

Office of Local Government

# **GUIDELINE ON THE EXERCISE OF FUNCTIONS UNDER THE COMPANION ANIMALS ACT**



**OCTOBER 2015**

## **ACCESS TO SERVICES**

The Office of Local Government is located at:

Levels 1 & 2

5 O'Keefe Avenue  
NOWRA NSW 2541

Locked Bag 3015  
NOWRA NSW 2541

Phone 02 4428 4100

Fax 02 4428 4199

TTY 02 4428 4209

Level 9, 6 – 10 O'Connell Street  
SYDNEY NSW 2000

PO Box R1772  
ROYAL EXCHANGE NSW 1225

Phone 02 9289 4000

Fax 02 9289 4099

Email [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Website [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

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# TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION .....</b>	<b>6</b>
1.1	What is this Guideline about? .....	6
1.2	Who is this Guideline for? .....	6
1.3	What must councils do? .....	7
1.4	What doesn't this Guideline do? .....	7
1.5	How to use this Guideline .....	7
<b>2</b>	<b>ACCESSING AND USING THE REGISTER .....</b>	<b>8</b>
2.1	Access levels .....	8
2.2	Passwords and data entry .....	9
2.3	Legitimate access .....	10
<b>3</b>	<b>PRIVACY AND RECORD-KEEPING.....</b>	<b>14</b>
3.1	Privacy and confidentiality .....	14
3.2	Keeping and disposing of companion animal records .....	16
3.3	Generating reports from the Register .....	16
<b>4</b>	<b>HANDLING IDENTIFICATION INFORMATION.....</b>	<b>18</b>
4.1	Identification and registration .....	18
4.2	Receiving identification information.....	18
4.3	Processing identification information .....	19
4.4	Inconsistent records.....	21
4.5	Animals with pre-existing microchips .....	21
4.6	Animals with more than one microchip.....	22
4.7	Microchips that cannot be read .....	22
4.8	Incorrect 'duplicate' microchip numbers.....	23
4.9	Removing an incorrect record.....	24
<b>5</b>	<b>DEALING WITH REGISTRATIONS .....</b>	<b>26</b>
5.1	Companion Animals Amendment Act 2013 - Registrations.....	26
5.2	Council responsibilities.....	27
5.3	Registration categories .....	27
5.4	Desexed animals.....	29
5.5	Desexed animals sold by an eligible pound or shelter - 50% discount .....	29
5.6	When to flag an animal as eligible for pound/shelter discount registration on the Register .	30
5.7	Pensioner discounts .....	31
5.8	Recognised breeders.....	31
5.9	Assistance animals .....	32
5.10	Working dogs .....	33
5.11	Loss of registration exemption.....	34
5.12	Processing registration information.....	35
5.13	Correcting or removing a registration.....	36
5.14	Registration tags.....	36
5.15	Delegation of registration functions .....	37
5.16	Requests for refunds .....	37
<b>6</b>	<b>USING INFORMATION FROM THE REGISTER .....</b>	<b>38</b>
6.1	Searching for information .....	38
6.2	Using information for enforcement purposes .....	38
6.3	Dealing with seized and surrendered animals .....	39
6.4	Seized animals.....	40
6.5	Surrendered animals .....	41
6.6	Locating and contacting owners .....	41

6.7	Injured stray animals.....	42
6.8	Dealing with impounded Pet Industry Association of Australia (PIAA) member dogs .....	42
<b>7</b>	<b>SUPPRESSED RECORDS.....</b>	<b>44</b>
7.1	Suppressed records.....	44
7.2	Who can deal with suppressed records? .....	44
7.3	Handling requests to suppress a record.....	44
7.4	Using suppressed records .....	45
7.5	Enforcement and suppressed records .....	46
7.6	Privacy and record-keeping for suppressed records.....	47
<b>8</b>	<b>CHANGING INFORMATION ON THE REGISTER.....</b>	<b>48</b>
8.1	Possible reasons to change information .....	48
8.2	Who is responsible for changing information? .....	48
8.3	Protocol for handling enquiries about information on the Register .....	48
8.4	Receiving and processing requests .....	49
8.5	Correcting minor errors.....	50
8.6	Change of ownership or contact details .....	50
8.7	Deleting records .....	51
8.8	Missing and found animals .....	51
8.9	Notifications of dangerous or menacing dog declaration and death of animal .....	52
8.10	The recorded owner has not notified change of contact details.....	53
8.11	Change of ownership is not notified and recorded owner does not know new owner's details .....	53
<b>9</b>	<b>DANGEROUS, MENACING AND HUNTING DOGS .....</b>	<b>55</b>
9.1	What is a dangerous dog?.....	55
9.2	Hunting dogs .....	55
9.3	Menacing dogs .....	56
9.4	Determining unreasonable aggression and serious injury.....	57
9.5	Exercising discretion.....	58
9.6	Notices of intention to declare a dog to be a dangerous or menacing dog .....	59
9.7	Dangerous and menacing dog declarations.....	59
9.8	Requests to revoke a dangerous or menacing dog declaration.....	60
9.9	Penalties for dog attack related offences .....	62
<b>10</b>	<b>RESTRICTED DOGS .....</b>	<b>63</b>
10.1	What is a restricted dog? .....	63
10.2	Notices of intention to declare a dog to be a restricted dog.....	63
10.3	Recording notices of intention on the Register .....	64
10.4	Breed assessments.....	64
10.5	Temperament assessments .....	64
10.6	Recording breed and temperament assessments on the Register.....	65
10.7	Restricted dog declarations .....	65
10.8	Requests for change of breed of a restricted dog on the Register .....	66
10.9	Requests to revoke a restricted dog declaration made as a result of a notice of intention issued by an authorised council officer.....	67
<b>11</b>	<b>RESPONSIBILITIES OF OWNERS OF DANGEROUS, MENACING AND RESTRICTED DOGS.....</b>	<b>68</b>
11.1	Control requirements.....	68
11.2	Enclosures for dangerous and restricted dogs.....	68
11.3	Enclosure requirements for menacing dogs .....	69
11.4	Collars for dangerous, menacing and restricted dogs .....	69
11.5	Power to seize proposed dangerous, menacing or restricted dogs that are unregistered .....	70

<b>12 OTHER DANGEROUS, MENACING AND RESTRICTED DOG PROVISIONS.....</b>	<b>71</b>
12.1 Prohibition on selling or acquiring dangerous, menacing and restricted dogs .....	71
12.2 Prohibition on breeding restricted dogs .....	71
12.3 Seizure and immediate destruction of dangerous, menacing and restricted dogs .....	71
12.4 Additional powers to seize and destroy dangerous and menacing dogs.....	71
12.5 Additional power to seize and destroy restricted dogs .....	73
12.6 Council-declared restricted dogs may be seized and immediately destroyed .....	73
<b>13 NUISANCE ORDERS.....</b>	<b>74</b>
13.1 Council powers to issue nuisance orders.....	74
13.2 Nuisance dogs .....	74
13.3 Dealing with barking dogs.....	75
13.4 Nuisance cats .....	76
<b>14 OTHER DOG MANAGEMENT ISSUES .....</b>	<b>77</b>
14.1 Greyhound microchipping.....	77
14.2 Greyhound muzzling exemptions and the Greenhounds program .....	77
14.3 Dingoes.....	79
14.4 Dogs in outdoor dining areas .....	80
<b>15 PAYING AND RECONCILING REGISTRATION FEES.....</b>	<b>82</b>
15.1 Overview .....	82
15.2 What are councils required to do?.....	82
15.3 The reconciliation process .....	83
15.4 Reimbursing fees to councils .....	84
15.5 Audit process.....	84
<b>16 ANNUAL REPORTING .....</b>	<b>85</b>
16.1 Requirements.....	85
<b>17 COLLECTING AND REPORTING POUND DATA .....</b>	<b>86</b>
17.1 Requirements.....	86
<b>18 MANDATORY REPORTING OF DOG ATTACK INFORMATION .....</b>	<b>87</b>
18.1 Reporting requirements.....	87
<b>19 NEED MORE INFORMATION?.....</b>	<b>88</b>
19.1 Companion Animals Forms .....	88
19.2 Requests for access to the Companion Animals Register .....	88
19.3 Updating companion animals policy .....	88
19.4 Legislation and other printed publications .....	88
19.5 Companion Animals Register User Support .....	89
<b>ANNEXURE A - Companion Animals Regulation 2008 (Extract) .....</b>	<b>90</b>
<b>ANNEXURE B - Model compliance certificate for dangerous/restricted dog enclosures.....</b>	<b>91</b>
<b>ANNEXURE C - Notice of intention to declare a dog to be a restricted dog.....</b>	<b>92</b>
<b>ANNEXURE D - Model Restricted Dog Declaration.....</b>	<b>101</b>
<b>ANNEXURE E - Model Notice of Intention to Declare a Dog to be a Dangerous Dog .....</b>	<b>111</b>
<b>ANNEXURE F - Model Dangerous Dog Declaration .....</b>	<b>120</b>
<b>ANNEXURE G - Model Notice of Intention to Declare a Dog to be a Menacing Dog .....</b>	<b>128</b>
<b>ANNEXURE H - Model Menacing Dog Declaration .....</b>	<b>135</b>
<b>ANNEXURE I - Model Notice of Proposed Nuisance Dog Order .....</b>	<b>143</b>
<b>ANNEXURE J - Model Nuisance Dog Order .....</b>	<b>145</b>
<b>ANNEXURE K - Model Notice of Proposed Nuisance Cat Order .....</b>	<b>147</b>
<b>ANNEXURE L - Model Nuisance Cat Order.....</b>	<b>149</b>
<b>ANNEXURE M - Dog Control Categories .....</b>	<b>151</b>

# 1 INTRODUCTION

## 1.1 What is this Guideline about?

1.1.1 This Guideline provides information about the maintenance of the Companion Animals Register and exercise of enforcement functions under various provisions of the [Companion Animals Act 1998](#) (the Act) and the [Companion Animals Regulation 2008](#) (the Regulation). It is a revised version of the guideline issued in November 2013.

1.1.2 This version incorporates amendments made by the Companion Animals Amendment Act 2013 (and accompanying amendments to the Regulation) and the Companion Animals Amendment (Registration Fee) Regulation 2015.

[Council circular 13-47](#) provides more information about the changes introduced by the Companion Animals Amendment Act 2013.

1.1.3 Clauses 7 and 13 of the Regulation require authorised identifiers and registration agents to follow the procedures in this Guideline.

## 1.2 Who is this Guideline for?

1.2.1 This Guideline is for everyone who uses the NSW Companion Animals Register (the Register).

1.2.2 People using or attempting to use the Register might include:

- a) councils as registration agents and enforcement agencies
- b) people operating under delegation from council
- c) council staff such as customer service officers
- d) other registration agents
- e) authorised identifiers
- f) administrators of the Register
- g) officers of the Office of Local Government
- h) police officers
- i) data entry operators
- j) approved animal welfare organisations or any 'approved person' (such as a vet) that may be authorised by the Chief Executive, Local Government of the Office of Local Government under section 75(7)(a1) of the Act to access information in the Register to identify seized or lost companion animals.

A separate [Guideline for Approved Persons to Access the Companion Animals Register](#) sets out the criteria for granting the Chief Executive, Local Government's authorisation under section 75(7)(a1) of the Act.

1.2.3 Some people might also attempt to use the register illegally. An outline of the proper and improper uses of the Register is set out in Table 2: Proper and improper uses of the Register in Chapter 2 of this Guideline.

### **1.3 What must councils do?**

- 1.3.1 Councils must make sure that all staff and contractors accessing the Register or dealing with companion animal issues are familiar with this Guideline and use it in conjunction with internal council policies and procedures.
- 1.3.2 Councils are responsible for maintaining and updating all microchip records on the Register, including updating change of address details for owners. The Office of Local Government, Department of Planning and Environment (the Office) does not undertake this function for councils or owners of companion animals.

### **1.4 What doesn't this Guideline do?**

- 1.4.1 This Guideline does not provide legal advice and it is not intended to be an exhaustive statement of companion animals law. It is also not a substitute for reading the provisions of the companion animals legislation.
- 1.4.2 If council officers have any concerns, they should seek advice from a supervisor/manager or other appropriate council officer or, in some cases, be guided by independent legal advice.
- 1.4.3 The Office sets the policy and legislative framework within which councils manage their companion animal responsibilities. However, we cannot provide legal advice to councils and don't generally give advice to council officers on specific incidents or circumstances.

### **1.5 How to use this Guideline**

- 1.5.1 This Guideline provides highlighted information in the following ways:
  - a) Blue boxes – highlight important information or explain how to find more advice or information on a related topic.
  - b) Grey boxes – highlight specific references to legislation.

There are also direct links to internet based information for council staff that will be using this Guideline electronically.

## 2 ACCESSING AND USING THE REGISTER

### 2.1 Access levels

- 2.1.1 Information from the Register may only be accessed or used in the lawful exercise of functions under the Companion Animals Act, or as otherwise allowed under section 89 of the Act. See Table 1: Levels of access, permissions and functions on page 11 for more information.
- 2.1.2 Authorised users of the Register will have different levels of access, depending on the functions they are exercising under the Act. Access levels have been updated, so councils should use this information to determine the appropriate access level required when requesting the set-up of new Register users.
- 2.1.3 **Level AI** access is for authorised identifiers who need to enter new animal identification data only.
- 2.1.4 **Level AP** access is for Approved Persons who can enter a microchip number to enable an animal search to assist the re-homing of lost animals.
- 2.1.5 **Level 1L** access is for council officers who need to do basic searches of the Register to answer enquiries from animal owners about the status of their animal's record. Data entry is limited to 'death of animal' notification only. This level of access also allows you to do certificate reprints at the request of owners.
- 2.1.6 **Level 1C** access is for operators who are only processing original forms. It allows you to enter identification and registration data, but not use search functions. Authorised identifiers have a similar level of access, but can only enter identification information.
- 2.1.7 **Level 1W** access is for council appointed registration agents. It provides limited data entry functions and access to the certificate reprint function.
- 2.1.8 **Level 1G** access is for authorised Greyhound Racing NSW staff in their capacity as registration agents. It provides the same functions as Level 1W (except for Pound/Shelter Animal related functions) with the addition of the "Notify greyhound muzzle exemption" function.
- 2.1.9 **Level 1T** access is for authorised Cat Protection Society NSW staff in their capacity as registration agents. It provides the same functions as Level 1W (except for Pound/Shelter Animal related functions).
- 2.1.10 **Level 2** access is primarily for data entry operators who need to process changes of ownership or address. It is also available to authorised officers and council pounds to allow them to do animal searches. Level 2 access allows basic searches to be made and the status of records to be updated. This includes listing an animal as 'missing' or 'home', and any notices of intention about restricted, dangerous or menacing dogs or nuisance orders that may have been issued.



- 2.1.11 **Level 3** access is generally restricted to council managers. This access allows you to correct data-entry errors in a microchip number, and generate reports for financial reconciliation, enforcement or statistical purposes.
- 2.1.12 One nominated officer in each council with Level 3 access will be authorised to deal with suppressed records. However, only authorised officers of the Office of Local Government can create suppressed records. For more information about suppressed records, see Chapter 7.
- 2.1.13 Council managers or Level 3 users may nominate people to become authorised users of the Register, or change details of authorised people, by emailing the Office at [pets@olq.nsw.gov.au](mailto:pets@olq.nsw.gov.au). This email request must be sent directly from the manager or Level 3 user and include:
- a) the name of the council
  - b) the name and position title of the nominated user
  - c) the level of access required.
- 2.1.14 Before processing any new request for access to the Register, the Office may contact the council manager making the request by email to obtain:
- a) confirmation of the currency of authorised users assigned to that council
  - b) notification of any authorised users who no longer require access.
- 2.1.15 The manager of any authorised user of the Register is responsible for ensuring that:
- a) all authorised users of the Register have the appropriate level of access, and their level of access is not at a higher level than is required
  - b) all authorised users of the Register are assigned their own username and a secret password
  - c) people who stop exercising relevant functions under the Act – eg by leaving or changing duties – have their access to the Register cancelled promptly
  - d) all authorised users of the Register are familiar with the sections of this Guideline that apply to them.

## 2.2 Passwords and data entry

- 2.2.1 The passwords of authorised users at all levels must be kept confidential. There is a penalty of up to \$2,750 (or \$11,000 for suppressed records) for sharing or allowing other people access to your password.
- 2.2.2 If you are an authorised user, the Register will prompt you to change your password every few months. However, if you are not using your access regularly, the Register may automatically lock your account. If this happens, you can reset your password using the online [Forgotten password, reset request](#) function located on the login page of the Register. Alternatively, you can request a password reset by telephoning 1300 134 460 or emailing [pets@olq.nsw.gov.au](mailto:pets@olq.nsw.gov.au).
- 2.2.3 All authorised users of the Register have a responsibility to enter full and accurate information. There is a penalty of up to \$2,750 (or \$11,000 for suppressed records) for making a false entry or omitting or misrepresenting information.

2.2.4 Councils should do an audit at least once every six months to identify any users that no longer need access to the Register. This can be done by a Level 3 user only, using the 'Authorised User Search' function of the Register. A request to deactivate non-current users should then be emailed to the Office at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) as soon as practicable.

## 2.3 Legitimate access

2.3.1 Access and use of information is limited to appropriate officers of council in the exercise of their functions and to others authorised under the legislation or by the Chief Executive, Local Government.

2.3.2 Generally, access will legitimately be required for one of three purposes:

- a) data entry or correction
- b) enforcement – where the details of an animal owner are needed to issue a penalty for a breach of the Act
- c) to reunite animals with their owners.

2.3.3 Information on the Register or intended for it may be accessed before, during or after the completion of data entry. Councils must guard against the potential for misuse at all of these stages.

2.3.4 Councils are responsible for determining the legitimacy of any request for information. The onus is on the person accessing the information to be as certain as possible that the information will not be misused. There are significant penalties for the misuse of information on the Register.

2.3.5 Examples of requests that are not legitimate include requests for information:

- a) for personal reasons – to find an old friend, monitor an ex-partner etc
- b) for commercial reasons – to market products to pet owners, to update a commercial database etc
- c) to supplement other data – to check real estate records, to determine the number of residents in a house etc
- d) to enforce other legislation – including the Local Government Act
- e) to pursue debts – whether or not on behalf of council
- f) for the control of animals other than under the Act – to deal with cruelty cases or identify the number of animals kept on a property.

2.3.6 Councils should be wary of requests that may appear legitimate, but are difficult to protect from illegitimate uses – for example, requests to do a survey of animal owners for research purposes.

