

(4) A person who injures or destroys a dog in circumstances referred to in this section must, as soon as practicable—

- (a) inform a member of the police force; and
- (b) inform the council of the area in which the dog was injured or destroyed; and
- (c) take reasonable steps to inform a person who owns or is responsible for the control of the dog.

Penalty: Division 10 fine.

**Laying of poison in baits for dogs**

**49.** (1) If it is reasonably necessary for the protection of animals that are being farmed on land, the owner or occupier of the land or a person acting under the authority of the owner or occupier may lawfully lay poison on that land in baits likely to be taken by dogs wandering at large<sup>1</sup> if—

- (a) the poison is not laid in contravention of another Act; and
- (b) the poison is not laid in a manner likely to endanger children or to endanger native birds or animals; and
- (c) the person complies with the requirements of the regulations as to the display and service of notices relating to the action taken.

(2) A person who lays poison in baits for dogs except as authorised by this section or by another Act is guilty of an offence.

Penalty: Division 7 fine.

<sup>1</sup> See section 7.

**DIVISION 3—DESTRUCTION AND CONTROL ORDERS****Classes of orders**

**50.** A council may, in accordance with this Division, make an order of any of the following classes in relation to a specified dog:

- (a) *Destruction Order:*
  - (i) the dog must be destroyed within a specified period (but not less than one month after the date of the order); and
  - (ii) the dog must be kept or detained until destroyed at a place specified in the order (or at some other place subsequently approved by the council);
- (b) *Control (Dangerous Dog) Order:*
  - (i) the dog must, while on premises of which the person who is responsible for the control of the dog is the occupier, be kept indoors or in an enclosure that is constructed so as to prevent the dog escaping from it; and
  - (ii) 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); and
  - (iii) the dog must, except while confined to premises of which the person who is responsible for the control of the dog is the occupier—
    - (A) have a muzzle securely fixed on its mouth so as to prevent it from biting any person or animal; and

- (B) be under the effective control<sup>1</sup> of a person by means of a chain, cord or leash that is less than 2 metres in length restraining the dog; and
  - (iv) 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 a dangerous dog is kept on the premises; and
  - (v) all reasonable steps must be taken to prevent the dog repeating the behaviour that gave rise to the order;
- (c) *Control (Nuisance Dog) Order:*
- (i) the dog must, while on premises of which the person who is responsible for the control of the dog is the occupier, be kept indoors or in an enclosure that is constructed so as to prevent the dog escaping from it; and
  - (ii) 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<sup>1</sup> of a person by means of a chain, cord or leash that is less than 2 metres in length restraining the dog; and
  - (iii) all reasonable steps must be taken to prevent the dog repeating the behaviour that gave rise to the order;
- (d) *Control (Barking Dog) Order:* all reasonable steps must be taken to prevent the dog repeating the behaviour that gave rise to the order.

<sup>1</sup>. See section 8.

**Grounds on which orders may be made**

**51.** (1) A council may, on its own initiative or on application, make a *Destruction Order* in relation to a dog if satisfied that—

- (a) the dog is unduly dangerous; and
- (b) 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.<sup>1</sup>

(2) A council may, on its own initiative or on application, make a *Control (Dangerous Dog) Order* or a *Control (Nuisance Dog) Order* in relation to a dog if satisfied that—

- (a) the dog is dangerous or a nuisance; and
- (b) 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.<sup>1</sup>

(3) A council may, on its own initiative or on application, make a *Control (Barking Dog) Order* in relation to a dog if satisfied that—

- (a) the dog is a nuisance; and

**Dog and Cat Management Act 1995**

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- (b) the dog has created noise by barking or otherwise in circumstances that would constitute an offence against this Act.<sup>2</sup>

<sup>1</sup>. See item 2 of the table in section 43.

<sup>2</sup>. See item 11 of the table in section 43.

**Procedure for making and revoking orders**

**52.** (1) Before making an order under this Division in relation to a dog, the council 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.

(2) An order—

- (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 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 may be revoked by a 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.

**Directions about how to comply with order**

**53.** (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.

**Application of orders and directions**

**54.** (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.

### **Contravention of order**

**55.** (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.

Penalty: (a) In the case of a *Control (Barking Dog) Order*—division 11 fine;  
(b) In any other case—division 7 fine.

(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, 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 a person who owns or is responsible for the control of the dog.