2.3.7 Table 2: Proper and improper uses of the Register provides an outline of proper and improper uses of the Register by approved people. It also includes references to more detailed information about the types

**Table 1: Levels of access, permissions and functions**

						<b>Level 3 Council manager</b>
						BA/TA enter assessment
						Greyhound muzzling exemption report
						Animal Search via Mobile Device
						Dog attack – search,modify,enter
						Control order & report
						Username listing report
						Correct registration and registration removal report
						Remove animal report
						Nuisance order report
						Restricted dog report
						Dangerous/menacing dog declaration report
						Pound/shelter report
						Missing animal report
						Death of animal report
						LGA totals report
						Financial report
						Unregistered animals report
						<b>Level 2 Council data entry and enforcement</b>
						Animal count report
						Regn by LGA by type report
						BA/TA enter assessment
						Authorised identifier search
						<b>Level 1W, 1G or 1T Registration agents</b>
					Animal Search via Mobile Device	Remove animal record
					Dog attack – search/modify	Correct or remove a registration
					Pound/shelter animal (Level 1W only)	Dog attack - enter incident
						Authorised user search
						Restricted dog notice
						Restricted dog notice
					Greyhound muzzling exemption (Level 1G only)	Dangerous/menacing dog declaration process
						Dangerous/menacing dog declaration process
						Nuisance order
						Nuisance order
					Flag animal eligible pound – shelter discount registration	Flag animal eligible pound – shelter discount registration
						Flag animal eligible pound – shelter discount registration
					Animal search	Animal search
						Animal search
					Animal Search via Mobile Device	Pound/shelter animal
						Pound/shelter animal
					Change details	Change details
						Change details
					Certificate reprint	Certificate reprint
						Certificate reprint
					Missing animal	Missing animal
						Missing animal
					Death of animal	Death of animal
						Death of animal
					Flag animal eligible pound – shelter discount registration	Flag animal eligible pound – shelter discount registration
					Animal Search via Mobile Device	Animal Search via Mobile Device
					Animal search	Animal search
					ID & registration	ID & registration
					ID & registration	ID & registration
					ID & registration	ID & registration
<b>Level AI</b>	Animal Search via Mobile Device	Registration only	Certificate reprint	Registration only	Registration only	Registration only
ID only	Animal search microchip only	ID only	Death of animal	ID only	ID only	ID only
<b>Authorised identifiers</b>	<b>Approved persons</b>	<b>Council authorised officers</b>				

**Table 2: Proper and improper uses of the Register**

User	Examples of proper use	Examples of improper use
People not authorised at all and not public sector, such as hackers	No proper use	<ul style="list-style-type: none"> <li>• any data entry or change to record</li> <li>• using another person's username or password</li> <li>• any use or disclosure of information</li> <li>• making a record of information</li> </ul>
People not authorised, but work at a council	No proper use	<ul style="list-style-type: none"> <li>• any data entry or change to record</li> <li>• using another person's username or password</li> <li>• any use or disclosure of information</li> <li>• making a record of information</li> </ul>
Authorised Identifiers (Level AI access)  See <a href="#">Guideline 2001/ID3</a> <a href="#">Guideline for Authorised Identifiers</a>	Identification only	<ul style="list-style-type: none"> <li>• false data entry or change to record</li> <li>• using another person's username or password</li> <li>• disclosing your password to another person, other than those responsible for issuing passwords</li> <li>• using or disclosing owners' personal information, other than for exercising identification functions or verifying data entered</li> <li>• making or keeping a record of information, other than as required or allowed under the <a href="#">Companion Animals Act 1998</a> or the <a href="#">Veterinary Practice Act 2003</a>.</li> </ul>
Council and registration agent data entry (Level 1C access)	Identification  Registration  Verification of data entered	<ul style="list-style-type: none"> <li>• false data entry or change to record</li> <li>• using another person's username or password</li> <li>• disclosing your password to another person, other than those responsible for issuing passwords</li> <li>• using personal information, other than for exercising identification, registration or data verification functions</li> <li>• making or keeping a record of information, other than as required under the Act</li> </ul>
Call centre staff (Level 1L access)	<i>Searching by microchip</i> <i>Certificate reprint</i> <i>Death of an animal</i>	<ul style="list-style-type: none"> <li>• false data entry or change to record</li> <li>• using another person's username or password</li> <li>• disclosing your password to another person, other than those responsible for issuing passwords</li> <li>• using Register information for enforcing other legislation</li> </ul>
Police officers (Level 1L access - search only)	Searching by microchip for enforcement functions as authorised officers under the Act	<ul style="list-style-type: none"> <li>• searching, using, disclosing or making a record of personal information, other than what is necessary for exercising functions – this includes contacting a listed owner or secondary contact person, and giving details to a relevant authorised officer</li> </ul>

User	Examples of proper use	Examples of improper use
<p>Approved Persons (Level AP access)</p> <p>See <a href="#">Guidelines for Approved Persons</a></p>	<p><i>Searching by microchip</i></p>	<ul style="list-style-type: none"> <li>• using another person’s username or password</li> <li>• disclosing your password to another person, other than those responsible for issuing passwords</li> <li>• using Register information for enforcing other legislation</li> <li>• searching, using, disclosing or making a record of personal information, other than what is necessary for exercising functions – this includes contacting a listed owner or secondary contact person, and giving details to a relevant authorised officer</li> </ul>
<p>Registration agents (Level 1W, 1T and 1G access)</p>	<p>Identification</p> <p>Registration Change details</p> <p>Pound/shelter</p> <p>Certificate reprint</p> <p>Death of animal</p>	<ul style="list-style-type: none"> <li>• false data entry or change to record</li> <li>• using another person’s username or password</li> <li>• disclosing your password to another person, other than those responsible for issuing passwords</li> <li>• using personal information, other than for exercising identification, registration or data verification functions</li> <li>• making or keeping a record of information, other than as required under the Act</li> </ul>

### 3 PRIVACY AND RECORD-KEEPING

#### 3.1 Privacy and confidentiality

3.1.1 The NSW Companion Animals Register is not a public register. Information on the Register is protected from general disclosure and can only be used for the lawful exercise of functions under the [Companion Animals Act 1998](#).

3.1.2 This section of the guideline outlines what may be meant by 'the lawful exercise of functions' under the Act. It will help councils decide whether someone has breached the misuse provisions of the Act. However this information should not be used in place of proper legal advice.

3.1.3 Section 89(2) of the Act states that:

'A person must not:

- a) access or attempt to access confidential information
- b) allow a person to have access to confidential information
- c) directly or indirectly make a record of confidential information
- d) directly or indirectly disclose or pass confidential information to any person
- e) use confidential information
- f) alter, delete, destroy or interfere with any record comprising confidential information
- g) make any entry in the Register'.

3.1.4 Section 89(4) of the Act states that:

'It is not an offence under this section for a person to do anything referred to in section (2) (a)-(g):

- a) for the purposes of, or in connection with, the lawful exercise of functions under the Act
- b) as authorised or required under section 75
- c) as authorised or directed by the Chief Executive, Local Government
- d) for the purposes of listing the identification or registration information in respect of a companion animal on a database that is of a class prescribed by the regulations, but only if the owner of the companion animal has expressly consented to that information being so listed'.

3.1.5 Everyone using or attempting to use the Register must familiarise themselves with their responsibilities under this legislation. They are also responsible for keeping up-to-date with the current provisions of the Act, Regulation and all relevant guidelines. The current version of this Guideline is available on the Office's website at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

3.1.6 Councils should make sure that authorised users of the Register are aware of the penalties for misusing information. A conviction for misuse of information may include a penalty of up to \$2,750 for each breach (or \$11,000 for suppressed records), withdrawal of the right of access to the Register, and exposure to civil action by people whose private information has been misused.

3.1.7 All public sector agencies, their employees and contractors – including councils and their employees and contractors such as data entry services

and pound providers – are also bound by the [Privacy and Personal Information Protection Act 1998](#). Further penalties apply under that legislation. Compliance with this Guideline will not necessarily amount to compliance with the Privacy and Personal Information Protection Act.

[Council Circular 13-35](#) contains important information for authorised officers in relation to requests for information about enforcement action taken by their local council.

Section 89(2) of the Act prohibits the disclosure of “confidential information” by authorised officers. Section 89(1) defines “confidential information” as:

- (a) any information contained in, or acquired from, the Register, or
- (b) any other information obtained in connection with the enforcement or administration of this Act or the regulations.

Section 89(1) of the Act is commonly interpreted as prohibiting the release of any such information. However, it is acknowledged that the withholding of such information in certain circumstances may be contrary to accepted complaint-handling better practice, including the guidance contained in the Australian Standard on Complaint Handling (AS ISO 10002-2006).

For example, when a request is made by the victim of a dog attack about action taken by a council in relation to the attack in question, it may be appropriate for the council to provide that person with general information about the action it has taken (eg: investigations continue, infringements have been issued to the animal’s owner, a notification of proposed dangerous dog declaration has been issued to the animal’s owner).

In recognition of this, the Chief Executive, Local Government has provided the following authorisation in accordance with section 89(4)(c) of the Act:

An authorised officer (as defined in section 5 of the Act) is authorised to provide information about the nature of enforcement action taken by their local authority under the Act, to an appropriate person.

For this purpose, an appropriate person means a person who:

- (a) is able to demonstrate that they are a party to the relevant enforcement action, and
- (b) has made a request for such information to the local authority in writing.

Any such disclosure made by an authorised officer must not provide any information which could reasonably be seen to:

- (a) identify an individual companion animal or its owner, or
- (b) reveal details about the nature of a companion animal owner’s compliance with the enforcement action taken by the council, or
- (c) jeopardise any relevant enforcement action being undertaken by any local authority or other enforcement agency.

Authorised officers should assess requests for such information on a case-by-case basis. Councils are strongly encouraged to develop written guidance for authorised officers and complainants in relation to such requests as part of their complaints handling policy.

## **3.2 Keeping and disposing of companion animal records**

3.2.1 Privacy provisions apply to all records that relate to:

- a) identification information
- b) registration information
- c) requests to change details on the Register
- d) notifications under section 11 of the Act
- e) any log books kept or notes made about companion animal matters
- f) reports generated from the Register or that use information obtained from the Register.

3.2.2 Councils must retain records for at least two years and not more than five years from the date they were created.

3.2.3 Companion animal records (other than suppressed records) may be kept in the possession or custody of council or some other suitable person, such as a commercial storage provider.

3.2.4 Suppressed records and related information may only be kept in the possession or custody of the General Manager, Executive or Public Officer of the council. The maximum penalty for misuse of a suppressed record is \$11,000. For more information about suppressed records, see Chapter 7.

3.2.5 Councils must ensure (or make arrangements to ensure) the confidentiality, safe keeping, proper preservation and due return or disposal of the records. This applies whether the records are in the custody of the council or some other person.

3.2.6 Councils must not, for example:

- a) abandon, dispose of or delete the records except as indicated by this Guideline
- b) take or send the records out of New South Wales
- c) damage or alter the records
- d) neglect the proper storage of the records in a way that causes or is likely to cause damage to them
- e) compromise the confidentiality of personal information in the records.

3.2.7 Records must be disposed of in a way that protects the information against loss, unauthorised access, use, modification, disclosure and all other misuse. It is suggested that the documents be shredded.

3.2.8 Councils must, on request, supply the Chief Executive, Local Government with any information collected, generated or accessed in the exercise of functions under the Act.

## **3.3 Generating reports from the Register**

3.3.1 The Register includes functions that allow councils to generate reports. Although many of these reports (financial, statistical) will not include personal information, other reports – such as those used to identify outstanding registrations or dangerous, menacing and restricted dogs – will result in a document that contains personal details of animal owners.



- 3.3.2 Any reports generated that contain personal details of animal owners, or other information able to result in access to their personal details, must be handled, stored and disposed of in accordance with sections 3.1 and 3.2.

## **4 HANDLING IDENTIFICATION INFORMATION**

### **4.1 Identification and registration**

- 4.1.1 Identification and registration are two separate steps. All companion animals must be permanently identified with a unique microchip, except for those that are exempt from the registration requirements of the Act under clause 16 of the Regulation.
- 4.1.2 Animals held by animal rescue organisations approved by the Chief Executive, Local Government for the purposes of rehoming are exempt from registration under clause 16(d) of the Regulation when they are in the custody of the approved organisation. However, they must still be identified. For more information about animals that are exempt from registration, see paragraph 5.3.2.
- 4.1.3 Authorised identifiers permanently identify animals and may enter the identification information for those animals onto the Register. Councils then register the animal and collect the registration fee as a separate step.
- 4.1.4 Alternatively, councils may receive hard-copy versions of identification information from authorised identifiers. Councils are responsible for entering any information they receive from any authorised identifier or pet owner onto the Register within the required timeframe. However if you consistently receive large volumes of data about companion animals from outside your council area, you should contact the authorised identifier concerned and advise them to send future data to the appropriate council.
- 4.1.5 Councils may assist authorised identifiers in their area of operations to submit data directly online. Council staff may need to demonstrate this and provide initial support.
- 4.1.6 Councils should note that the provisions of this Guideline are binding under clause 7 and 13 of the Regulation.

For more information about receiving information from authorised identifiers, please see the Office's Guidelines for Authorised Identifiers.

### **4.2 Receiving identification information**

- 4.2.1 Protecting the confidentiality of private information is the overriding consideration when handling identification information. Councils must comply with their legal obligations to protect the privacy of the personal information they hold and their legal obligations under the Act. For more details about privacy and record-keeping, see Chapter 3.
- 4.2.2 Councils must have a procedure for receiving approved companion animals forms from authorised identifiers and members of the public that provides appropriate protection of privacy. This procedure must be consistent with the council's privacy management plan. For example, there should be a procedure for receiving forms by fax and email and a separate mail sorting process for forms received through the post.

- 4.2.3 The appropriate protection of privacy may involve:
- a) ensuring that all forms containing personal information are separated from general mail and stored to maintain confidentiality
  - b) ensuring that information that is transferred within the organisation passes along a clear trail of responsibility
  - c) limiting access to the information to only those staff exercising their functions under the Act
  - d) establishing clear lines of supervision of staff with access to the information
  - e) maintaining an adequate tracking process to identify who has had access to the information.
- 4.2.4 A senior officer must be responsible at all times for the confidentiality and proper handling of the information. They may delegate tasks for processing the information, but remain responsible for establishing, operating and maintaining appropriate systems to ensure the confidentiality of the information.

When handling enquiries about companion animals information, follow the protocol in section 8.3.

### 4.3 Processing identification information

- 4.3.1 Properly completed identification information submitted to a council must be entered onto the Register by the council that receives the information within 7 days of receipt.
- 4.3.2 The required (or volunteered) 'identification information' must be provided on a NSW Companion Animals Register Permanent Identification form (the form). No other form is acceptable.
- 4.3.3 If information is received in a format other than the prescribed form, you should return it to the authorised identifier and ask them to submit it on the correct form. If you can't identify the authorised identifier, return the form to the animal owner with an explanation and a copy of the prescribed form, and ask them to return the form with all sections properly completed.
- 4.3.4 If councils consistently or repeatedly receive information from an authorised identifier in an incorrect format they should report this to the Office. Authorised identifiers are required under the Regulation and this Guideline to use the prescribed form in the prescribed manner, and consistent or repeated failure to do so may result in their authorisation being withdrawn.
- 4.3.5 Councils must not process forms unless they include the signature of the animal owner.
- 4.3.6 If an animal has been acquired from interstate or overseas or the previous owner cannot be found, a copy of the bill of sale, a statutory declaration outlining the circumstances of sale or proof of ownership must accompany the identification form. A completed Verification of Existing Microchip form should be included to confirm the microchip number is still operable.
- 4.3.7 If you cannot establish who microchipped an animal, refer to the Office's publication Companion Animals Microchip Numbers in Use in NSW. This

document will help you to identify microchip distributors using a chip's prefix. Distributors may then be contacted to find out who this batch of chips was sold to.

4.3.8 If the identity of the authorised identifier is still unclear, use the three specified 'dummy numbers' for records. These numbers should only be used as a substitute for an actual authorised identifier number if you have made reasonable attempts to find out the actual number. Use of the 'dummy numbers' is audited by the Office to ensure they are being used correctly and appropriately.

4.3.9 The 'dummy numbers' to be used are:

- a) V0003825 – for animals implanted before 1 July 1999.
- b) V0003957 – for animals implanted after 1 July 1999, but the implanter is from outside NSW.
- c) V0004178 – for animals implanted after 1 July 1999 in NSW, but the authorised identifier is unable to be identified.

4.3.10 The responsible officer at council must ensure that the information on identification forms is entered onto the Register electronically within 7 days of its receipt. All data must be entered accurately – especially the microchip number, the implanter number (authorised identifier number) and the implantation date. The Register is able to track data entry operators with high error rates.

4.3.11 Once processing is complete (and assuming registration is not to be completed at this point), print a new Certificate of Identification from the Register. Attach a registration reminder sticker to the certificate before sending it to the animal's owner to alert them that registration is required by 6 months of age.

#### Processing Pet Industry Association of Australia (PIAA) labels

PIAA is the peak body for pet industry businesses across Australia, including retailers selling live animals and suppliers of pet-related products. In order to assist with the rehoming of surrendered or abandoned dogs sourced from PIAA member pet shops, PIAA has developed the Dogs Lifetime Guarantee Policy on Dog Traceability and Rehoming.

The policy guarantees that any dog purchased from a PIAA member pet shop that becomes unwanted or abandoned at any age will be re-homed at PIAA's expense, where suitable.

Crucial to the success of PIAA's policy is the ability for authorised council officers to identify an unclaimed dog as having been originally purchased from a PIAA member store, and for the council to notify PIAA of such dogs.

To assist in the implementation of this policy, the Office and PIAA have jointly funded the following labels for inclusion on the Change of Owner (C3A) forms of all dogs sourced from PIAA member pet stores:

When completing the Change of Owner form at the time of sale of a dog, the PIAA Member will write their unique member number on the label prior to submitting the form to the local council.

As prompted by the label, a council data entry officer should enter the supplied details in the 'Identifying marks' field of the dog's record on the Companion Animals Register. This field is clearly displayed when a search of the Register is conducted by an authorised officer.

For further information about dealing with impounded PIAA dogs, see section 6.8 of this Guideline.

Further information about PIAA's Dogs Lifetime Guarantee Policy on Dog Traceability and Re-homing policy can be found at:

<http://piaanet.au/>

#### **4.4 Inconsistent records**

4.4.1 If a record already exists for the same animal but a different owner and/or address are listed, do not change the record on the Register until you have contacted the owner listed on the Register to establish the current situation. Use the protocol for handling enquiries outlined in section 8.3.

4.4.2 This issue may arise if a change of ownership and/or address has been processed before the original identification form, or an authorised identifier has incorrectly completed a form for an animal they did not microchip.

#### **4.5 Animals with pre-existing microchips**

4.5.1 Some animals may be found to have a pre-existing microchip. These microchips may have been implanted interstate or overseas and may be ISO or non-ISO microchips. In this case, an authorised identifier or authorised officer should complete a Verification of Existing Microchip form. If the microchip is not listed on the Register, they should also complete a Permanent Identification form to allow council to enter the information onto the Register. The correct procedure is:

- a) animal's owner should fill in the animal and owner details on the Permanent Identification form. The authorised identifier or authorised officer who completed the Verification of Existing Microchip form should also fill in the animal's microchipping details on the Permanent Identification form and certify this information by signing in the relevant field.
- b) The authorised identifier or authorised officer should attach the Verification of Existing Microchip form to the Permanent Identification form and give both forms to the animal's owner.
- c) The animal's owner is responsible for giving both the completed forms to council.
- d) Council should then enter the details on the Register, using the applicable 'dummy number' (see paragraph 4.3.9).

## 4.6 **Animals with more than one microchip**

- 4.6.1 If an animal has two (or more) microchips implanted, enter the details for both microchips on the Register with a note in the 'additional comments' and 'identifying marks' fields of the animal's record using the 'change details' function in the main menu. These comments should be applied for each number – cross-referencing the animal to the other microchip number – and
- 4.6.2 If the animal is registered, one microchip number should have the full registration record entered on it and the other used as an 'identification only' record. Do not enter the registration on the second record.
- 4.6.3 Send a request to the Office at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) asking them to enter the record as a registration record with a nil registration fee. Include:
- a) both microchip numbers
  - b) the animal and owner details
  - c) registration type
  - d) receipt number
  - e) amount paid.
- 4.6.4 An officer of the Office will then enter the second record as a registration record with a nil registration fee. This will ensure that the registration information for the animal is correct and records are correct for council's reconciliation purposes and the remittance of registration fees. Both Certificates of Registration should then be given to the animal's owner.

## 4.7 **Microchips that cannot be read**

- 4.7.1 There are a number of brands of microchip used overseas that cannot be read by scanners used by councils and vets in Australia. In these cases, the animal must be re-microchipped.
- 4.7.2 For example, the Avid encrypted microchip may interfere with the reading of an ISO chip. The Australian Quarantine Station at Eastern Creek has a scanner that can read Avid microchips and it may be used to scan Avid microchipped animals inside quarantine. However these animals must still be re-microchipped, as they will not commonly be recognised by other Australian microchip scanners.
- 4.7.3 If you are asked to process identification information or register an animal with a microchip that cannot be read, you should:
- a) Inform the owner that their microchip cannot be read by most vets or councils in Australia.
  - b) Ask the owner to take their animal to a vet/authorised identifier (or authorised person of council) to confirm that the microchip cannot be read (most multi-readers will detect the presence of a microchip). The authorised identifier or authorised person should fill out a Verification of Existing Microchip form, noting that the microchip number cannot be read, and include the microchip number from the owner's existing paperwork if available.
  - c) Advise the owner to contact an authorised identifier to have the animal re-microchipped with an ISO microchip in the normal manner.

- d) Note in the 'identifying marks' field of the record that the animal has a second unreadable microchip.
- e) Complete data entry for both microchips (if the number for the unreadable microchip is known) and cross-reference via the identifying marks as per the procedure for an animal with two microchips. Use the dummy V000 numbers to process the unreadable microchip number.
- f) Email the Office at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) and follow the procedure for animals with more than one microchip – see section 4.6 of this Guideline.

#### **4.8 Incorrect 'duplicate' microchip numbers**

- 4.8.1 If – when entering a new record – you find that a record already exists for that microchip number for a different animal, follow the procedure set out in this section.
- 4.8.2 Start with the new record that has not yet been entered on the Register. Check that the microchip number has been typed correctly when attempting to enter the information on the Register. Permanent Identification forms should have a barcode sticker attached, which will reduce the likelihood of an error occurring with the microchip number.
- 4.8.3 If the barcode is missing, check that the microchip number has been correctly recorded on the form – for example, that it is not missing the 3-digit manufacturer's prefix. A number should read 98200xxxxxxxxx or 96700xxxxxxxxx not 00xxxxxxxxx.
- 4.8.4 Contact the authorised identifier who implanted the microchip to double check their records against the microchip number recorded on the form. If you don't know their contact details, use the 'authorised identifier search' function on the Register's main menu.
- 4.8.5 Often there will be one digit wrong, especially if it has been handwritten rather than using a barcode sticker. If the authorised identifier has recorded the incorrect number on the form, process the correct number and ask the authorised identifier to amend their records. You should also advise them that they are required to use the barcode sticker.
- 4.8.6 Immediately inform the pet owner so that they can amend their own records. It is especially important that you do this immediately – before the owner tries to use their copy of the (wrong) form to, for example, try to register the animal or change ownership.
- 4.8.7 If the authorised identifier confirms that their records match the microchip number provided on the form, try the authorised identifier for the animal already listed on the Register. Reprint a Certificate of Identification or Registration to obtain their authorised identifier number and use the 'authorised identifier search' function to get their contact details.
- 4.8.8 Contact that authorised identifier to double check their records, and then repeat the steps under this section.

- 4.8.9 If both authorised identifiers say they have the correct number, ask the owners of both animals to have their animal scanned by a vet, authorised officer or authorised identifier to check what the microchip number actually is.
- 4.8.10 If the microchip number on the form not yet entered on the Register is correct, contact the council of the area where the animal is already recorded on the Register. Inform them of the problem and advise that it would appear that there has been a data entry error made for an animal in their area that needs attention.
- 4.8.11 If both animals have been scanned and are definitely showing the same microchip number – or one of the animals involved in the microchip number mix up is listed on the Register as deceased – you need to notify the Office.

#### **4.9 Removing an incorrect record**

- 4.9.1 If the incorrect record on the Register is for a registered animal (that is, not just 'identified only'), it is especially important that the council that processed the registration (and receipted the registration fee) is the council that removes the record and re-enters it correctly. Otherwise, the financial reconciliation will be extremely difficult.
- 4.9.2 Only the council or registration agent that entered the registration should remove it. If the council that registered the animal is shown as 'none', contact the Office to run a report to identify which council receipted the registration.
- 4.9.3 If you don't know which council did the data entry, assume that it was the council for the area where the animal is usually kept. If it is a registration record, that council should check the microchip number against the records they are required to keep for reconciliation purposes. If in doubt, the council should generate a financial report for the period covering the date of registration of the animal – the registration date is the date of data entry, not the date the money was receipted – and check if the particular microchip number appears. You could also contact the owner of the listed animal (if possible) and ask them where they registered the animal.
- 4.9.4 Once it is established which council is responsible for the incorrect data entry, that council should re-print the Certificate of Registration for the animal with the incorrect record.
- 4.9.5 An authorised Register user with Level 3 access – from the council that registered the animal – should then remove the incorrect record by using the 'remove animal record' function on the Register's main menu. Be extremely careful when typing in the microchip number.
- 4.9.6 A record cannot be removed if it has pound history attached. Please email the Office at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) to ask for the pound history to be removed before proceeding. You must then re-enter the pound history when adding the record to the Register again.
- 4.9.7 Contact the council with the form for the 'correct' animal for the microchip number that has just been removed and inform them that the Register is now ready for them to do their data entry.



- 4.9.8 Enter the data (shown on the reprinted certificate) for the animal of the removed record against its correct microchip number.
- 4.9.9 Print a new Certificate of Registration and send it to the pet owner immediately. Include a note telling them that the microchip number recorded on any previous forms or certificates is incorrect, and they should destroy any incorrect papers.
- 4.9.10 If the record was a 'registration' record, then the registering council should make a note of the following for reconciliation purposes:
- a) the incorrect microchip number
  - b) the date of registration (date of data entry) of the incorrect microchip number
  - c) the registration amount paid
  - d) council receipt number
  - e) the date of receipt
  - f) the correct microchip number
  - g) the date of registration (date of data entry) of the correct microchip number
  - h) the reason for the variation – that is, that the initial entry had the wrong microchip number.
- 4.9.11 If the record was an 'identified only' record, you should remove the record, re-enter the correct details, print off a new Certificate of Identification and send it to the pet owner immediately. Include a note to the owner as in paragraph 4.9.9.
- 4.9.12 If the record removed was a 'registration' record, use the details noted under paragraph 4.9.10 to do the reconciliation report required when council's receipting records don't match their financial report. Follow the procedures to do this in Chapter 15.

## 5 DEALING WITH REGISTRATIONS

The Companion Animals Amendment (Registration Fees) Regulation 2015 provides a new registration fee for desexed cats or dogs that are sold or transferred from eligible pounds or shelters to be discounted by 50%.

An eligible pound or shelter means all NSW council pounds, the Animal Welfare League NSW, the Cat Protection Society NSW Inc. and the NSW RSPCA.

This means that the discounted registration fee (refer clause 17(1)(e)) which is 50% of the desexed animal registration fee, can be applied by councils and other registrations agents at the point of purchase.

Where registration is not yet required or able to be processed at the point of purchase or transfer, such as kittens and puppies under 6 months of age, animals transferred from an eligible pound or shelter to a rescue organisation (clause 16d or otherwise) or in some instances animals sold by the RSPCA, the animal's record is to be flagged on the Companion Animals Register as eligible for the discounted fee. A function on the Register has been created for this purpose.

This discounted registration fee for desexed animals purchased from eligible pounds and shelters does not apply to eligible pensioners with desexed animals. Pensioners continue to pay the registration fee provided by clause 17(1)(b) of the Regulation.

For further information on applying this flag refer to 5.5 and 5.6 - **When to flag an animal as eligible for discounted pound shelter registration on the Register** and the Register User Guide.

### 5.1 Companion Animals Amendment Act 2013 - Registrations

5.1.1 In response to low lifetime registration rates observed in many council areas, the Companion Animals Amendment Act 2013 strengthened powers available to councils to require cat and dog owners to lifetime register their animals by 6 months of age. This aims to improve the ability of councils to track cats and dogs through more accurate Register data and allow councils to fund further regulatory activity and education programs.

5.1.2 Under sections 9(1) and 10, penalties for failure to register a cat or dog have increased. An on-the-spot penalty of \$275 applies (previously \$165), with maximum penalties of \$5,500 or \$6,600 for dangerous, menacing or restricted dogs (previously \$880 and \$5,500 respectively).

5.1.3 Section 9(3) provides that a person commits a separate offence for every day the cat or dog remains unregistered after it reaches 6 months of age. However, the person cannot be convicted of more than one such offence (for each animal) during any single calendar month, and can only be convicted once for any failure to register which occurred before the matter came to the notice of the council of the area where the animal is ordinarily kept.

5.1.4 Additionally, under section 10B:

- a) an animal owner who receives a notice from a council to lifetime register their cat or dog has 14 days to do so (previously 28 days).

- b) the maximum penalty for failing to comply with such a notice has risen to \$5,500 or \$6,600 for dangerous, menacing or restricted dogs (previously \$330 and \$1,430 respectively).
- c) a council may issue such a notice to an animal owner every 3 months (previously 6 months).

## 5.2 Council responsibilities

- 5.2.1 As registration agents, councils are responsible under the Act, Regulation and this Guideline for ensuring that registration information is entered on the Register and accurately maintained. They are also responsible for helping people in their areas of operation who provide services – such as identifying seized or lost companion animals – as an approved person under section 62A of the Act.
- 5.2.2 Applications to register a companion animal must be made on the prescribed [Lifetime Registration - R2](#) form. Councils must then enter this information onto the Register within 7 days of receiving it.
- 5.2.3 It is an offence if a person gives information, or makes a statement in or in connection with an application for registration, that they know is false or misleading. This can attract a maximum penalty of \$880 under section 71(4) of the Act.
- 5.2.4 Councils must now issue a court attendance notice, rather than a penalty notice, for offences under section 71(4) of the Act. This change was introduced by the Companion Animals Regulation 2008. It reflects the government's policy that these offences should be proved before a court as relevant elements are open to interpretation.
- 5.2.5 Councils must comply with their legal obligations to protect the privacy of the personal information they hold and their legal obligations under the Act and the Protection of Privacy and Personal Information Act. For more details, see Chapter 3.

## 5.3 Registration categories

- 5.3.1 Under sections 8 and 9 of the Act, all cats and dogs must be permanently identified and registered.
- 5.3.2 The only allowable exemptions from registration are in clause 16 of the Regulation:

The following companion animals are exempt from section 9 (Registration required from age 6 months):

- a) a cat born before 1 July 1999, other than a cat whose ownership changes after that date
- b) an animal that is ordinarily kept outside New South Wales, but not if the animal has been in New South Wales for a continuous period of at least 3 months
- c) an animal in the custody of a council (including in a council pound), the Animal Welfare League NSW, The Cat Protection Society of NSW Inc. or RSPCA

- d) an animal in the custody of an organisation approved by the Chief Executive, Local Government, for the purposes of this clause, by order published in the Gazette
- e) an animal kept at a pet shop for the purposes of sale
- f) an animal kept for the purposes of sale in the course of a business conducted at a booth or stall in a market or at a fair
- g) a greyhound registered in accordance with the rules made in relation to greyhound racing under the *Greyhound Racing Act 2009*.
- h) a dog that is ordinarily used by a police officer on official duty
  - (h1) a dog that is ordinarily used on official duty by a correctional officer (within the meaning of the Crimes (Administration of Sentences) Act 1999)
- i) a dog used by a Commonwealth officer on official duty
- j) an animal in the custody of an accredited research establishment within the meaning of the *Animal Research Act 1985*, or the holder of an animal research authority or an animal supplier's licence within the meaning of that Act, for purposes in connection with animal research, as authorised under that Act
- k) an animal kept at a licensed animal display establishment within the meaning of the *Exhibited Animals Protection Act 1986* and lawfully exhibited in accordance with that Act
- l) a working dog that is ordinarily kept in a part of the Western Division of the State that is not within a local government area
- m) a working dog that is ordinarily kept on land categorised as farmland for the purposes of Part 3 of Chapter 15 of the *Local Government Act 1993*.

5.3.3 Animals that are entitled to exemptions from registration may lose that entitlement under certain circumstances – such as being seized and taken into the custody of a council pound or being the subject of a nuisance order. For more details, see section 5.11.

5.3.4 Animals referred to in clauses 16(h) (police dog), 16(h1) (corrective services dog) or 16(i) (dog used by a Commonwealth officer on official duty) of the Regulation are exempt from the requirement to be lifetime registered. These dogs were formerly referred to as being 'in the service of an instrumentality of the State'. Examples include customs dogs and dogs used by emergency services for rescues. However, clause 16(h), 16(h1) or 16(i) exempt animals must be microchipped and their record must be updated on the Register to indicate “zero dollar” registration fee.

Council officers do not have access to the Register to process “zero dollar” registrations for clause 16(h), 16(h1) or 16(i) exempt animals. In most circumstances where such an application is received by a council, it should be referred to the Chief Executive, Local Government.

However, it is recognised that special circumstances exist where it is necessary for council officers to process such registrations, for example, where regular applications are received because a police dog training facility is located in the council area. In such cases, a Level 3 Manager at the Council should contact the Office at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) to request access to this Register for this purpose.

- 5.3.5 Lifetime registration fees are prescribed under clause 17(1) of the Regulation. In accordance with clause 17(4) of the Regulation, from 1 July 2014 lifetime registration fees will be annually adjusted for inflation.
- 5.3.6 Current prescribed registration fees are available for download on the Dogs and cats page of the Office's website: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).
- 5.3.7 Councils cannot alter the registration fees set by the Regulation. The full fee set for each category of registration must be remitted to the Office.
- 5.3.8 If councils wish to provide a subsidy for a certain class of people, this subsidy must be treated as a community service obligation and funded from the council's consolidated revenue.

#### **5.4 Desexed animals**

- 5.4.1 Before granting a discount for a desexed animal, councils and other registration agents must sight proof of desexing.
- 5.4.2 Proof of desexing may include a letter, certificate or clear receipt from a vet or a statutory declaration from the owner that the animal has been desexed. To claim the desexed rate, an animal must be permanently incapable of reproduction. There are products on the market that render male dogs temporarily unable to reproduce, but these effects are not permanent and the animal is not considered to be desexed.
- 5.4.3 Any information given on the original form or the Register about the desexed or entire status of the animal should not be relied upon when deciding whether to grant a discount. If in doubt, ask the owner to complete a statutory declaration.

#### **5.5 Desexed animals sold by an eligible pound or shelter - 50% discount**

- 5.5.1 Clause 17 of the Companion Animals Regulation 2008 has been amended (October 2015) to include a new category of registration discounted by 50% for desexed animals sold by eligible pounds or shelters.
- 5.5.2 This means that a cat or dog sold by an eligible pound or shelter that is desexed at the time of registration, the fee payable is 50% of the fee for a desexed animal as referred to in clause 17(1)(a). This discount also applies to animals that have been transferred from an eligible pound or shelter to a rescue organisation for rehoming.
- 5.5.3 This discounted registration fee for desexed animals purchased from eligible pounds and shelters does not apply to eligible pensioners with desexed animals. Pensioners continue to pay the registration fee provided by clause 17(1)(b) of the Regulation.
- 5.5.4 An eligible pound or shelter includes a NSW council pound, the Animal Welfare League NSW, the Cat Protection Society of NSW Inc. and the RSPCA NSW.

- 5.5.5 Before granting a discount for a desexed animal sold by an eligible pound or shelter, councils and other registration agents must sight proof of desexing and proof of sale or transfer from an eligible pound or shelter.
- 5.5.6 Proof of desexing may include a letter, certificate or clear receipt from a vet or a statutory declaration from the owner that the animal has been desexed.
- 5.5.7 To claim the desexed rate, an animal must be permanently incapable of reproduction. There are products on the market that render male dogs temporarily unable to reproduce, but these effects are not permanent and the animal is not considered to be desexed.
- 5.5.8 Proof that an animal was sold or transferred for rehoming from an eligible pound or shelter includes:-
- a) receipt from a NSW council pound, Animal Welfare League NSW, Cat Protection Society of NSW Inc. or RSPCA NSW containing the animal's microchip number, or
  - b) the animal's record on the Companion Animal's Register has been flagged as eligible for the 50% discounted fee using the new Flag animal as eligible for pound shelter discount registration function.
  - c) Certificate of Identification which includes the following text on the second page:- 'This animal may be eligible for discounted registration as an animal purchased from an eligible pound or shelter – desexed'.

## 5.6 **When to flag an animal as eligible for pound - shelter discounted registration on the Register**

- 5.6.1 The Flag animal as eligible for pound shelter discounted registration function on the Register is to be utilised when a cat or dog, kitten or puppy is not required or able to be registered at the point of purchase from the eligible pound or shelter. This includes the following circumstances:-
- a) when an animal is rehomed from the RSPCA NSW (as RSPCA are not registration agents)
  - b) when the animal sold from an eligible pound or shelter is under 6 months of age (not required to be registered under the Act)
  - c) where an animal has been transferred from an eligible pound or shelter to an animal rescue organisation for rehoming and registration is deferred (For example animals transferred from a council pound to a rescue organisation for rehoming and the organisation holds an exemption from registration under clause 16d of the Regulation)

The 50% discounted registration fee for animals sold by an eligible pound or shelter is not subject to an expiry period and is available to the owner of the animal at the time of registration irrespective of whether ownership has changed since the animal was sold or transferred from an eligible pound or shelter. However, the animal must be desexed at the time of registration.

Information on how to apply the 'flag' (or remove the 'flag' if applied to the incorrect record) is provided in the Register User Guide which is located on the Main Menu screen of the Register.

## 5.7 Pensioner discounts

- 5.7.1 Pensioners with entire animals (animals that are not desexed) must pay the full registration fee unless they fall under some other category such as recognised breeder.
- 5.7.2 An eligible pensioner is the same as that defined in clause 134 of the Local Government (General) Regulation 2005. This category includes anyone who receives an aged pension, a war widows pension or a disability pension.
- 5.7.3 Councils must sight the appropriate documentation before granting the pensioner registration discount. This might include a pensioner concession card or social security documents. A health care card or senior citizens card is not acceptable evidence of being the recipient of a pension. Pensioners must also provide proof that the animal is desexed or a veterinary statement stating the animal is permanently incapable of reproduction.

## 5.8 Recognised breeders

The exemption from microchipping for a cat or dog less than 12 weeks of age that is sold by a recognised breeder to a pet shop has been removed from the Regulation. Recognised breeders must therefore ensure that all the cats and dogs they sell are microchipped prior to sale.

- 5.8.1 A recognised breeder is a person who is a “breeder” member of one of the following breed organisations:
- Dogs NSW (Royal NSW Canine Council)
  - NSW Cat Fanciers Association
  - Waratah State Cat Alliance (now trading as Australian National Cats Inc.)
  - Any other body approved by the Chief Executive, Local Government for the purposes of this definition by an order published in the Gazette.

A list of approved recognised breeder bodies is available on the Dogs and Cats webpage at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

- 5.8.2 When a breeder member of a recognised breeder body registers a breeding dog or cat, a council officer must sight:
- proof of current membership as a breeder member of a recognised breeder body defined under clause 3(1) of the Regulation;
  - documentation verifying that the cat or dog is of a breed accepted by the recognised breeder body; and
  - a signed statement by the member that the cat or dog is to be kept for breeding purposes.
- 5.8.3 If the required documentation is not produced, a council officer cannot process the registration at the recognised breeder registration rate.

Further information about the recognised breeder body approval process can be found in the [Guidelines for Approval as a Recognised Breeder Body under Clause 3\(1\) of the Companion Animals Regulation 2008](#).

## 5.9 Assistance animals

5.9.1 Assistance animals must be microchipped and lifetime registered, but the owners of these animals pay no registration fee.

5.9.2 Owners claiming a fee exemption for assistance animals should provide council with reasonable proof that the animal is a genuine assistance animal. This proof should include both:

- a) a signed statement or documentation from a recognised training body that the animal is (or is being) trained as an assistance animal
- b) a signed statement from the training body or the owner that the animal is being used for that purpose.

5.9.3 At the time of publication, an 'assistance animal' is defined under section 5 of the Act to include a guide dog, a dog trained to assist a person in activities where hearing is required, and any other animal trained by a recognised training organisation to assist a person to alleviate the effect of a disability. However, this definition is drawn from the [Disability Discrimination Act 1992 \(Commonwealth\)](#) which includes animals that are:

- a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability, or
- b) accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph, or
- c) trained:
  - (i) to assist a person with a disability to alleviate the effect of the disability
  - (ii) to meet standards of hygiene and behaviour that is appropriate for an animal in a public place.