### **Notification to council**

**56.** (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.

Penalty: Division 10 fine.  
Expiation fee: Division 10 fee.

(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.

Penalty: Division 10 fine.  
Expiation fee: Division 10 fee.

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

**Dog and Cat Management Act 1995**

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**Notification of order to proposed new owner of dog**

**57.** 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.

Penalty: Division 9 fine.

Expiation fee: Division 9 fee.

**Appeal**

**58.** (1) A person who owns or is responsible for the control of a dog may appeal to the Administrative Appeals Division of the District Court against a decision of a council to make an order under this Division or to refuse to revoke an order.

(2) The Court may, in exercising its jurisdiction under this Act, be constituted of a Magistrate.

(3) If the council does not give reasons in writing at the time of making the decision, the council must do so on request made by a person who owns or is responsible for the control of the dog within 14 days of the making of the decision.

(4) 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 (3)—within 14 days after receipt of the reasons in writing.

(5) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be instituted within the period fixed by this section.

(6) The operation of a decision appealed against requiring a dog to be destroyed is suspended pending the determination of the appeal.

(7) Subject to subsection (8), the operation of any other decision appealed against will continue pending the determination of the appeal.

(8) The Court or the council may make an interim order suspending the operation of a decision.

(9) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court so determines, by affidavit.

(10) The Court may, on the hearing of an appeal—

(a) affirm or rescind the decision appealed against, or rescind the decision and substitute a decision that the Court thinks appropriate; and

(b) 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);<sup>1</sup> and

- (c) make any other order that the case requires (including an order for costs).

<sup>1</sup> See section 47.

**Power of court to order destruction or control of dog on application**

**59.** 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).<sup>1</sup>

<sup>1</sup> See section 47.

**DIVISION 4—SEIZURE AND DETENTION OF DOGS**

**Power to seize and detain dogs**

**60.** (1) A dog management officer may seize and detain a dog in any of the following circumstances:<sup>1</sup>

- (a) if the dog is wandering at large;<sup>2</sup>
- (b) if the officer 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 officer reasonably believes that the dog is unduly dangerous;
- (d) if the officer reasonably believes it necessary to detain the dog in order to ensure that an order under this Act for the destruction of the dog is carried out.

(2) If a dog management officer 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 dog management officer must take reasonable steps to inform a person who owns or is responsible for the control of the dog.

(4) An inspector under the *Prevention of Cruelty to Animals Act 1985* may exercise the powers of a dog management officer under this Division in relation to a dog found wandering at large<sup>2</sup> while the inspector is acting in the ordinary course of his or her duties under that Act.

<sup>1</sup> For limitations on a dog management officer's powers to enter a place or vehicle for the purposes of seizing a dog see section 30.

<sup>2</sup> See section 7.

**Procedure following seizure of dog**

**61.** (1) If a dog 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
- (b) be detained in a facility approved by the Board for the purpose of detaining dogs.

**Dog and Cat Management Act 1995**

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- (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;<sup>1</sup> 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.
- (5) A person aggrieved by the continued detention of a dog under this Division may apply to the Magistrates Court for release of the dog.

<sup>1</sup> See Division 3.

**Limits on entitlement to return of dog**

**62.** A person is not entitled to the return of a dog 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.

**Destruction or disposal of seized dog**

**63.** (1) If—

- (a) a dog found wandering at large<sup>1</sup> 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.

(2) If a dog is disposed of under subsection (1) by sale, the proceeds of the sale are the property of the operator of the facility at which the dog had been detained.

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

- (a) if satisfied on reasonable grounds—
  - (i) that the dog is suffering from injury, disease or sickness to the extent that it is impracticable to maintain the dog; or
  - (ii) that the dog 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.

(4) If a dog is destroyed under subsection (3), the operator of the facility must take reasonable steps to inform a person who owns or is responsible for the control of the dog.

<sup>1</sup>. See section 7.

**Recovery of costs of seizure, detention or destruction**

**64.** The operator of a facility at which a dog 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 from a person who owns or is responsible for the control of the dog as a debt in a court of competent jurisdiction whether or not the dog has been returned to the person.

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**PART 6**  
**CIVIL ACTIONS RELATING TO DOGS**

**Ownership and responsibility for control of dogs in civil actions**

**65.** 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.<sup>1</sup>

<sup>1</sup>. See sections 5 and 6.