5.9.4 NSW law does not provide for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability. However, the Office continues to recognise assistance training organisations that can show their training program has met the standards established by Assistance Dogs International Inc. (ADI) or equivalent. Training organisations recognised by the Office for this purpose are those listed on the ADI website as Australian-affiliated ("candidate" or "accredited") programs. The details of these organisations can be found at:

<http://www.assistancedogsinternational.org/location/australia/>

5.9.5 [The Disability Discrimination Act 1992 \(Commonwealth\)](#) defines disability as:

- a) total or partial loss of the person's bodily or mental functions
- b) total or partial loss of a part of the body
- c) the presence in the body of organisms causing disease or illness
- d) the presence in the body of organisms capable of causing disease or illness
- e) the malfunction, malformation or disfigurement of a part of the person's body
- f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction



g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

5.9.6 Genuine assistance animals are always desexed and come with papers and/or identification discs that clearly indicate their purpose and show they are an assistance animal from a recognised training body.

5.9.7 Other animals may be used as therapy animals to improve a person's general wellbeing and quality of life. Therapy animals may work with a patient to provide emotional comfort and promote a positive state of mind. The animal may also ease discomfort through its affection, play and presence. Councils sometimes receive requests to list these animals as 'assistance animals'. However, animals that are used as therapy animals are not assistance animals and must still be microchipped and lifetime registered and have a registration fee paid – the same as other cats and dogs.

5.9.8 Section 59 of the Act states that:

...a person with a disability is entitled to be accompanied by an assistance animal being used bona fide by the person to assist the person, into or onto any building or place open to or used by the public or on any public transport.

5.9.9 Any enquiries about access to shops and shopping centres for assistance animals of people with disabilities should be referred to the shop owner or the centre management of the shopping centre. Enquiries about access to public transport for assistance animals – for example, permit applications – should be directed to the Public Transport Infoline on 131 500 or <http://www.transportnsw.info/en/tickets/concessions/disability.page?>

5.9.10 If a lifetime registration fee has already been paid for an animal that subsequently undertakes training to become an assistance animal, the registration fee/status cannot be changed on the Register. However, if councils sight the necessary evidence and are satisfied that an animal is an assistance animal, they may add a note in the 'identifying marks' field of the animal's record. A new Certificate of Registration should be printed which will include the updated information. The officer who sights the evidence should also note in the 'identifying marks' field the date, their initials, the council name, the details of the evidence sighted and a statement that the council is satisfied that the animal is an assistance animal.

## 5.10 Working dogs

5.10.1 A working dog is defined under section 5 of the Act as a dog used primarily for droving, tending, working or protecting stock. It includes a dog being trained as a working dog.

5.10.2 The Companion Animals Amendment Act 2006 removed the exemption from the identification and registration requirements which previously applied to all working dogs.

5.10.3 However, the Regulation (clauses 16(l) and (m)) exempts the following categories of working dogs from the registration requirements under Part 2 of the Act:

- a) A working dog that is ordinarily kept in a part of the Western Division of the State that is not within a local government area (unincorporated area).
  - b) A working dog that is ordinarily kept on land categorised as farmland for the purposes of Part 3 of Chapter 15 of the Local Government Act.
- 5.10.4 Owners of exempt working dogs should still be encouraged to microchip and register their valuable animals in accordance with Part 2 of the Act. However, no registration fee applies.
- 5.10.5 All other working dogs that are not exempted under clause 16 of the Regulation must be microchipped and registered in accordance with the Act. However, no registration fee applies (clause 17(2)(b) of the Regulation).
- 5.10.6 If working dogs are microchipped and/or registered as in paragraphs 5.10.4 and 5.10.5, councils should apply the \$0 working dog fee to the animals record on the Register. If councils do not have their own reference number, the receipt number '0000' should be entered.

## 5.11 **Loss of registration exemption**

- 5.11.1 Animals that are entitled to exemptions from registration may lose that entitlement under certain circumstances.
- 5.11.2 Any animal that is seized and taken into the custody of a council pound or animal shelter must be microchipped and lifetime registered before being returned to its original owner. This requirement overrides any exemptions from registration that would ordinarily apply under clause 16 of the Regulation.
- 5.11.3 Any animal that is transferred for rehoming from a council pound or animal shelter to the RSPCA, Animal Welfare League or Cat Protection Society, must be microchipped and lifetime registered at the point of being rehomed with its new owner.
- 5.11.4 Any animal that is transferred for rehousing from a council pound or animal shelter to an organisation approved by the Chief Executive, Local Government under clause 16(d) of the Regulation – such as a breed rescue group – must be microchipped before leaving the council facility. However, these animals do not have to be lifetime registered until they are at the point of being rehomed with their new owner.
- 5.11.5 The registration exemption for an animal in the custody of a clause 16(d) approved organisation is only valid for 12 months from the time the animal enters the custody of the organisation. If the animal remains in custody after this time, the organisation must register it.
- 5.11.6 Cats and dogs under 6 months of age that are rehoused with new owners after being seized under the Act are subject to the same requirements as they would be if they were held by a pet shop or breeder. Generally, this means that they need to be microchipped before rehousing, and then registered by 6 months of age.

- 5.11.7 Under section 36(1)(b) of the Act, a dog that is the subject of a Notice of Intention to Declare the Dog to be a Dangerous Dog or a Menacing Dog must be microchipped and lifetime registered within 7 days after its owner receives the notice.
- 5.11.8 Similarly, dogs of a restricted breed or those subject to a Notice of Intention to Declare the Dog to be a Restricted Dog cannot claim any exemption from the requirement for identification and registration – in accordance with sections 56(1)(h) and 58B(1)(b) of the Act. For more information, see section 10.2 about the approved form for Notice of Intention to Declare a Dog a Restricted Dog.

*The Companion Animals Amendment Act 2013* introduced powers for council officers to seize proposed dangerous, menacing or restricted dogs for the purpose of ensuring that they are microchipped and lifetime registered, regardless of the 7 day notice period.

See section 11.5 of this Guideline for further information.

- 5.11.9 If an animal that would normally be exempt from registration is the subject of a nuisance order, council has the discretion under clause 22 of the Regulation to order that the animal be identified and registered.

## 5.12 Processing registration information

- 5.12.1 Owners wishing to register their animals must give council proof that their animal has been microchipped. This proof could include:
- a fully completed copy of the Companion Animals Permanent Identification form
  - a Certificate of Identification printed from the Register
  - a microchip certificate stating the microchip number (for animals microchipped before 1 July 1999)
  - a fully completed copy of the Companion Animals Verification of Existing Microchip form.
- 5.12.2 Owners who do not have a copy of the appropriate documentation to prove that their animal has been microchipped must have their animal scanned by an authorised identifier or authorised person at a council pound. They will then give the owner a completed Verification of Existing Microchip form.
- 5.12.3 Owners wishing to claim a discount must give council proof of entitlement, as outlined in sections 5.3 to 5.10.
- 5.12.4 There is no facility to give a discount or change the category of registration of an animal if it has been incorrectly registered. Councils must therefore make sure that all owners registering animals understand the discounts available and the requirements to qualify for these discounts. Printed material should be available at all customer service points where registration may be made, and customer service staff should draw owners' attention to this material.
- 5.12.5 To enter registration details directly onto the Register, you must complete the following steps:

- a) Locate the animal's identification information on the Register using the microchip number provided by the owner.
  - b) Confirm with the owner that the information on the Register has been entered correctly (see Chapter 8 if changes need to be made).
  - c) Accurately and thoroughly complete the registration details on-line.
  - d) Collect the required fee.
  - e) Issue the owner with a receipt.
  - f) Record the receipt number on the Register.
  - g) Give the owner a Certificate of Registration printed from the Register.
- 5.12.6 The Register is designed to allow council staff to complete registration directly while the pet owner is present (after they have: completed an approved Lifetime Registration form, supplied proof of microchipping, and paid the relevant registration fee). However, this may not always be possible – for example, if the identification information has not yet been entered or council customer service staff do not have the necessary equipment.
- 5.12.7 If registration cannot be completed while the pet owner is present, the following must occur:
- a) **Ensure the owner has accurately and thoroughly completed an approved Lifetime Registration form and attach a photocopy of the owner's proof of microchipping.**
  - b) Collect the required fee.
  - c) Issue the owner with a receipt.
  - d) Record the receipt number on the registration form.
  - e) Give the owner the (duplicate) copy of the completed Registration form.
  - f) Enter the registration information onto the Register within seven days.
  - g) Provide (send) a Certificate of Registration (printed from the Register) to the owner once registration details have been entered onto the Register.

### 5.13 **Correcting or removing a registration**

- 5.13.1 Registration details should only be corrected when a data entry error has occurred. Whether an animal is desexed or not is only relevant at time of registration.
- 5.13.2 If an animal is desexed after registration **DO NOT** change the registration type from Non Desexed to Desexed as this will change the fee paid. The amount paid field should always equal the amount paid by the owner.
- 5.13.3 A registration can only be corrected or removed by an authorised Register user with Level 3 access from the council that applied the registration.
- 5.13.4 Reasons for removal include where a registration has been applied to the incorrect record or when payment has been dishonoured.

### 5.14 **Registration tags**

- 5.14.1 All dogs must wear a tag showing their name and the contact details of their owner – usually a telephone number.

5.14.2 It is recommended that tags are not engraved with microchip numbers. This is because most chip numbers are 15 digits long and errors are likely to occur in copying the number. This will create problems in accurately identifying the animal.

5.14.3 Registration tags are no longer supplied – the requirement for registration tags was removed on 14 December 2001 (see Circular 02/04). However, animals must still wear a name tag showing their name and the contact details of their owner.

#### **5.15 Delegation of registration functions**

5.15.1 Councils may delegate their registration functions to agents, but must ensure that the agent is familiar with and acts in accordance with this Guideline – especially maintaining standards of privacy and confidentiality.

5.15.2 Councils are responsible for collecting registration monies from their agents and including all monies in their monthly remittance to the Office. For more details, see Chapter 15.

#### **5.16 Requests for refunds**

5.16.1 No refunds are available once a registration has been processed, unless the incorrect registration type was originally entered and documentary evidence is provided to council staff. If councils wish to provide a refund for any reason, the amount must be treated as a community service obligation and funded from council's consolidated revenue. This includes circumstances where an animal has died soon after being lifetime registered or been desexed after being lifetime registered as an undesexed animal for the higher fee.

5.16.2 Councils may use their discretion to process a refund only if the owner lifetime registers an animal and notifies of its death within the same monthly accounting period. In this case, council's monthly companion animals registration invoice will show two separate transactions for the one microchip number – that is, a registration and a removal of registration – which will cancel each other out.

5.16.3 If the notification of death is processed outside the same monthly accounting period as the registration, the removal of registration will show up on the following month's invoice. In this case, the invoice for the month in which the registration took place will not balance. Councils should note that failure to pay the total of the monthly invoice may result in a delay to the processing of their companion animals payment.

## **6 USING INFORMATION FROM THE REGISTER**

### **6.1 Searching for information**

6.1.1 The Register has functions to search:

- a) by microchip number
- b) by full address – eg 4 Station Street, Sydney
- c) by street name and breed – eg ‘Station’ and ‘cattle dog’.

6.1.2 The Register is a register of animals rather than owners. It is therefore inappropriate to have a facility to search by name of an owner, so this facility is not available.

6.1.3 Legitimate circumstances for carrying out a search of the Register include to:

- a) confirm information entered on the Register
- b) complete registration on the Register
- c) identify the owner of a found or seized animal
- d) identify the owner of an animal to enforce the Act.

6.1.4 A limited search function (by microchip number only) is available to approved people who are authorised by the Chief Executive, Local Government to access the Register so that they can return lost and stray animals (Level AP). This includes people who operate approved premises.

All approved people must comply with the Guideline for Approved Persons which is available on the Office’s website at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

6.1.5 The general search function – which includes search by address – is available to users with an authorisation of Level 1L, 1W, 1G , 1T, Level 2 and Level 3 only. For more information about levels of access, see Chapter 2.

6.1.6 To comply with the notification requirements under section 63 of the Act and the provisions of this Guideline, councils must ensure that pounds and shelters – including those operating under contracting arrangements – have appropriate access to the Register.

6.1.7 Councils must comply with their legal obligations to protect the privacy of the personal information they hold and their legal obligations under the Act and the Protection of Privacy and Personal Information Act. For more details, see Chapter 3.

6.1.8 Searches may only be done to exercise functions under the Act. There is a penalty of up to \$2,750 (or \$11,000 for suppressed records) for misusing this facility or the information you obtain.

6.1.9 For more information about access to suppressed records, see Chapter 7.

### **6.2 Using information for enforcement purposes**

6.2.1 Access to the Register may be required for enforcement purposes under the Act. This includes investigating or prosecuting offences and returning lost or straying animals.

- 6.2.2 Only authorised officers may access the Register for enforcement purposes. Police officers generally only require Level 1L access to obtain owner details to exercise their enforcement function under the Act. The Office may approve a higher level of Register access for police officers where necessary.
- 6.2.3 The Register is not a public register, so information in the Register may only be used for the lawful exercise of functions under the Act. For example, in an enforcement situation, information about the animal and its owner must not be disclosed to a third party except as allowed by section 89 of the Act.
- 6.2.4 In the case of a dog attack or other behaviour by a cat or dog – such as rushing onto a road and causing an accident – a complainant may wish to access the name of the animal's owner for insurance or legal purposes. Section 89 of the Act provides that councils may issue the name of the owner only if:
- a) the information is required to bring legal proceedings against the owner
  - b) the complainant or their legal representative have made a written request for that information
  - c) the behaviour of the animal concerned has been reported to police or a council and evidence of the report is presented.
- 6.2.5 The only information to be given under these circumstances is the name of the owner. You must not provide other personal information – such as addresses or information about the enforcement history of the owner or animal.

### 6.3 Dealing with seized and surrendered animals

For the purposes of the Act and this Guideline, the following definitions apply:

**An approved animal welfare organisation means:**

- a) the Royal Society for the Prevention of Cruelty to Animals, NSW
- b) the Animal Welfare League NSW
- c) the Cat Protection Society of NSW
- d) any other organisation approved by the Chief Executive, Local Government by order published in the Gazette.

**An approved person is:**

- a) an approved animal welfare organisation
- b) any person authorised by the Chief Executive, Local Government under section 75(7)(a1) to have access to information in the Register to identify seized or lost animals.

**Approved premises** are any premises, other than a council pound, operated by an approved person.

**A seized animal** is an animal that is seized under the authority of the Act. Animals may be seized under sections 13, 14, 18, 22, 30, 32, 36, 52, 57 and 58B of the Act.

**A surrendered animal** is a companion animal that:

- a) is surrendered to a council pound
- b) has come into the possession of a council pound or shelter, but was not seized under the authority of the Act.

- 6.3.1 [Part 7 of the Act](#) – Procedures for dealing with seized and surrendered animals – generally only applies to companion animals that are seized under the authority of the Act or that otherwise end up at council pounds. Part 7 is not intended to apply to:
- a) lost or injured animals that are taken by members of the public to animal welfare organisations (such as the RSPCA) or to a vet merely so that they can be treated or reunited with their owners
  - b) animals that are surrendered to animal welfare organisations, unless the organisation operates as a council pound or shelter.
- 6.3.2 If companion animals (other than those seized under the authority of the Act) end up at a council pound or shelter – eg by being surrendered or abandoned – they may be dealt with by the pound operator under Part 7.
- 6.3.3 However, Part 7 does not apply to animals seized under sections 57D (Declared restricted dogs may be seized and destroyed after transition period) and 58G (Power to seize and destroy dangerous, menacing and restricted dogs in certain circumstances).

## 6.4 Seized animals

- 6.4.1 Under section 62(1) of the Act, any person (including an authorised officer) that seizes an animal under authority of the Act – as opposed to a person that merely finds a lost or injured animal – must cause the animal to be delivered as soon as possible to either its owner, a council pound or any approved premises. The maximum penalty for not complying with this provision is \$3,300.
- 6.4.2 A person who is not an authorised officer, such as a member of the public, may also seize an animal under authority of the Act. However, to comply with section 62(1), that person must – as soon as possible after seizing the animal – arrange with an authorised officer for the animal to be delivered by the officer to either its owner, a council pound or any approved premises. Approved premises may include veterinary clinics or hospitals as well as approved animal welfare organisations.
- 6.4.3 When a seized or lost animal is delivered to approved premises or a council pound, the person in charge must do their best to find out who the owner of the animal is and return the animal to that person. To help do this, they may access information on the Register or other private registers or check any identification on the animal.
- 6.4.4 Under section 63A of the Act – if a seized animal is not claimed by or on behalf of the owner after 72 hours of it being delivered to the approved premises – the person in charge of the premises must send the animal to a council pound or shelter.
- 6.4.5 If enquiries fail to establish the owner of the seized or lost animal or the animal's microchip is not listed on the Register, arrangements should be made to relocate the animal to the council pound or shelter – whether or not
- 6.4.6 The minimum holding periods under sections 64(1)(a) and (b) of the Act apply from the time the seized animal is delivered to the council pound. This



means that councils may sell or destroy a seized animal delivered to them – including an animal delivered from an approved premises – after:

- a) 14 days from when the required seizure notice under section 63 of the Act was given – that is, if the owner of the animal can be established.
- b) 7 days if a seizure notice was not required – that is, if the owner of the animal cannot be established.

6.4.7 Councils may – if they have adopted a policy about the management of feral or infant companion animals – destroy the seized animal concerned before the end of any of the periods referred to in (a) and (b) above. However, section 64(5) of the Act requires that, before destroying a seized animal, council consider whether there is a possible alternative and, if practicable, adopt this alternative.

## 6.5 Surrendered animals

6.5.1 The provisions of section 64A of the Act apply to surrendered animals. Council pounds and shelters should not refuse to accept surrendered animals.

6.5.2 Surrendered animals are those that have come into the possession of a council pound, but have not been seized under authority of the Act. This may include animals that have been given up to the pound by their owners, or lost or injured animals that have been ‘rescued’ by a member of the public.

6.5.3 A council may sell or destroy a surrendered animal at any time if it was surrendered by its owner. Also, as is the case with seized animals, a council's feral or infant companion animals management policy may apply. However, before destroying a surrendered animal, it is important that councils consider whether there is a possible alternative and, if practicable, adopt this alternative (section 64A(4) of the Act).

## 6.6 Locating and contacting owners

6.6.1 If a council establishes who the owner of a seized or lost animal is, information about the owner must not be given to any person other than an approved person operating approved premises.

6.6.2 In all other cases, council may act as an intermediary between the person holding the animal and the owner of the animal – unless the owner expressly consents to their information being made available to the person who has seized or found the animal. You must make a note of this consent in the 'additional comments' field under the animal's record on the Register.

6.6.3 Council must also be satisfied that the person who has seized or found the animal has consented to their personal information being passed on to the owner. If the person holding the animal does not consent, then they should take the animal to a council pound or animal shelter.

6.6.4 If consent is given, the council officer must then:

- a) contact the owner to inform them of where their animal is being held
- b) contact the person holding the animal to confirm that this information has been passed on to the owner.

- 6.6.5 Council must establish lines of responsibility to ensure that this procedure is carried out promptly. A single officer should handle all aspects of the enquiry.
- 6.7 **Injured stray animals**
- 6.7.1 Under the provisions of the [Prevention of Cruelty to Animals Act 1979](#), any member of the public who finds an animal that is injured may take the animal to a vet for treatment rather than immediately contacting council.
- 6.7.2 If the vet is an approved person under section 62A and therefore authorised to have access to the Register, they should search the Register and make any necessary enquiries to find out who the owner of the animal is and reunite the animal with its owner.
- 6.7.3 Vets that are not authorised to access the Register for the 'animal search' function should contact their local council within business hours to find out the owner's contact number.
- 6.7.4 If ownership of the animal cannot be established, or the owner cannot be contacted, the vet should notify council as soon as possible and make arrangements to transfer the animal to the pound.
- 6.8 **Dealing with impounded Pet Industry Association of Australia (PIAA) member dogs**
- 6.8.1 As advised in the note to section 4.3.11 of this Guideline, PIAA has introduced a Dogs Lifetime Guarantee Policy on Dog Traceability and Re-homing policy which guarantees that any dog purchased from a PIAA pet store member that becomes unwanted or abandoned at any age will be re-homed at PIAA's expense, where suitable.
- 6.8.2 The Companion Animals Register record of a dog sold from a PIAA member pet store after 1 March 2013 should include the following statement in its "Identifying Marks" field: "This animal was sourced from PIAA member <member number>."
- 6.8.3 If a dog whose record displays such a message arrives at a council pound, impounding officers must, in the first instance, follow the procedures for dealing with seized or surrendered animals (as relevant to the circumstances) set out in sections 6.4, 6.5 and 6.6 of this Guideline.
- 6.8.4 If the owner of the dog cannot be established within the relevant statutory holding period, a council officer should **contact PIAA Head Office by telephoning 02 9659 5811** to advise of the dog's whereabouts and the relevant PIAA member number indicated on the animal's record.
- 6.8.5 PIAA will arrange for the dog to be collected from the pound as soon as possible after notification is received.
- 6.8.6 Council officers should not euthanase any such dog before contacting PIAA unless veterinary advice confirms that it is necessary to do so due to an extenuating injury or medical condition.

Further information about PIAA's Dogs Lifetime Guarantee Policy on Dog Traceability and Re-homing policy can be found at:  
<http://piaa.net.au/>

## **7 SUPPRESSED RECORDS**

### **7.1 Suppressed records**

- 7.1.1 Suppressed records are records kept on the Register that can only be accessed by people specifically authorised by the Chief Executive, Local Government. They are created under section 89(3) of the Act to restrict access to personal information for privacy reasons.
- 7.1.2 Section 89(3)(d) of the Act specifies that the Chief Executive, Local Government must be satisfied that the reason for creating a suppressed record is that the animal owner is concerned that disclosure of their personal information could jeopardise their safety or the safety of any member of their family.
- 7.1.3 This function must not be used for animal owners concerned about issues other than the safety of themselves or their family.

### **7.2 Who can deal with suppressed records?**

- 7.2.1 The only people authorised by the Chief Executive, Local Government to deal with suppressed records, or hold documents associated with suppressed records, are a Council's General Manager, Executive or Public Officer.
- 7.2.2 However, in certain circumstances, the Chief Executive, Local Government may specifically authorise another council officer to deal with a suppressed record. For more information, contact the Office by email at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au).
- 7.2.3 The Chief Executive, Local Government's authorisation to deal with suppressed records, or the exercise of any function related to suppressed records, cannot be delegated.
- 7.2.4 Councils must make sure that any officer authorised to deal with suppressed records understands their responsibilities and has read and understood the relevant sections of this Guideline. There are serious issues involved with suppressed records – relating to the safety of the animal owner or their family – and significant penalties for misusing information on the Register.
- 7.2.5 Councils should arrange for any officer authorised by the Chief Executive, Local Government to deal with suppressed records to be granted access to the Register. If you don't know whether the authorised officer has access to the Register, contact the Office by email at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) for more information.

### **7.3 Handling requests to suppress a record**

- 7.3.1 Only officers of the Office of Local Government are authorised to create suppressed records. If an owner asks for their animal's record to be suppressed, you should advise them to contact the Office by email at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) to arrange this.

- 7.3.2 You must also inform the owner that having a suppressed record may potentially delay the process of notifying them if their animal is found injured or straying.
- 7.3.3 Councils should not ask the owner for any documentation containing confidential information related to the suppressed record and should make all efforts to discourage any such documentation being transferred to council.
- 7.3.4 If, however, any documentation is delivered to council by the owner or a third party (for example, an authorised identifier), it must be immediately and properly delivered to the Public Officer. 'Proper' delivery includes maintaining the confidentiality of the information in the documents at all times. Council's Public Officer should then contact the Office for further information as soon as practicable.

#### 7.4 **Using suppressed records**

- 7.4.1 When you are handling any information generated from, or associated with, suppressed records it is crucial to maintain the highest level of confidentiality. Protocols for handling enquiries and procedures for privacy and record keeping must be strictly followed at all times.
- 7.4.2 If an owner of an animal whose record is suppressed asks for their animal's record to be updated in any way, you should advise them to contact the Office by email at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) to arrange this.
- 7.4.3 The council officer authorised by the Chief Executive, Local Government to deal with suppressed records is permitted to access the contact details for owners with suppressed records only to:
- a) reunite a lost animal with its owner
  - b) enforce the provisions of the Act.
- 7.4.4 Information in suppressed records may not be used for any purpose other than the exercise of functions under the Act. Examples of uses that are not permitted include:
- a) enforcing any other Act, including the Local Government Act and animal welfare legislation
  - b) public education purposes
  - c) personal or commercial reasons.
- 7.4.5 If possible, the officer using the suppressed record should not make any record that might identify the owner. If this is unavoidable, records must be handled, stored and disposed of in a manner that preserves the confidentiality of identifying information.
- 7.4.6 All handling of suppressed records must be carried out promptly and, as far as possible, by a single officer.
- 7.4.7 If lost or injured animals with suppressed records are being held by a pound, veterinary surgery or animal welfare organisation, the person authorised by the Chief Executive, Local Government to deal with suppressed records must:
- a) not divulge any details of the owner to the person holding the animal

- b) contact the owner directly and inform them of where their animal is being held – this function cannot be delegated
- c) contact the person holding the animal to confirm that the owner has been notified.

## **7.5 Enforcement and suppressed records**

7.5.1 The following procedures must be followed when using suppressed records in the enforcement of the Act.

7.5.2 The principles to be applied are that:

- a) information is to be accessed only when strictly necessary
- b) the number of people who handle the information must be strictly controlled
- c) all dealings with the information must be traceable to the responsible person
- d) any records made or kept during the handling of the suppressed record should not be capable of identifying the animal owner.

7.5.3 Having a suppressed record must not advantage an owner in an enforcement situation. For example – if an owner with an ordinary record (or no record) would be penalised for a breach of the Act, an owner with a suppressed record must be penalised.

7.5.4 Penalty notices should not be issued ‘on the spot’ if it is known or appears likely that a suppressed record will be involved. The procedure set out in this Guideline must be followed.

7.5.5 When issuing a penalty notice, the enforcement officer must take the contact details of the animal owner. Ideally, the animal owner should provide their full contact details and indicate immediately that their record is suppressed.

7.5.6 If the owner wishes to withhold their contact details on the basis that their record is suppressed, the enforcement officer may choose to scan the animal for its microchip number on the spot.

7.5.7 Enforcement officers should make the animal owner aware that having a suppressed record does not excuse them from their obligation under the Act to provide their name and address to the enforcement officer.

7.5.8 If the owner’s details are not known but a microchip number has been identified, the person authorised to access suppressed records will provide the owner’s details:

- a) only after the information listed in paragraph 7.5.7 has been provided
- b) only to the relevant enforcement officer.

7.5.9 The enforcement officer must not issue the penalty notice until they have notified the council officer authorised to deal with suppressed records that a penalty notice is to be issued to an owner with a suppressed record and provided:

- a) the penalty notice number
- b) the type of infringement
- c) any associated file number or internal reference number.

**Note:** This responsibility cannot be delegated.

- 7.5.10 To finalise issuing a penalty notice to an owner with a suppressed record, the enforcement officer must:
- a) ensure that the owner's contact details are completed on the penalty notice
  - b) seal the notice in an envelope and label it with the postal address of the owner
  - c) deliver the envelope directly to the postal service
  - d) ensure that the confidentiality of the information is protected at all times
  - e) ensure that all other documents associated with the infringement are handled in keeping with section 7.5.

**Note:** This responsibility cannot be delegated.

- 7.5.11 Regardless of which process is used to identify the owner with the suppressed record, all documents associated with the record must be delivered immediately to the council officer authorised by the Chief Executive, Local Government to deal with suppressed records. If another officer has not been specifically authorised, documents must be delivered to the Public Officer.
- 7.5.12 The enforcement officer must ensure that all documents are properly delivered. Proper delivery includes maintaining the confidentiality of the information in the documents at all times.

## 7.6 Privacy and record-keeping for suppressed records

- 7.6.1 The Register will monitor all activities in relation to suppressed records. However, the officer authorised by the Chief Executive, Local Government to deal with suppressed records should also keep a log identifying the dates, times and purposes for which suppressed records were accessed. This log must not include information that allows the suppressed records or personal details in them to be identified.
- 7.6.2 The officer authorised to deal with suppressed records must retain all copies of any documents associated with the suppressed record. This responsibility cannot be delegated. For more details about keeping the records, see section 3.2.
- 7.6.3 Nothing in this Guideline prohibits the authorised officer from divulging the information in the suppressed record if the disclosure is for the purposes outlined in section 89(7) of the Act – that is, to bring legal proceedings against the owner because of the animal's behaviour. However, under this section, only the name of the owner can be divulged – and this may only be done if:
- a) the person has requested the disclosure of that information in writing, and
  - b) the animal's behaviour concerned has been reported to a police officer or the council.

## **8 CHANGING INFORMATION ON THE REGISTER**

### **8.1 Possible reasons to change information**

8.1.1 Section 11 of the Act requires owners of companion animals to notify any changes in the registration or identification information for their animal. These changes may include:

- a) change of owner
- b) change of address or contact details
- c) dog is declared dangerous by a court
- d) the animal dies
- e) the animal has been missing for more than 72 hours
- f) the animal has been found after notification that it was missing.

8.1.2 The Act sets time limits for notifying each of these changes. Owners may also wish to change the information on the Register if it has been entered incorrectly, either with minor or significant errors.

8.1.3 Councils may issue a penalty notice for \$165 (\$1,320 if the animal is a dangerous, menacing or restricted dog) or choose to prosecute under section 11(1)(a) of the Act for non-compliance with the requirement to notify changes in registration or identification information. The maximum penalty is \$880 or \$5,500 if the animal is a dangerous, menacing or restricted dog.

8.1.4 Councils must now issue a court attendance notice, rather than a penalty notice, for offences under section 11(4) of the Act relating to a person making a statement or giving information that they know is false or misleading. This change was introduced by the Companion Animals Regulation 2008. It reflects the government's policy that these offences should be proved before a court as relevant elements of the offences are open to interpretation.

8.1.5 In accordance with section 11(3) of the Act, councils should not charge for changing information on the Register.

### **8.2 Who is responsible for changing information?**

8.2.1 Councils must comply with requests to update information for any animal entered on the Register, regardless of the animal's registration status.

8.2.2 All changes to information must be processed within 7 days of receiving the request.

8.2.3 If councils receive requests to update or change information, they must complete the data entry – even if the animal does not live in their local government area. Councils must not post documentation to the council area where the animal is kept.

### **8.3 Protocol for handling enquiries about information on the Register**

8.3.1 Councils must comply with their legal obligations to protect the privacy of the personal information they hold and their legal obligations under the Act and



the Protection of Privacy and Personal Information Act. For more details, see Chapter 3.

- 8.3.2 Councils must also establish clear lines of responsibility to ensure continuity and confidentiality in the handling of all companion animal enquiries. It is best if a single officer handles each enquiry.
- 8.3.3 When handling any enquiries, council officers must establish – to a reasonable level of satisfaction – that the person requesting or presenting the information is the appropriate person. You must also make sure that the confidentiality of any personal information is protected at all times.
- 8.3.4 If personal information is to be accessed, the appropriate person will be the person that the personal information is about. Transferring information for or on behalf of family members, friends or other people should be permitted only if council is satisfied that the circumstances make it strictly necessary and/or the owner has given the person written authorisation to act on their behalf.
- 8.3.5 Never prompt enquiries that relate to confirming information already on the Register. For example if a person calls to check their address, they must clearly state the address that they believe is on the Register. To guard against prompting, you should – as far as possible – limit yourself to ‘yes’ or ‘no’ responses to enquiries about information on the Register and associated information.
- 8.3.6 To comply with privacy and confidentiality requirements, you should not – as far as possible – duplicate any information from the Register by, for example, taking notes. If you do write such information down, you are responsible for ensuring that it is handled properly. For more details, see section 3.2.
- 8.3.7 Never post copies of registration or identification certificates to anyone but the owner listed on the Register at the address listed on the Register.

#### **8.4 Receiving and processing requests**

- 8.4.1 Requests to substantially change information on the Register may only be accepted in writing. However minor corrections, such as updating phone numbers and email addresses, may be accepted over the telephone or in person.
- 8.4.2 A council officer with access to the Register should be responsible for handling and processing requests. This avoids other people taking notes or messages that may include personal information.
- 8.4.3 Once processing is complete, you should print a new Identification or Registration Certificate from the Register and send it to the owner at the address on the Register record.
- 8.4.4 The Office may provide further details about processing specific categories of requests in circulars to councils.

## 8.5 **Correcting minor errors**

- 8.5.1 When they receive their Identification or Registration certificates, owners may identify minor errors in their information entered on the Register.
- 8.5.2 You may accept requests for changes to minor errors in identification or registration information on the telephone or in person as long as:
- a) the changes do not affect key identification information – such as microchip number, implanter number and date of implantation
  - b) the errors are minor and clearly attributable to data entry mistakes, such as transposed numbers – 124356 instead of 123456 – or minor spelling errors
  - c) you follow the protocol for handling enquiries in section 8.3.
- 8.5.3 If you are not sure if a change is a minor error or not, you should ask the owner to send their request to council in writing.
- 8.5.4 Correction of minor errors must be processed within 7 days of receiving the request.

## 8.6 **Change of ownership or contact details**

- 8.6.1 There are approved forms for [Change of Owner](#) and [Change of Address](#) that must be completed by the animal's owner and used by councils to process these requests.
- 8.6.2 Requests for changes to ownership and/or contact details should always include a copy of either the pink copy of the completed [Permanent Identification Form](#), a [Change of Owner](#) form and/or a Certificate of Identification or a Certificate of Registration.
- 8.6.3 The person who is relinquishing ownership of the animal is responsible for submitting the appropriate paperwork to council to transfer the ownership of the animal to the new owner. In some cases, the new owner will bring the ownership transfer paperwork to the council before the old owner. As long as the old owner's signature is on the paperwork or proof of sale is provided – for example, a statutory declaration completed by the old owner or breed registration papers – you can record the change of ownership.
- 8.6.4 You must not accept a notice of change of ownership if there is no signature from the old owner/seller on the form or proof that a transfer has taken place. The only exception is if council is satisfied that ownership of the animal has been transferred with the permission of the old owner – for example, by receiving a statutory declaration by the old owner or a receipt of sale.
- 8.6.5 If there is any doubt about the transfer of ownership, contact the old owner directly to check that they have given their permission. Follow the protocol for handling enquiries and make sure that there is no third party access to the information during this process.
- 8.6.6 The new owner must sign the change of ownership form to confirm they have accepted ownership of the animal.

- 8.6.7 Sometimes animals change hands a number of times. If the old owner is not contactable, then council must investigate and determine the legitimacy of the request. A statutory declaration completed by the new owner is acceptable if the council officer handling the enquiry is satisfied that the transfer is legitimate. A note in the 'additional comments' field on the animal's record should accompany the transfer.

The Companion Animals Act only applies to animals living in NSW. However, councils may receive requests to update details when an animal is moving interstate or overseas and these should be processed as normal.

## 8.7 Deleting records

- 8.7.1 Information can only be deleted if the microchip number is incorrect. If registration has been applied to the wrong record refer to section 5.13 and remove the registration using the Correct or remove a registration function. Only councils that apply a registration are able to remove that registration. All other errors can be corrected on the existing record.
- 8.7.2 If a record is deleted, the correct data must be entered immediately. If the deleted record contained registration information, follow the protocol in section 4.9. If you are the officer who deleted, or authorised the deletion of, the record you are responsible for making sure this process is properly completed.
- 8.7.3 The Register monitors the deletion of records by authorised users. Inappropriate deletion of records constitutes misuse of the information on the Register and may attract a penalty of up to \$2,750 under section 89 of the Act.
- 8.7.4 Councils should not delete records if animals move to another state or territory within Australia. The Office regularly receives requests for microchip information on animals living interstate. They should be processed as a normal change of address or change of ownership.
- 8.7.5 Councils should also not delete records if animals move out of Australia. They should be processed as a normal change of address or change of ownership. The Register has the facility to select 'outside Australia' in the field where the state of residence normally appears. Enter all other address details as usual – the new number, street, city and country should be entered in the open address fields.

## 8.8 Missing and found animals

- 8.8.1 Owners are required under section 11 of the Act to notify council if their animal is missing for more than 72 hours. They must also notify council within 72 hours if their animal is found, after having been reported missing. These notifications can be accepted on the telephone or in person. Follow the protocol for handling enquiries in section 8.3.
- 8.8.2 You must enter a notification that an animal is missing onto the Register at the first available opportunity. Once an animal's record has been noted as 'missing', no details can be changed until the animal is listed as 'home' on

the Register. This prevents someone from claiming to be the new owner – for example, if the animal has been stolen.

8.8.3 Make sure the 'missing' function of the Register is completed in full every time an animal is reported to council as missing or stolen. The 'contact details' and 'comments' fields must also be completed.

8.8.4 It is also important to check if the owner's address and contact details are up to date. If they're not, they should be changed before the animal is listed as missing – as once the record reflects the missing animal status, no data entry changes can be made.

8.8.5 The Register Animal Search screen has been updated to provide the 'contact details' and 'comments' fields from the 'missing animal' screen.

8.8.6 Once council has been notified that the animal has been found, the record status can be changed by calling up the 'missing animal' menu and selecting 'home'. Follow the same requirements as for the original notification.

## 8.9 **Notifications of dangerous or menacing dog declaration and death of animal**

8.9.1 Owners are required under section 11 of the Act to notify council if their dog is declared dangerous or menacing, or has died.

8.9.2 Notifications after a council or court declares a dog dangerous or menacing must be made in writing. There is no prescribed form for this, but the owner must include all relevant details as well as a copy of the court order.

8.9.3 Notifications about the death of an animal may be made by phone or in writing. A statement by a vet may be included, but is not strictly necessary.

8.9.4 If an owner claims their animal has been euthanased and enforcement action – such as a notice of intention to declare a dog to be dangerous, menacing or restricted, or an existing dangerous or menacing dog declaration or nuisance dog order – is being or has been taken against them, council should request a statement from the vet who euthanased the animal confirming that the animal is dead.

8.9.5 If there is any doubt about the legitimacy of a request to record an animal as deceased, ask the owner to put the request in writing and/or complete a statutory declaration.

8.9.6 Details of dangerous or menacing dog and death of animal notifications must be entered onto the Register within 7 days of the notification being received by council.

8.9.7 Once a record has been marked 'deceased' on the Register, it is not possible to change any details, nor its status. If an animal has been incorrectly marked as deceased, you should double-check the microchip number and then contact the owner on the record to check the circumstances.

8.9.8 Once satisfied, you should print out the record and email the Office at [pets@olq.nsw.gov.au](mailto:pets@olq.nsw.gov.au) requesting that the record's status be restored to

'home'. This email should include background information about why the record was marked 'deceased' and all the relevant details about the ownership of the animal – name, address, contact numbers, and confirmation that the owner is the same as that listed on the Register.

8.9.9 The Office will send you an email advising that the status of the record has been changed so that any further amendments can be made by council.

#### 8.10 **The recorded owner has not notified change of contact details**

8.10.1 If you try to contact a recorded owner and become aware that they have changed their address, you should make all reasonable efforts to find out their new address. This could include – for example – checking other council records, the White Pages, the electoral roll or other registers. If you find the owner's new address, contact them to confirm that they still own the animal and ask them to complete a C3A Change of Address/Details form. This information should then be entered onto the Register.

8.10.2 If an owner's details are not current and no new owner details are known, update the Register by selecting the 'out of date' option on the animal's record and provide further information in the 'additional comments' field. This 'further information' should include the name and contact number of the council officer making the alteration to the record, the date, and what action was taken. Do not, under any circumstances, remove the previous owner's details from the animal's record.

There are penalties for not notifying changes in registration or identification information.

#### 8.11 **Change of ownership is not notified and recorded owner does not know new owner's details**

8.11.1 If you contact a recorded owner and they tell you that they no longer own the animal or know the name and/or contact details of the new owner, you need to be satisfied that this assertion is true. Check if the recorded owner has sent a Change of Owner form that has not been processed. Council may also wish to inspect the property and interview neighbours to be satisfied that the animal is no longer kept at the recorded owner's premises.