**Liability for dogs<sup>1</sup>**

**66.** (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 *Wrongs 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 *Wrongs 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 *Wrongs 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 *Wrongs 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 *Wrongs 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.<sup>2</sup>

(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.

<sup>1</sup> 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 1A of the *Wrongs Act 1936* which provides that negligence is the basis of liability. This section, however, qualifies the *Wrongs Act 1936* principles by imposing strict liability in relation to dogs subject, however, to statutory qualifications.

<sup>2</sup> Compare *Wrongs Act 1936*, s. 27A(4).

#### **Court's power to make orders relating to dogs in civil actions**

**67.** 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).<sup>1</sup>

<sup>1</sup> See section 47.

**PART 7  
MANAGEMENT OF CATS****DIVISION 1—CAT MANAGEMENT OFFICERS****Cat management officers appointed by Board or council**

**68.** (1) The Board or a council may appoint suitable persons to be cat management officers for the purposes of this Part.

(2) An appointment may be made subject to conditions specified in the instrument of appointment.

(3) The Board or council may, at any time, revoke the appointment of a cat management officer or vary or revoke a condition of appointment or impose a further condition of appointment.

**Identification of cat management officers**

**69.** (1) A cat management officer must be issued with an identity card in a form approved by the Board.

(2) If the powers of the cat management officer have been limited by conditions, the identity card issued to the officer must contain a statement of those conditions.

(3) A cat management officer exercising powers under this Act must, at the reasonable request of any person, produce for the inspection of the person his or her identity card.

**Area limitation on cat management officers**

**70.** (1) A cat management officer appointed by the Board may (subject to any conditions of the appointment of the officer) exercise powers under this Part in the areas, or in the circumstances, specified in the instrument of appointment.

(2) A cat management officer appointed by a council may (subject to any conditions of the appointment of the officer) exercise powers under this Part—

- (a) within the area of the council; or
- (b) outside the area of the council for the purpose of seizing or destroying a cat that has been pursued from a place within the area of the council; or
- (c) within the area of another council pursuant to an arrangement between the councils.

**Offences by cat management officers**

**71.** A cat management officer 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.

Penalty: Division 6 fine.

**DIVISION 2—CATS IN REMOTE OR FRAGILE AREAS**

**Reserves and wilderness**

**72.** (1) A warden under the *National Parks and Wildlife Act 1972*, or a person authorised for the purpose by a warden, may lawfully seize, detain, destroy or otherwise dispose of any cat found in a reserve within the meaning of that Act.

(2) A warden under the *Wilderness Protection Act 1992*, or a person authorised for the purpose by a warden, may lawfully seize, detain, destroy or otherwise dispose of any cat found in a wilderness protection area or zone constituted under that Act.

**Sanctuaries and other designated areas**

**73.** (1) The owner or occupier of land in a sanctuary under the *National Parks and Wildlife Act 1972* or in an area designated under this section, or a person authorised for the purpose by the owner or occupier, may lawfully seize, detain, destroy or otherwise dispose of any cat found in the sanctuary or designated area.

(2) The Governor may, by proclamation made on the recommendation of the Board, declare land to be a designated area for the purposes of this section.

(3) A proclamation under this section may be varied or revoked by further proclamation made on the recommendation of the Board.

**Remote areas**

**74.** A person may lawfully seize, detain, destroy or otherwise dispose of any cat found in a place that is more than one kilometre from any place genuinely used as a place of residence.

**Notification to owner of identified cat**

**75.** A person who seizes, detains, destroys or disposes of an identified cat under this Division must, as soon as practicable, take reasonable steps to inform the owner of the cat of the action taken.

Penalty: Division 10 fine.

Expiation fee: Division 10 fee.

**DIVISION 3—UNIDENTIFIED CATS IN OTHER AREAS**

**Other areas**

**76.** A person may lawfully seize, detain, destroy or otherwise dispose of an unidentified cat in any of the following circumstances:

- (a) if the person is a cat management officer and the cat is found in an area in respect of which the officer is authorised to exercise powers under this Part or is delivered to the officer by another person;
- (b) if the person is a Crown lands ranger or a district council ranger under the *Crown Lands Act 1929* and the cat is found in an area in respect of which the ranger is authorised to exercise powers under that Act;
- (c) if the person is an authorised officer under the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* and the cat is found in an area in respect of which the officer is authorised to exercise powers under that Act;