8.11.2 Councils may require the recorded (previous) owner to complete as many details as possible about the new owner on the Change of Owner form and sign and date the form. They may also require them to sign a statutory declaration that they ceased to be the owner of the animal on a specified date and that they do not know the name and/or contact details of the new owner.

8.11.3 If the recorded (previous) owner can provide any details about the new owner, you should make all reasonable efforts to contact that person, confirm that they are the current owner of the animal, ask them to complete a Change of Owner form and enter the details onto the Register.

8.11.4 If the new owner cannot be contacted, you should leave the recorded owner's name and contact details on the Register and – in the 'identifying marks' field – enter '(date) new owner no contact details (council name)'.

The name and contact number of the council officer making the alteration to the record, the date, and what action was taken should also be recorded in the 'additional comments' field.

- 8.11.5 Councils should keep any statutory declarations and relevant file notes so that they can be accessed if another council contacts them for details about the animal.

## 9 DANGEROUS, MENACING AND HUNTING DOGS

This section contains important information about the tiered approach to dangerous dog management introduced in the *Companion Animals Amendment Act 2013*. The key changes are:

- the introduction of a menacing dog category which may be applied to dogs that show unreasonable aggression towards a person or animal or are involved in less serious attacks (ie: those not causing serious injury or death) (see chapter 9.3)
- the removal of a provision relating to unreasonable aggression by a dog towards a person or animal as a reason that an authorised officer or court may declare a dog to be dangerous (see chapters 9.1 and 9.4).

Authorised officers also have powers to address specific problem behaviours in dogs through the nuisance dog provisions of the Act, which are explained in [section 13](#) of this Guideline.

[Annexure M](#) also provides an overview of the dog control provisions of the Act.

### 9.1 What is a dangerous dog?

9.1.1 A dangerous dog is defined under section 5 of the Act as a dog that has been declared to be dangerous by an authorised officer or the court. The meaning of dangerous is set out in section 33 of the Act.

9.1.2 An authorised officer may declare a dog to be dangerous under Division 1 of Part 5 of the Act if they are satisfied that the dog:

- a) has, without provocation, attacked or killed a person or animal (other than vermin) or
- b) has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin) or
- c) is kept or used for hunting.

9.1.3 A dog is not regarded as being kept or used for hunting if it is only used to locate, flush, point or retrieve birds or vermin. Vermin includes small pest animals only, such as rodents.

9.1.4 Under section 34(1)(b) of the Act, an authorised officer may also declare a dog to be dangerous if *“the dog has been declared a dangerous dog under a law of another State or a Territory that corresponds with the Act”*.

### 9.2 Hunting dogs

9.2.1 Section 33(1)(d) of the Act (ie: a dog may be declared dangerous if kept or used for hunting) is designed to bring the types of dogs that can potentially cause great damage if they attack a person or animal into the scope of the meaning of dangerous.

9.2.2 This provision is not intended to include hunting dogs that are kept and used by responsible owners and are no threat to the public. Legitimate and responsible hunting is dealt with under the [Game and Feral Animal Control Act 2002](#) and its regulations. This legislation sets out conditions for the use of dogs to hunt game animals along with a mandatory code of practice that

forms part of the conditions on all game hunting licences. It also includes specific requirements for dogs that are used to hunt game, birds, deer and pigs.

- 9.2.3 The type of dog used to locate, point or flush birds would not usually be considered dangerous, nor would those used by responsible and ethical hunters to bail and hold game animals.
- 9.2.4 Dogs used for authorised hunting on public land must be fitted with microchips and radio tracking collars. Also, their owners have undertaken formal training and are accredited by the Game Council of New South Wales. These activities are all regulated under the game and feral animal control legislation.
- 9.2.5 The Companion Animals Act provisions enabling hunting dogs to be declared dangerous are not intended to undermine legitimate activities under the game and feral animal legislation, or the role of conservation hunting in minimising the impact of feral animals on the natural environment.
- 9.2.6 For example, it should not be necessary for authorised officers to declare a German short-haired pointer or Labrador as a dangerous dog just because it may be used for hunting game animals. Section 33(1)(d) is also not intended to cover dogs such as cocker spaniels, setters, jack russells or fox terriers that may be kept for flushing and retrieving birds and other small animals.
- 9.2.7 Hunting dogs are not automatically dangerous dogs under the Act. A dangerous dog declaration must be made for an individual dog before the control requirements of the Act apply.
- 9.2.8 If a hunting dog is declared to be a dangerous dog, the declaration does not necessarily mean that the dog cannot be used for lawful hunting. Section 51(3) of the Act exempts a hunting dog that has been declared dangerous from the lead and muzzling requirements under section 51(1)(e) while the dog is actually engaged in lawful hunting.

### 9.3 Menacing dogs

- 9.3.1 A menacing dog is defined under section 5 of the Act as “*a dog for the time being the subject of a declaration by an authorised officer of a council under section 34 (1A) or a court under section 45 (1A) that the dog is a menacing dog*”.
- 9.3.2 Under section 33A of the Act, a dog is “menacing” if it:
  - a) has displayed unreasonable aggression towards a person or animal (other than vermin), or
  - b) has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.
- 9.3.3 However, under section 34(1A) of the Act an authorised officer may only declare a dog to be menacing if they are satisfied that:
  - a) the dog is menacing or
  - b) the dog is of a menacing breed or kind of dog (or a cross-breed of a menacing breed or kind of dog), or



- c) the dog has been declared a menacing dog under a law of another State or a Territory that corresponds with the Act.

9.3.4 The Act also makes provision for the Regulation to declare a breed or kind of dog to be a “*menacing breed or kind of dog*”. However, there are currently no menacing breeds or kinds of dogs prescribed under the Regulation.

Under section 58I of the Act, a declaration that a dog is a dangerous dog is taken to revoke any declaration that the dog is a menacing dog. Similarly, a declaration that a dog is a menacing dog is taken to revoke any declaration that the dog is a dangerous dog.

However, a declaration that a dog is a dangerous or menacing dog does not prevent the issuing of a nuisance dog order on the dog.

#### 9.4 Determining unreasonable aggression and serious injury

*The Companion Animals Amendment Act 2013* repealed section 33(1)(c) of the Act, which provided that a dog was “*dangerous*” if had “*displayed unreasonable aggression towards a person or animal (other than vermin)*”:

The repeal of this provision recognises that:

- a) the new ‘menacing’ dog category can apply to dogs which display unreasonable aggression, and
- b) section 33(1)(b) of the Act (ie: that a dog is dangerous if it “has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin)”), may continue to apply to dogs which show more serious levels of unreasonable aggression.

The information contained in this section provides further information for authorised officers in determining the appropriate application of these powers.

9.4.1 Sections 33(1)(b) (dangerous dogs) and 33A(1)(a) (menacing dogs) are designed to enable authorised officers to be proactive in dealing with instances of unacceptable behaviour in individual dogs and addresses the potential of a dog to cause problems in the future.

9.4.2 The phrase ‘unreasonable aggression’ is not defined in the Act, so the common meaning of the words applies. The aggressive behaviour displayed should be able to be objectively judged as unreasonable in the circumstances. In other words, an authorised officer should consider whether an ordinary dog placed in the same circumstances of the allegedly dangerous or menacing dog would have behaved in such a manner.

9.4.3 These provisions recognise situations where a dog may have come to the attention of an authorised officer because it has displayed unreasonable aggression towards a person or animal – to the extent that it causes fear or apprehension of an attack. Such a dog poses a threat to people and animals.

9.4.4 These provisions are not intended to apply to dogs that may only behave aggressively when protecting or guarding their owners’ homes or businesses. For example, it may not be unreasonable for a dog to bark, lunge at, growl or bare its teeth in a threatening manner at an intruder. However, if a dog is

kept in a manner that allows it to pose a threat to other people or animals, then an authorised officer may consider taking proactive action.

9.4.5 These provisions are also not intended to apply to:

- a) dogs working under the effective control of a person with a security industry licence in the course of their security duties
- b) police dogs used by police officers
- c) corrective services dogs used by a correctional officer.

9.4.6 The application of a dangerous or menacing dog declaration by an authorised officer should be informed by the level of unreasonable aggression displayed by the dog. For example, it may be appropriate to issue a menacing dog declaration on a dog which has had a once-off display of unreasonable aggression. However, in the case of the dog that repeatedly displays unreasonable aggression, or shows a more serious level of unreasonable aggression, it may be more appropriate to issue a dangerous dog declaration.

9.4.7 The phrase 'serious injury' is not defined in the Act, so the common meaning of the words applies. Attacks resulting in serious injury may include those where a human or animal victim has required medical treatment or hospitalisation. However, the perception of the human victim or owner of an animal victim of the seriousness of any injury caused by an attacking dog should also be taken into consideration.

## 9.5 **Exercising discretion**

9.5.1 Authorised officers have discretion in the application of the dangerous and menacing dog declaration provisions to suit the individual circumstances of incidents to which they are responding. The dominant factor is the public interest and the safety of the community.

9.5.2 Factors to be considered when determining the public interest may include:

- a) the harm or potential harm to the public that may be caused if a declaration is not made
- b) any mitigating or aggravating circumstances
- c) the prevalence of public risk circumstances and the need for deterrence
- d) the length and expense of a court hearing
- e) whether the consequences of any declaration would be unduly harsh or oppressive.

9.5.3 The key principle is that a declaration should not be made for improper purposes. A decision whether or not to make a declaration must not be influenced by:

- a) any elements of discrimination against the owner of the dog – such as race, nationality, or political or community associations
- b) personal empathy or antipathy towards the owner
- c) the political or other affiliations of the authorised officer responsible for making the decision.

- 9.5.4 Owners that have been issued with a Notice of Intention to Declare a Dog to be a Dangerous Dog or Menacing Dog have objection and appeal rights under the Act.
- 9.5.5 As the final arbiter, a court may revoke a dangerous dog declaration if it considers the action was inappropriate in the particular circumstances of the case. However, as noted in section 41(1) of the Act, no appeal can be made to a court by an owner against a menacing dog declaration made by a council, or against a refusal by a council to revoke a menacing dog declaration.
- 9.5.6 If an authorised officer of council believes that a dog that has attacked may also be of a restricted breed, they should decide on the most appropriate course of action. The decision to issue a notice of intention to declare the dog dangerous (or menacing, in the case of less serious attacks) or restricted should be based on the immediate need to protect the community. Issuing one type of notice or declaration does not prevent you from issuing another type on the same dog at a later date, if appropriate. You may however wish to obtain independent legal advice before issuing any subsequent notices or declarations. For more information about restricted dogs, see [section 10](#).
- 9.6 Notices of intention to declare a dog to be a dangerous or menacing dog**
- 9.6.1 Authorised officers are required under section 35 of the Act to give the owner of a dog a notice of their intention to declare the dog to be a dangerous or menacing dog.
- 9.6.2 A Model Notice of Intention to Declare a Dog to be a Dangerous Dog is attached at [Annexure E](#) and a Model Notice of Intention to Declare a Dog to be a Menacing Dog is attached at [Annexure G](#). Councils should use these documents to issue these notices as they contain the information required under sections 35(2) and 36 of the Act. A Microsoft Word version of this form is available in the main menu of the Companion Animals Register.
- 9.6.3 The model notices set out the rights of owners to appeal against council's intention to declare their dog to be a dangerous or menacing dog. They have 7 days from the date of the notice to make their representations to council. Officers should familiarise themselves with the model notices as they contain important information about the dangerous and menacing dog declaration process.
- 9.6.4 If you don't use the model notices, you must make sure that your local notices of intention are regularly reviewed and updated to reflect any relevant amendments to the Act.
- 9.7 Dangerous and menacing dog declarations**
- 9.7.1 Before making a dangerous or menacing dog declaration, authorised officers must consider all representations made by the owner within the 7 day period after they have received the notice of intention.

- 9.7.2 Councils should have an internal policy that sets out how these representations are evaluated and communicate this policy to relevant dog owners.
- 9.7.3 The policy may include the type and level of evidence required and how you can get this evidence. For example, a council may decide to allow owners to provide an animal behavioural assessment from an animal behaviour specialist or other qualified professional to support their representations. In such cases, council may choose to specify which people or organisations can do these assessments in their local area.
- 9.7.4 Councils must not refer dog owners to the Companion Animals Helpdesk for details of approved temperament assessors so they can have a behavioural assessment done to contest a dangerous or menacing dog declaration. Temperament assessments are only applicable to dogs proposed to be declared restricted by councils under section 58C of the Act. They do not apply to any other part of the Act and cannot be used to contest a dangerous or menacing dog declaration. Owners will be referred back to their council.
- 9.7.5 After the expiry of the 7 day notice of intention period, the authorised officer must notify the dog's owner whether or not they intend to declare the dog dangerous or menacing (section 38(1) of the Act). You must do this within 7 days of making the decision.
- 9.7.6 A Model Dangerous Dog Declaration is attached at Annexure F, and a Model Menacing Dog Declaration is attached at Annexure H. These set out the required information under section 38(2) of the Act and the certificate of compliance requirements for dangerous dogs (see section 11.2). A Microsoft Word version of this form is available in the main menu of the Register.
- 9.7.7 Within 7 days of the declaration being issued, the authorised officer must record the dangerous dog or menacing declaration on the Register using the 'Dangerous dog declaration process' or 'Menacing dog declaration process' function in the main menu.
- 9.7.8 The abovementioned functions of the Register have been updated to automatically generate a new Certificate of Registration for a dog declared dangerous or menacing at the end of the data entry process. If you enter the dangerous or menacing dog declaration onto the Register you must make sure that the new certificate is printed off and sent to the dog's owner as soon as practicable. This must be done to satisfy the requirements of section 11(3) of the Act.

## 9.8 **Requests to revoke a dangerous or menacing dog declaration**

- 9.8.1 Under section 39(1) of the Act, the owner of a dog that has been declared dangerous or menacing by a local council can apply to the council of the area in which the dog is ordinarily kept (whether or not it is the council that made the declaration) for the declaration to be revoked. This application cannot be made until 12 months after the declaration was made.
- 9.8.2 A dangerous or menacing dog declaration should be revoked by a resolution of the council. Section 39(2) of the Act stipulates that councils must be

satisfied that it is appropriate to revoke a dangerous or menacing dog declaration before doing so.

- 9.8.3 Under section 39(2)(b) of the Act, a council may determine it necessary to require that a declared dangerous or menacing dog undergo appropriate behavioural training before any revocation request will be considered. However, under section 39(2A) of the Act, in the case of declared menacing dogs, councils must have regard to the nature and extent of any behavioural training that the dog has undergone when considering an application to revoke a menacing dog declaration.

The issuing officer should indicate to the owner of the dog in question whether the Council has determined it necessary for the dog to undergo appropriate behavioural training before any revocation request will be considered. This should be done by way of the *Statement regarding behavioural assessment requirement for the purposes of revoking a menacing dog declaration contained on the final page of the Model Dangerous Dog declaration* ([Annexure F](#)) or Model Menacing Dog declaration ([Annexure H](#)).

- 9.8.4 If considered appropriate, a council may delegate the power to revoke a dangerous or menacing dog declaration to the general manager of the council (in accordance section 377 of the *Local Government Act 1993*). Additionally, the general manager may sub-delegate that function to an appropriate council employee (in accordance with section 378 of the *Local Government Act*).

- 9.8.5 Councils should have a policy for assessing applications to revoke dangerous or menacing dog declarations and communicate this policy to relevant dog owners. This policy should highlight with whom the authorisation to revoke a dangerous or menacing dog declaration lies (ie: the Council, general manager or delegated officer), and should cover issues such as:

- a) the circumstances under which the dangerous or menacing dog declaration was issued. If the council considering the request to revoke is not the council that issued the dangerous or menacing dog declaration, it should contact the issuing council for more information about the circumstances surrounding the making of the declaration.
- b) the dog's current circumstances and behaviour in relation to the original declaration, including any behaviour modification training that may have been undertaken.
- c) any behavioural assessment obtained by the owner from an animal behaviour specialist or other qualified professional (whether or not required by the Council under section 39(2)(b) of the Act).

In developing such policies, councils should have regard to section 39(2A) of the Act, as referred to in section 9.8.3 of this Guideline.

- 9.8.6 Councils must not refer dog owners to the Companion Animals Helpdesk for details of approved temperament assessors so they can have a behavioural assessment done to help revoke a dangerous or menacing dog declaration. Temperament assessments are only applicable to dogs proposed to be declared restricted by councils under section 58C of the Act. They do not apply to any other part of the Act and cannot be used to help revoke a

dangerous or menacing dog declaration. Owners will be referred back to the relevant council.

9.8.7 Council must, as soon as practicable, inform the owner of the dog that the declaration has been revoked or that council has refused to revoke it.

9.8.8 Councils must notify the Chief Executive, Local Government within 7 days of revoking a dangerous or menacing dog declaration. This notification can be done by recording the details of the revocation on the Register using the 'Dangerous dog declaration process' or 'Menacing dog declaration process' function. For more information, see the *Companion Animals Register User Guide*.

## 9.9 Penalties for dog attack related offences

9.9.1 The *Companion Animals Amendment Act 2013* introduced the concept of 'fault' in relation to dog attack offences. A court may apply significantly higher penalties to the owner of (or other person in charge of) a dog involved in an attack that occurs as a result of a "reckless act or omission by the owner or the other person in charge of the dog":

- a) Section 16 (1AA) provides a maximum penalty of \$22,000 or 2 years imprisonment (previously \$5,500)
- b) Section 16(1AB) provides a maximum penalty of \$55,000 or 4 years imprisonment in the case of a declared dangerous, menacing or restricted dog (previously \$32,000).

9.9.2 Where no 'fault' is established on the part of a dog's owner (or the other person in charge of the dog) in relation to an attack, sections 16(1) (or 16(1A) in the case of a declared dangerous, menacing or restricted dog) continue to apply. However, maximum penalties for offences under these sections have also increased:

- a) under section 16(1) (where a dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin) the maximum penalty is \$11,000 or \$44,000 in the case of a dangerous, menacing or restricted dog (previously \$5,500 and \$33,000 respectively)
- b) under section 16(1A) (where a dangerous, menacing or restricted dog attacks or bites any person, whether or not an injury is caused to the person as a result of the owner's failure to comply with the relevant control requirements for the dog) the maximum penalty is \$77,000 or 5 years imprisonment (previously \$55,000 and 2 years imprisonment).

9.9.3 Maximum penalties under section 17(1) of the Act (in relation to offences where a dog is encouraged to attack), have also been increased to \$22,000, or \$77,000 or 5 years imprisonment in the case of a dangerous, menacing or restricted dog (previously \$2,200 and 6 months imprisonment, and \$11,000 and 2 years imprisonment respectively).

For more information about the management of restricted dogs, see Chapters 10 and 11 of this Guideline.

## 10 RESTRICTED DOGS

### 10.1 What is a restricted dog?

The following dogs are restricted dogs under section 55(1) of the Act:

- a) American pit bull terrier or pit bull terrier
- b) Japanese tosa
- c) dogo Argentino
- d) fila Brasileiro
- e) Perro de Presa Canario or Presa Canario
- f) any other dog of a breed, kind or description whose importation into Australia is prohibited by or under the [Customs Act 1901 of the Commonwealth](#) – see Schedule 1 to the Customs (Prohibited Imports) Regulations 1956 made under the Customs Act
- g) any dog declared under Division 6 of Part 5 of the Act to be a restricted dog – see Circulars 06-04, 06-29 and 06-35
- h) any other dog of a breed, kind or description prescribed by the regulations.

**Note:** At the time of publication there are no such prescribed dogs.

### 10.2 Notices of intention to declare a dog to be a restricted dog

10.2.1 An authorised officer may issue a dog owner with a Notice of Intention to Declare a Dog to be a Restricted Dog if the officer is of the opinion that the dog is:

- a) a breed or kind referred to in section 55(1)
- b) a cross-breed of any of these breeds or kinds of dog.