**Dog and Cat Management Act 1995**

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- (d) if 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;
- (e) if the person seizes the cat and delivers it, within 12 hours, to—
- (i) a registered veterinary surgeon; or
  - (ii) a cat management officer; or
  - (iii) a facility for the care of cats operated by—
    - (A) the *Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated*; or
    - (B) the *Animal Welfare League of South Australia, Incorporated*; or
    - (C) a body or person specified by the regulations,
- (but the person is not authorised to destroy the cat);
- (f) if the person is a registered veterinary surgeon acting in the ordinary course of his or her profession;
- (g) if the cat has been delivered to 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,
- and the person detains, destroys or otherwise disposes of the cat on behalf of the operator of the facility.

**DIVISION 4—MISCELLANEOUS****Unlawful entry on land**

77. Nothing in this Part authorises a person to enter land without the consent of the occupier or, if there is no occupier, the owner of the land.

**Offence to hinder**

78. A person who hinders or obstructs another person in the lawful seizure, detention, destruction or disposal of a cat under this Part is guilty of an offence.

Penalty: Division 6 fine.

**Offence to interfere with cat identification**

**79.** A person must not, without reasonable excuse, interfere with or remove the means by which a cat is identified as set out in the regulations.

Penalty: Division 6 fine.

**No liability for lawful action against cat**

**80.** A person incurs no civil or criminal liability by reason only of action lawfully taken against a cat under this Part.

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**PART 8**  
**MISCELLANEOUS****Guide dogs**

**81.** Despite this Act or any other Act—

- (a) a person who is wholly or partially blind or deaf is entitled to be accompanied by a guide 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 on the ground that the person is accompanied by a guide dog.

Penalty: Division 10 fine.

**False or misleading statements**

**82.** 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.

- Penalty:
- (a) If the person made the statement knowing that it was false or misleading—division 5 fine;
  - (b) In any other case—division 7 fine.

**No liability for lawful action against dog**

**83.** A person incurs no civil or criminal liability by reason only of action lawfully taken against a dog under this Act.

**Immunity from personal liability**

**84.** (1) No personal liability attaches to a dog management officer, cat management officer or other person engaged in the administration or enforcement of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power or function under this Part.

(2) A liability that would, but for subsection (1), lie against an officer, employee or agent of a council lies instead against the council.

(3) A liability that would, but for subsection (1), lie against any other person lies instead against the Crown.

**Continuing offences**

**85.** (1) A person convicted of an offence against a provision of this Act (except section 33) 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.

### **General defences**

**86.** 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.

### **Service of notices and documents**

**87.** 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.

### **Evidence**

**88.** 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 dog; or
- (ii) a dog was a dog of a prescribed breed; or
- (iii) a dog of a prescribed breed was not at a specified time desexed; or
- (iv) that a person was at a specified time a dog management officer or cat management officer,

will be accepted as proved in the absence of proof to the contrary; and

- (b) the onus of proving that a dog was registered or was at a specified time under the age of 3 months lies on the person making that assertion.

**Appropriation of penalties**

**89.** 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.

**By-laws**

**90.** (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;
- (e) make provision for a registration scheme for cats (including payment of a fee for registration) and encourage the desexing of cats;
- (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 1934* 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.

**Regulations**

**91.** (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 of a specified class;
- (b) prohibit the keeping of dogs of a specified class in specified places or areas;
- (c) regulate the detention of dogs 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) impose a penalty (not exceeding a division 7 fine) for contravention of, or non-compliance with, a regulation.

(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.

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**SCHEDULE 1**

*Repeal and Transitional Provisions*

**Repeal**

1. The *Dog Control Act 1979* is repealed.

**Transitional provisions**

2. (1) A dog that was registered under the *Dog Control Act 1979* immediately before the commencement of this Act and that is required to be registered under this Act will be taken to have been registered under this Act.

(2) A person who was an authorised person appointed by a council under the *Dog Control Act 1979* immediately before the commencement of this Act will be taken to have been appointed as a dog management officer under this Act.

(3) The money held in the *Dog Control Statutory Fund* is, on the commencement of this Act, to be paid into the *Dog and Cat Management Fund*.

(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.

**SCHEDULE 2**

*Amendment of Local Government Act 1934*

The *Local Government Act 1934* is amended by striking out subparagraph VIII of section 667(1)5 (Animals).

**Dog and Cat Management Act 1995****APPENDIX****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*