10.2.2 The notice must be on the approved form and set out the requirements that the owner will have to comply with if the declaration is made. Notices of intention cannot be issued for a dog that is already listed on the Register as a pure bred restricted dog.

10.2.3 The Chief Executive, Local Government has approved an Approved Form for a Notice of Intention to Declare a Dog to be a Restricted Dog. This form is attached at [Annexure C](#) of this Guideline. A Microsoft Word version of the form is also available to download from the main menu of the Companion Animals Register. This approved form now includes details of the certificate of compliance requirements and notice of the seizure and immediate destruction powers.

10.2.4 Council officers should familiarise themselves with the approved form as it contains important information about the restricted dog declaration process. It sets out the rights of a dog's owner to contest the notice through the breed and temperament assessment process prescribed under section 58C(2) of the Act. It also includes contact details for dog owners to obtain the list of approved breed and temperament assessors. Council officers cannot obtain this list.

10.2.5 The dog's owner has 28 days from the date of the notice to arrange for assessments to be done. However, an authorised officer may extend this period in reasonable circumstances (section 58C(5) of the Act).

10.2.6 When granting such an extension, you should consider matters such as the owner's ability to organise the assessments – including access to available assessors and the need for both a breed and temperament assessment to be done.

### 10.3 **Recording notices of intention on the Register**

10.3.1 Councils must record the notice of intention on the Register using the 'notice to declare restricted' function in the main menu. This must be done at the time the notice is issued. The Office will not give a dog owner the list of breed assessors until this notice has been entered on the Register. Owners of dogs whose records do not have an active notice of intention will be referred back to the relevant council.

10.3.2 A dog must be microchipped before a notice of intention is served so the notice can be entered on the Register. Breed and temperament assessors must verify a dog's identity by scanning the microchip before doing an assessment. The microchip in the dog must match that listed on the notice before an assessment can be done. The dog must also be registered within 7 days of the date of the notice.

### 10.4 **Breed assessments**

10.4.1 A breed assessment has 'passed' if the approved breed assessor has disagreed with statements 1 and 2 on the breed assessment statement – that is, the dog is not a restricted breed or a cross-breed of a restricted breed.

10.4.2 A breed assessment has 'failed' if the approved breed assessor has either:

- a) Agreed with statement 1 – that is, the dog is a pure-bred restricted breed, or
- b) Agreed with statement 2 – that is, the dog is a cross-breed of a restricted breed. In this case, the notice of intention process remains open on the Register as the owner has the option of organising a temperament assessment for the dog.

### 10.5 **Temperament assessments**

10.5.1 A temperament assessment has 'passed' if the approved temperament assessor has stated that the dog is not a danger to the public and is not likely, without provocation, to attack or bite any person or animal.

10.5.2 A temperament assessment has 'failed' if the approved temperament assessor has stated that the dog is a danger to the public and is likely, without provocation, to attack or bite any person or animal.



## **10.6 Recording breed and temperament assessments on the Register**

- 10.6.1 Councils must, as soon as practicable, record the results of any breed and temperament assessments they receive on the Register, using the 'breed/temperament enter assessment' function. This includes ensuring that the dog's breed as listed on the Register reflects that identified by the Breed Assessor.
- 10.6.2 This function has been updated to automatically generate a new Certificate of Registration for dogs that are declared restricted through a notice of intention process. Make sure this new certificate is printed off and sent to the owner of the dog as soon as practicable. This must be done to comply with section 11(3) of the Act.
- 10.6.3 The breed and temperament 'assessment refused' category should also be recorded for animals whose owners don't organise an assessment within the 28 day period.
- 10.6.4 If you don't enter all the relevant breed and temperament assessment results (pass, fail or assessment refused) on the Register, the notice of intention process will not be finalised. Councils should periodically review their active notices of intention to make sure that all relevant data entry has been done.
- 10.6.5 The authorised officer must also, as soon as practicable, advise the animal owner of the results of any breed or temperament statement received and the implications of the results – for example, the animal will be declared restricted or the owner may organise a temperament assessment for the dog. The owner should also receive a copy of the statement from the approved assessor who did the assessment.

## **10.7 Restricted dog declarations**

- 10.7.1 Authorised officers must immediately declare a dog to be restricted if they receive:
- a) a breed assessment statement from an approved breed assessor who has found the dog to be a pure bred restricted dog
  - b) a temperament assessment statement from an approved temperament assessor who has found that the dog is a danger to the public and is likely, without provocation, to attack or bite any person or animal.
- 10.7.2 After the end of the 28 day period from when the notice of intention was issued, authorised officers must declare a dog to be restricted if:
- a) the dog's owner does not organise for a breed assessment to be done within the 28 day period, unless an extension has been granted
  - b) an approved breed assessor has found the dog to be a cross-breed of a restricted dog and the dog's owner has not organised a temperament assessment within the 28 day period.
- 10.7.3 The authorised officer must notify the dog's owner of the outcome of the breed and temperament assessment process and issue a restricted dog declaration and a new Certificate of Registration.

10.7.4 If the dog has passed the breed or temperament assessment process, the authorised officer must notify the dog's owner that the dog will not be declared restricted.

10.7.5 A Model Restricted Dog Declaration is attached at [Annexure D](#). It is recommended that councils use this model declaration as it sets out the information required under section 58D(2) of the Act. A Microsoft Word version of this form is available in the main menu of the Companion Animals Register.

## 10.8 Requests for change of breed of a restricted dog on the Register

The breed of a dog that has been declared restricted as a result of a notice of intention issued by an authorised officer of council under section 58A of the Act cannot be changed using the procedure outlined in this section.

In such circumstances, authorised officers should refer to section 58D(3)(c) of the Act, which provides that a council may revoke a restricted dog declaration made by an authorised officer of council (also see section 10.9 below).

10.8.1 Sometimes, a dog may be incorrectly listed on the Register as a restricted breed. For example, there may have been a genuine data entry error when the animal's record was entered onto the Register. There are also cases where some dog owners may have willingly had their animal identified as a pure restricted breed where this is not the case. Those owners may request that their dog's breed be changed on the Register.

10.8.2 In the case of a genuine data entry error, council should email the Office at [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) to request a breed change and provide all the relevant evidence to support this request.

10.8.3 If councils receive a change of restricted breed request from a dog owner, an authorised council officer must assess the dog to check the validity of the request.

10.8.4 Councils should have local procedures in place for handling breed change requests for restricted dogs. All reasonable steps must be taken to identify the dog in question. This should include, as a minimum, scanning the dog to find out its microchip number. An officer might also photograph the dog as supporting evidence.

10.8.5 If, after the assessment, the breed change is not supported by the council, the owner should be notified as soon as possible. Council officers should then take all necessary steps to ensure that the dog complies with the relevant control requirements in Chapter 11 of this Guideline.

10.8.6 Restricted breeds can only be changed on the Register by an officer of the Office of Local Government at the written request of an authorised council officer to [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au). Any requests received by the Office from members of the public will be referred to the relevant council.

- 10.8.7 The Office will only process breed change requests if councils have provided all of the following information in their written request:
- a) the background to the request
  - b) the details of the dog in question – including microchip number and any other relevant identifying information
  - c) a statement confirming that an authorised officer of the council has assessed the dog and supports the owner’s assertion that the dog has been incorrectly identified
  - d) a request that the dog’s breed be changed on the Register to a restricted cross-breed – this should be specified in the message
  - e) a statement that a notice of intention to declare a dog to be a restricted dog will be issued on the dog when the breed change has been actioned by the Office, to enable a breed and/or temperament assessment to be done to determine the dog’s status, in accordance with the Act.
- 10.8.8 The Office will notify the relevant council when the breed change has been actioned. Council must then immediately issue a Notice of Intention to Declare a Dog to be a Restricted Dog on the dog.
- 10.8.9 The information outlined in this section only relates to requests for changes of breed for restricted dogs. Council users with Level 2 access and above can update the breed of other animals on the Register. Follow the procedures for changing information in Chapter 8 of this Guideline.
- 10.9 **Requests to revoke a restricted dog declaration made as a result of a notice of intention issued by an authorised council officer**
- 10.9.1 Any decision to revoke a restricted dog declaration made as a result of a notice of intention issued by an authorised officer must be made by way of a resolution of the council whose authorised officer made the declaration, unless the power to revoke such a declaration has been delegated by that council to the general manager (under section 377 of the Local Government Act) or sub-delegated by the general manager to an authorised council officer (under section 378 of the Local Government Act).
- 10.9.2 As a revocation can only be processed on the Companion Animals Register by an authorised officer of the Office, councils must submit a written request to revoke such a declaration to: [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au).
- 10.9.3 Such requests must also include the following information:
- a) Where a decision to revoke a restricted dog declaration has been made by the council – a copy of the relevant resolution of council, or
  - b) Where a decision to revoke a restricted dog declaration has been made by a general manager or authorised council officer under delegation - a copy of the appropriate instrument of delegation.

For more information about the management of restricted dogs, see Chapters 11 and 12 of this Guideline.

## **11 RESPONSIBILITIES OF OWNERS OF DANGEROUS, MENACING AND RESTRICTED DOGS**

### **11.1 Control requirements**

11.1.1 The owner of a dangerous dog or a restricted dog must comply with each of the control requirements listed under section 51(1) (dangerous dogs) and 56 (restricted dogs) of the Act. These provisions were amended by the *Companion Animals Amendment Act 2005* to enhance the prescribed enclosure requirements and introduce special collar requirements for dangerous and restricted dogs (sections 51(1)(c) and 51(1)(d1); 56(1)(a1) and 56(1)(c1)).

11.1.2 The owner of a menacing dog must comply with each of the control provisions set out in section 51(1A). They are the same as those that apply to dangerous and restricted dogs, with the exception of the prescribed enclosure requirements, which are explained in section 11.3 of this Guideline. These provisions were introduced by the *Companion Animals Amendment Act 2013*.

### **11.2 Enclosures for dangerous and restricted dogs**

11.2.1 The Act requires all owners of dangerous and restricted dogs to have a certificate of compliance from council. However, if the owner moves to another property a new certificate of compliance will be required.

11.2.2 The certificate will verify that the enclosure for the dangerous or restricted dog required under sections 51(1)(c) and 56(1)(a1) of the Act complies with the specifications for enclosure requirements in clause 24 of the Regulation (see [Annexure A](#)).

11.2.3 The council fee for issuing a certificate of compliance – after inspecting the enclosure and being satisfied with the standards – is currently prescribed by clause 25 of the Regulation at a maximum of \$150 (GST inclusive). The Act only prescribes a fee for issuing the certificate. However part of being able to issue a certificate is the inspection itself, and it is not appropriate for councils to charge additional fees for inspecting enclosures before issuing the certificate.

11.2.4 Owning and keeping a dangerous or restricted dog without a certificate of compliance for the dog's enclosure is an offence under section 58H(1) of the Act. However, it is not an offence if the owner does not have a certificate of compliance within the time limit for constructing the enclosure set out under either section 51(1)(c) or section 56(1)(a1).

11.2.5 There is a model certificate of compliance for councils to use in [Annexure B](#). A Microsoft Word version of this form is available in the main menu of the Companion Animals Register.

11.2.6 As set out in Circular 06-69, a development application is not required to build an enclosure for a restricted or dangerous dog.

### 11.3 Enclosure requirements for menacing dogs

- 11.3.1 Menacing dogs are not required to be kept in the prescribed enclosure set out in clause 24 of the Regulation. However, under section 51(1A)(b) of the Act, when a menacing dog is on the property on which it is ordinarily kept and is not under the effective control of a person aged 18 years or over it *“must be enclosed in a manner that is sufficient to restrain the dog and prevent a child from having access to the dog”*.
- 11.3.2 ‘Restraining’ a menacing dog includes ensuring that the dog is prevented from escaping the property on which it is ordinary kept (in accordance with the requirements of section 12A(1) of the Act.
- 11.3.3 This control is intended to provide scope for the ongoing socialisation of the dog, as long as this is undertaken in a manner which prevents a child who is not under the supervision of a competent adult from accessing the dog.
- 11.3.4 At any time that a menacing dog is outside the property on which it is ordinarily kept it must:
- a) be under the effective control of a competent person on a chain, cord or leash being held by that person, and
  - b) be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

### 11.4 Collars for dangerous, menacing and restricted dogs

- 11.4.1 A declared dangerous, menacing or restricted dog must wear a distinctive collar of the kind prescribed in clause 27 of the Regulation. This collar shows members of the community, especially children, that the dog is dangerous or likely to be dangerous.
- 11.4.2 A collar is the prescribed kind, under sections 51(1)(d1) and 56(1)(c1) of the Act, if:
- a) it consists of red stripes alternatively spaced with yellow stripes each being a width of 25 mm and set diagonal to the rim of the collar at an angle of 45 degrees
  - b) at least one of the 2 colours reflects light in the dark
  - c) it is made of durable materials
  - d) it is able to be securely fastened
  - e) it has a device or other facility that enables it to be attached to a leash
  - f) it has a minimum width of:
  - g) 25 mm for a dog weighing less than 20 kg, or
  - h) 40 mm for a dog weighing between 20 kg and 40 kg, or
  - i) 50 mm for a dog weighing more than 40 kg.
- 11.4.3 Collars meeting these requirements are available in NSW. The Office does not endorse any particular supplier, but Animal Care and Equipment Services Pty Ltd (ACES), 1-3 Chapel Road, Moorabbin, Victoria 3189 (Tel: (03) 9532 6069) supplies collars that comply with the specifications prescribed in the Regulation.

- 11.4.4 Councils should consider stocking these collars to supply to owners and advising relevant pet supply outlets in their area where such collars are available. Owners of declared dangerous, menacing or restricted dogs may also purchase the prescribed collars directly from ACES or any other supplier of compliant collars.
- 11.4.5 Dogs must not wear the prescribed collar unless they are a declared dangerous or restricted dog within the meaning of the Act. Misuse of these collars is an offence (clause 27 of the Regulation). However it is a defence if the owner does not know, or could not reasonably be expected to know, that this type of collar is only for a declared dangerous, menacing or restricted dog.
- 11.5 Power to seize proposed dangerous, menacing or restricted dogs that are unregistered**
- 11.5.1 Sections 36(3)(b) and 58B(4)(b) of the Act provide that an authorised officer may seize a dog that is subject to a Notice of Intention to declare the dog to be a dangerous, menacing or restricted dog, if the dog is not microchipped and lifetime registered at the time the Notice of Intention is issued, regardless of whether or not the 7 day compliance period set out in sections 36(1)(b) and 58B(1)(b) has expired.
- 11.5.2 The intention of these provisions is to limit the ability of irresponsible owners to hide their unmicrochipped dogs during the 7 day compliance period. This addresses concerns expressed by councils that some dangerous and restricted dogs have, in the past, effectively 'disappeared' and have therefore been unable to be traced as their microchip details are not captured on the Register.
- 11.5.3 The primary purpose of these provisions is to ensure that the dog in question is microchipped and identified on the Register. Authorised officers should only exercise such powers in circumstances where there is a perception of a genuine risk of flight on behalf of the dog owner. In cases where there is no such perceived risk, it is recommended that authorised officers continue to allow dog owners to microchip and lifetime register their dog within the 7 day compliance period set out in section 36(1)(b) and 58B(1)(b).
- 11.5.4 Where a dog is seized under sections 36(3)(b) or 58B(4)(b) of the Act, an authorised officer should arrange for the dog to be released to its owner as soon as practicable after microchipping and lifetime registration has occurred. However, an authorised officer should only release the dog if they are satisfied that the owner is capable of complying with the other interim control provisions of sections 36(1) and 58B(1).
- 11.5.5 Any charges levied by a council on a dog owner in relation to the seizing of a dog under sections 36(3)(b) or 58B(4)(b) of the Act (eg: microchipping and impounding fees) should be fair and reasonable. Such fees and charges should be included in the mandatory statement of fees and charges in the Revenue Policy of each council's annual Operational Plan.

## **12 OTHER DANGEROUS, MENACING AND RESTRICTED DOG PROVISIONS**

### **12.1 Prohibition on selling or acquiring dangerous, menacing and restricted dogs**

12.1.1 The Act prohibits the selling, giving away or acquisition of a dangerous, menacing or restricted dog – or a dog that is subject to a notice of intention to declare a dog to be a dangerous, menacing or restricted dog (sections 52A and 52B; 57A and 57B).

12.1.2 However, a person that accepts ownership of a dangerous or menacing dog, or proposed dangerous or menacing dog does not commit an offence if they could not reasonably be expected to know that the dog was subject to a dangerous or menacing dog declaration or a notice of intention to declare it to be a dangerous or menacing dog (section 52B(2)(b)).

12.1.3 If the owner of a dangerous or restricted dog – or a proposed dangerous or restricted dog – cannot comply with the control requirements, the dog may be surrendered to or seized by council. It must then be destroyed.

### **12.2 Prohibition on breeding restricted dogs**

12.2.1 Section 57C of the Act prohibits the breeding of a restricted dog or a dog that is the subject of a notice of intention to declare it to be a restricted dog.

12.2.2 It is also prohibited to advertise the availability of a restricted dog for breeding – or a dog that is the subject of a notice of intention to declare it to be a restricted dog.

### **12.3 Seizure and immediate destruction of dangerous, menacing and restricted dogs**

12.3.1 Section 58G(1) of the Act gives authorised officers the power to seize and arrange for the immediate destruction of a dangerous, menacing or restricted dog if the dog attacks or bites a person or animal (other than vermin) without provocation.

12.3.2 In these circumstances, the minimum holding periods under section 64(1) of the Act do not apply following seizure (section 58G(4)). This reflects the gravity of the offence. A dog that has been declared dangerous or menacing may have attacked before and their behaviour is considered to pose a risk to the community. A dangerous, menacing or restricted dog that attacks or bites a person or animal has demonstrated that it cannot be kept safely in the community.

### **12.4 Additional powers to seize and destroy dangerous and menacing dogs**

Following the introduction of the *Companion Animals Amendment Act 2013*, the ‘two strikes’ rule no longer applies to dangerous dogs, but does apply to menacing dogs. Further information is provided below.

- 12.4.1 Section 58G(1A) of the Act provides authorised officers with the power to seize and destroy a dangerous dog if the dog does not comply with key control requirements that ensure these dogs are not 'at large' or uncontrolled in the community. These key control requirements are:
- a) section 51(1)(c) – enclosure requirements
  - b) section 51(1)(c1) – temporary enclosure requirements
  - c) section 51(1)(e) – dog must be kept on a lead and be muzzled in public.
- 12.4.2 Only one instance of non-compliance with the abovementioned control requirements is required for an authorised officer to be able to seize and destroy a declared dangerous dog.
- 12.4.3 Section 58G(1B) provides authorised officers with an additional power – the 'two strikes' rule – to seize and destroy a menacing dog. This rule only applies to menacing dogs and is for non-compliance with the key control requirements that ensure these dogs are not 'at large' or uncontrolled in the community.
- 12.4.4 Under this rule, authorised officers have the power to seize and arrange for the immediate destruction of a menacing dog on the second occasion – within any 12 month period – that the dog's owner has not complied with any of the following provisions:
- a) section 51(1A)(b) – enclosure requirements
  - b) section 51(1A)(c) – dog must be kept on a lead and be muzzled in public
- 12.4.5 The destruction of a menacing dog under the 'two strikes' rule will only apply if the authorised officer is satisfied that it is reasonable to do so – after having made appropriate enquiries into the circumstances that led to the breach of the control provisions and resulted in the seizure (section 58G(3)).
- 12.4.6 The minimum holding periods under section 64(1) of the Act do not apply following seizure under this provision.
- 12.4.7 This 'two strikes' rule ensures that menacing dogs will not be arbitrarily destroyed if they are found outside their properties or uncontrolled through no fault of the owner. This could be, for example, if their property fence or gate has been tampered with or damaged because of unforeseen circumstances.
- 12.4.8 All breaches must be recorded on the animal's record in the 'additional comments' field on the Register. The information should include the specific breach, the authorised officer's name and contact details, and details of any penalties issued or action taken.
- 12.4.9 Authorised officers should keep separate records according to their council protocol for investigations. They should also give a verbal warning, if possible, on the occasion of the first breach explaining that a second breach within a 12 month period may result in the seizure and immediate destruction of the dog.



12.4.10 Written notice of these consequences should also be given on the penalty notice issued after the first breach. Owners would also have been made aware of these consequences under the menacing dog declaration.

12.4.11 Photographic evidence should be taken on each occasion that a breach has been detected and a full record must be kept by council.

## 12.5 **Additional power to seize and destroy restricted dogs**

12.5.1 Section 57(4) gives councils an additional power to seize and destroy restricted dogs for not complying with any of the control requirements of section 56.

12.5.2 The provisions of Part 7 of the Act – procedures for dealing with seized and surrendered animals – with the exception of sections 68 and 69 do not apply in the case of restricted dogs seized under section 57(4).

## 12.6 **Council-declared restricted dogs may be seized and immediately destroyed**

12.6.1 Under section 57D of the Act, the transition period is the period ending 12 months after Division 6 of Part 5 of the Act (section 55(2)) came into operation. This means the transition period ended on 27 April 2007.

12.6.2 Because the transition period has ended, any dog declared by council to be a restricted dog can be seized and immediately destroyed. This may be done regardless of whether the control requirements under section 56 have been, or are capable of being, complied with.

12.6.3 Section 57D does not apply:

- a) If the dog was registered before 28 April 2007 in any state or territory of Australia as a breed other than a breed or kind listed under section 55(1) of the Act or a cross-breed of any such breed or kind of dog.
- b) If the dog has not been involved in an offence under section 16(1) of the Act – such as an attack on a person or animal – or a similar offence under a corresponding Act of any state or territory.

## 13 NUISANCE ORDERS

### 13.1 Council powers to issue nuisance orders

- 13.1.1 If council officers identify a serious or ongoing problem with an animal's behaviour, they can issue a nuisance order. This order requires the owner to stop the animal doing the behaviour specified in the order. If the problem continues, the owner may be liable for a range of penalties.
- 13.1.2 Nuisance orders can be issued for both cats and dogs under sections 31 and 32A of the Act respectively. The order must specify the behaviour of the animal that must be stopped. It can specify more than one kind of behaviour.
- 13.1.3 The following model orders are attached to this Guideline:
- Model Notice of Proposed Nuisance Dog Order at [Annexure I](#).
  - Model Nuisance Dog Order at [Annexure J](#).
  - Model Notice of Proposed Nuisance Cat Order at [Annexure K](#).
  - Model Nuisance Cat Order at [Annexure L](#).

Microsoft Word versions of these forms are available in the main menu of the Companion Animals Register.

- 13.1.4 A nuisance order remains in force for six months from the date it is issued.
- 13.1.5 If an authorised officer issues a nuisance order, the council must notify the Chief Executive, Local Government within 7 days after the order is issued by entering the details of the order on the Register.
- 13.1.6 The owner of the animal must comply with an order issued to them and must continue to comply with it while it is in force. They must ensure that the behaviour or behaviours specified in the order do not occur during the period.
- 13.1.7 If the owner of the animal does not comply with the nuisance order, they can be issued with a penalty notice, or a court may issue a higher penalty as specified by the Act. The penalty amounts increase for subsequent offences.
- 13.1.8 Under clause 22(1) of the Regulation, a council may require that an animal on which a nuisance order has been issued be registered (and microchipped) within 7 days after notice of the order is given.

### 13.2 Nuisance dogs

The nuisance dog provisions of the Act have been renumbered (from sections 21 and 21A to 32A and 32B respectively) to better align with the broader dog control framework of the Act.

- 13.2.1 Under section 32A of the Act, a council can issue a nuisance order to the owner of a dog that:
- is habitually at large
  - makes a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises

- c) repeatedly defecates on property (other than a public place) outside the property where it is ordinarily kept
- d) repeatedly runs at or chases any person, vehicle or animal – other than vermin or in the course of droving, tending, working or protecting stock
- e) endangers the health of any person or animal – other than vermin or in the course of droving, tending, working or protecting stock
- f) repeatedly causes substantial damage to anything outside the property where it is ordinarily kept.

13.2.2 If a dog repeatedly runs at or chases a person or animal, an authorised officer may consider issuing a nuisance dog order if they are of the opinion that the dog's behaviour has caused a nuisance – but is not sufficient to require a dangerous dog declaration.

If you are considering doing this, make sure you read chapter 9.5 on exercising discretion before you decide what to do.

13.2.3 Issuing a nuisance order in these circumstances does not stop you making a subsequent dangerous dog declaration if the specified nuisance behaviour does not stop.

13.2.4 If you issue a nuisance order instead of a dangerous dog declaration, you must explain to the owner the consequences if the behaviour does not stop – that is, a dangerous dog declaration may be issued. You may also consider specifying that the dog completes behaviour modification training as a further condition of compliance with the order.

13.2.5 Before issuing an order under section 32A of the Act, you must give the owner notice of your intention to issue the order. This notice must set out:

- a) the requirements that the owner will have to comply with if the order is issued
- b) the owner's right to object to the proposed order in writing within 7 days after the date the notice is given.

13.2.6 If the owner does not object within that time, you may proceed to issue the order after the 7 days have passed.

13.2.7 If the owner does object within that time, you must consider the objection before deciding whether or not to issue the order.

### 13.3 Dealing with barking dogs

13.3.1 Councils should have established procedures for investigating complaints about barking dogs. In urban areas, councils will often require complaints from more than one resident before taking action in relation to a barking dog. Court action may result from issuing a penalty notice, so this ensures that council has an appropriate standard of evidence to prove a case in court, if required.

13.3.2 Many councils require a complainant to keep a diary noting when the dog is barking, as they may not have the resources to conduct high levels of surveillance on complaints they receive about this issue.

13.3.3 The NSW Environment Protection Authority (EPA) has produced a Noise Guide for Local Government which includes information about issuing nuisance orders under the Act in relation to barking dogs. You can obtain a copy of the guide by calling EPA on 131 555 or download it from their website at <http://www.epa.nsw.gov.au/noise/nlg.htm>.

#### 13.4 **Nuisance cats**

13.4.1 Under section 31 of the Act, a council can issue a nuisance order to the owner of a cat that:

- a) makes a noise that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises
- b) repeatedly damages anything outside the property where it is ordinarily kept.

13.4.2 Before issuing an order under section 31, you must give the owner of the cat notice that you intend to issue the order. This notice must set out:

- a) the requirements that the owner will have to comply with if the order is issued
- b) the owner's right to object to the proposed order in writing within 7 days after the date the notice is given.

13.4.3 If the owner does not object within that time, you may proceed to issue the order after the 7 days have passed.

13.4.4 If the owner does object within that time, you must consider the objection before deciding whether or not to issue the order.

## **14 OTHER DOG MANAGEMENT ISSUES**

### **14.1 Greyhound microchipping**

14.1.1 In June 2011, the Regulation was amended to addresses procedural issues which have arisen from the decision by Greyhounds Australasia to require all greyhounds whelped in Australia after 1 January 2011 to be microchipped.

14.1.2 Greyhounds registered in accordance with the rules under the *Greyhound Racing Act 2009* (“registered racing greyhounds”) are exempt from the identification and lifetime registration requirements of the Act. The microchipping of registered racing greyhounds is therefore considered to be “voluntary”.

14.1.3 The Regulation amendment makes clear that a registered racing greyhound remains exempt from the identification requirements of the Act, even if it is voluntarily microchipped.

14.1.4 Under the *Greyhound Racing Act 2009*, Greyhound Racing New South Wales (GRNSW) is responsible for registering racing greyhounds in NSW. As part of this role, GRNSW maintains its own database. The Regulation amendment therefore avoids the duplication of the registration of racing greyhounds.

14.1.5 When a greyhound ceases to be a registered racing greyhound, for example after being rehomed through an adoption program, it automatically loses its exemption from the identification and lifetime registration requirements of the Act. NSW greyhound racing rules have been updated to require trainers to notify their local council when they transfer a former racing greyhound to a new owner.

14.1.6 In accordance with arrangements outlined in section 14.2, GRNSW will process the identification and change of owner/details information of former racing greyhounds on the Companion Animals Register.

14.1.7 Councils must continue to process any such information that comes to their attention. Councils should use an M1 – Verification of Existing Microchip form for this purpose.

14.1.8 The Regulation also provides that a former racing greyhound does not need to be re-microchipped if it has previously been microchipped by GRNSW. Councils should therefore advise the owners of such greyhounds of the need to immediately lifetime register their animals under the Act.

### **14.2 Greyhound muzzling exemptions and the Greenhounds program**

14.2.1 In 2011 the Regulation was amended to provide an exemption to the requirement under section 15 of the Act for a greyhound to be muzzled while in a public place.

14.2.2 The exemption only applies to greyhounds that have successfully completed a greyhound re-training program which has been approved by the Chief Executive of the Office of Local Government by order published in the NSW

Government Gazette. To successfully complete an approved program a greyhound must be deemed suitable to be unmuzzled in a public place by an authorised greyhound assessor.

- 14.2.3 Only non-racing greyhounds (ie, retired-racing greyhounds, those kept solely for the purpose of being a pet and show greyhounds) are eligible to complete an approved program and therefore be eligible for an exemption. A greyhound granted an exemption is required to wear a distinctive “Greenhound” collar at all times when it is in a public place.
- 14.2.4 Guidelines for approval as a greyhound re-training program have been released by the Chief Executive, setting out criteria for approval as a greyhound re-training program and authorisation to assess the behaviour of greyhounds, and “Greenhound” collar specifications (see 14.2.7 for collar specifications).
- 14.2.5 In order to be eligible to take part in an approved program, a greyhound must be microchipped and desexed (unless it is registered with Dogs NSW for the purposes of showing, in which case it is not required to be desexed).
- 14.2.6 A greyhound must also be lifetime registered before undertaking an approved program. However, if the approved program holds an exemption from lifetime registration under clause 16(d) of the Regulation, the greyhound is only required to be lifetime registered by the approved program by the time it is rehomed to a new owner.
- 14.2.7 The “Greenhound” collar provides the primary mechanism for council officers and members of the public to identify muzzle exempt greyhounds. The Guidelines specify that:
  - a) the approved “Greenhound” collar is green in colour, contains the “Greenhound” logo embossed on its surface and has affixed to it an official “Greenhound” tag which contains:
  - b) the official “Greenhounds” logo on the front side, and
  - c) the greyhound’s microchip number engraved on the back side
  - d) only GRNSW may issue “Greenhound” collars to the owners of greyhounds that successfully complete approved programs; and
  - e) a “Greenhound” collar is not transferable to another greyhound.
- 14.2.8 Failure to wear the collar may mean the owner is guilty of an offence under section 15 of the Act (not having the greyhound muzzled while in public).
- 14.2.9 If a council officer is concerned about the authenticity of a “Greenhound” collar worn by a specific greyhound they should, in the first instance, scan the animal in question and compare its microchip number with the microchip number engraved on the “Greenhound” tag attached to the collar. If the numbers differ, this may indicate a counterfeit collar.
- 14.2.10 If the authenticity of the collar cannot be verified and the greyhound is unmuzzled, the owner may also be guilty of an offence under section 15 of the Act (not having the greyhound muzzled while in public).
- 14.2.11 If the microchip scan reveals that the greyhound is not microchipped, the owner may also be guilty of an offence under section 8(3) of the Act (failure to permanently identify an animal above 12 weeks of age).

- 14.2.12 In addition to any enforcement action taken, council officers should report all suspect counterfeit collars, unmicrochipped greyhounds or unmuzzled greyhounds not wearing the prescribed collar to GRNSW as soon as possible by phone: (02) 8767 0519 or email: [admin@greenhounds.com.au](mailto:admin@greenhounds.com.au). GRNSW may also be able to take action against the owners of such greyhounds in accordance with its powers under the Greyhound Racing Act 2009.
- 14.2.13 Any exempt greyhound that is subsequently proven to have attacked is subject to all existing responsibilities and penalties under the Act as is applicable to any other dog that attacks. Where an offence is proven the greyhound owner cannot rely on the exemption as an absolute defence.
- 14.2.14 The muzzling exemption does not apply to a greyhound that is a dangerous dog or a restricted dog.
- 14.2.15 Council officers should also note that the Chief Executive of the Office of Local Government has appointed GRNSW as a registration agent to process the permanent identification and change of ownership information of greyhounds undertaking approved re-training programs and process lifetime registrations for such animals.
- 14.2.16 GRNSW staff are not authorised to process such information for other types of companion animal.
- 14.2.17 Where a greyhound's permanent identification, change of ownership/details and lifetime registration information is provided to a council, the council must process the information in-line with the requirements of this Guideline.
- 14.2.18 When a greyhound successfully completes an approved program GRNSW staff will update the greyhound's record on the Register to indicate that it is exempt from muzzling. For such greyhounds a "Muzzle exempt" symbol, will be displayed adjacent to the dog's microchip number on the Register.

More information about the Greenhounds program can be found at [www.greenhounds.com.au](http://www.greenhounds.com.au)

### 14.3 Dingoes

- 14.3.1 In January 2012, the definition of dog in section 5(1) of the Act was amended to mean:

an animal (of either sex, or desexed, and whether or not domesticated) of a species within the scientific name *Canis familiaris*; *Canis lupus familiaris*, *Canis lupus dingo*, *Canis familiaris dingo* or, *Canis dingo* or a synonym of any of those names, and including a hybrid of any of those species.

- 14.3.2 This will ensure that councils continue to regulate dingoes and their cross-breeds in accordance with the Act. Dingoes must therefore be microchipped and lifetime registered, as would any other species of dog. This also means that dog attack and dangerous dog provisions of the CA Act continue to apply to dingoes.
- 14.3.3 Councils should also be aware that a note to the definition in section 5(1) states that:

The *Wild Dog Destruction Act 1921* continues to apply to dingoes in the Western Office within the meaning of the *Crown Lands Act 1989*. Section 26 of the *Wild Dog Destruction Act 1921* creates an offence if a person has in the person's possession any dingo or half-breed dingo without the written authority of the Wild Dog Destruction Board.

#### 14.4 **Dogs in outdoor dining areas**

14.4.1 In June 2010, the Act was amended to allow dogs in outdoor dining areas in certain circumstances.

14.4.2 The amendments allow dogs in outdoor dining areas that are generally provided on public footways that use temporary infrastructure to indicate the boundaries of the area. The amendments only apply to human food consumption areas. The prohibition from dogs being in food preparation areas remains.

14.4.3 The amendments allow café and restaurant operators to make the decision whether or not to allow dogs to enter their outdoor dining area. Where café and restaurant operators decide to allow dogs in their outdoor dining area, the following conditions must be complied with:

- a) the outdoor dining area must not be enclosed and must be able to be entered by the public without passing through an enclosed area
- b) dogs must be on a leash at all times
- c) dogs must be on the ground at all times
- d) dogs can be provided with drink but not food
- e) dangerous and restricted dogs are prohibited.

14.4.4 The following conditions have been included in the Act to deal with outdoor dining areas that are located in council designated off-leash areas:

- a) dogs are allowed off-leash in these areas but must be under effective control
- b) dogs can be provided with food as long as the food is on the ground and not provided using apparatus that is used for human food consumption
- c) dogs can sit on a person's lap, but must not be allowed to sit on any table or chairs or make contact with other apparatus provided for the consumption of food by humans.

14.4.5 Dog owners continue to be responsible for properly controlling their dogs in these off-leash areas. Owners are responsible for the dog's behaviour and for ensuring that it does not impact on the welfare of other people, dogs and animals in these areas.

14.4.6 Operators of outdoor dining areas will be responsible for informing their patrons of the conditions for having dogs in food consumption areas and should monitor compliance with these requirements or they will risk complaints being made.

14.4.7 A Regulation has also been made under the *Food Act 2003* to modify the Food Standards Code to allow dogs in outdoor dining areas where it is permissible under the Companion Animals Act.



- 14.4.8 The existing exemptions from prohibition in public places under section 14(8) of the Companion Animals Act continue to apply for police dogs and assistance animals being used bona fide by a person with a disability to assist the person.
- 14.4.9 Councils should consider whether there is a need for any changes to existing licence agreements between the outdoor dining area operator and the council or future development consent conditions. Councils should also ensure that any potential liability issues that may arise from allowing dogs in outdoor dining areas are managed appropriately.

## **15 PAYING AND RECONCILING REGISTRATION FEES**

### **15.1 Overview**

- 15.1.1 Councils must comply with the provisions of this Guideline. This will enable the Office to effectively monitor the collection and reimbursement of Companion Animal registration fees and the performance of the Register. If councils don't comply, this may lead to a lengthy reconciliation process and delays in reimbursing fees to councils for animals kept in their area.
- 15.1.2 Each month, councils will receive a monthly companion animals debtors invoice electronically from the Office. An extract of the council's current month's registration transactions taken from the Register will be attached to this invoice. This extract is accessed by clicking onto the 'financial report' tab immediately to the right of the 'invoice' tab on the invoice.
- 15.1.3 Councils must reconcile the financial report extract supplied by the Office with their internal financial records before remitting registration fees to the Office. You must always work from the form provided electronically by the Office – not any other report separately extracted by council. If other extracted monthly council financial reports are used, the invoices may not balance.
- 15.1.4 The financial report from the Office shows details of all registration transactions that have been successfully entered on the Register during the month. Councils must make sure that the total invoice amount is received by the Office before the last business day of the following month. This means, for example, that the Office must receive payment for the April invoice by the end of May. Any variances or errors in invoices must be reported to the Office as soon as they are detected.
- 15.1.5 Councils must account for all registration fees received and perform regular reconciliation of cash receipts (at least monthly) to the financial report. This reconciliation must be kept by council and given to the Office on request. It must also be subject to council's normal financial control and audit procedures.

### **15.2 What are councils required to do?**

- 15.2.1 Councils must keep appropriate records so that they can reconcile:
- a) registration fees they have received with registrations entered onto the Register
  - b) council records to the monthly invoice issued by the Office.
- 15.2.2 Councils must enter the following information onto the Register for all registration fees they collect:
- a) the type of registration
  - b) the council receipt number
  - c) the date of receipt.

- 15.2.3 Records of all registration fees received in any calendar month must be entered onto the Register as soon as possible – but at the least, within 5 working days of the start of the following month.
- 15.2.4 Councils must deposit all registration fees they collect into the Office's bank account by electronic funds transfer (EFT). These deposits must be received by the Office before the last business day of the month after the registrations were entered onto the Register. Only remit the amounts you have been invoiced for.
- Bank: Westpac  
BSB: 032-001  
Account: 203551
- 15.2.5 Councils must perform a monthly reconciliation of records entered onto the Register – as provided in the financial report from the Office – against their own financial records of fees received. This reconciliation doesn't have to be sent to the Office, but councils should be able to supply it on request.
- 15.2.6 Councils should use the monthly invoice from the Office to reconcile their internal financial accounting records against the registration fees listed as processed by the council in the financial report from the Register. Contact the Office immediately on [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au) if there any discrepancies.
- 15.2.7 If there are any variations between the financial report and council's registration records for that month, you need to report details of these variations to the Office within 10 working days after the close of the calendar month being monitored.
- 15.2.8 For records on the financial report but not in council's records, you need to report the:
- microchip number
  - date of entry onto the Register (the registration date)
  - reason for variation.
- 15.2.9 For records included in council's records but not on the financial report, you need to report the:
- council receipt number
  - date of receipt
  - amount paid
  - reason for variation.

### 15.3 The reconciliation process

- 15.3.1 The Office will electronically issue a monthly debtors invoice to councils supported by the appropriate detailed documentation extracted from the financial report, the correct registration details report, and the removed animals report generated for each council from the Register.
- 15.3.2 This monthly invoice will show the debit/credit balance of registrations and applicable adjustments for that month only.

15.3.3 If councils do not report on the variation or pay the outstanding amount, the Office may deduct the amount of any outstanding variation from the quarterly reimbursement to that council.

15.3.4 The Office issues a quarterly debtors statement that provides an aged debtors analysis of council's debtor accounts for companion animal registrations. Councils must ensure that any unpaid invoices or outstanding debits or credits listed on the statement are investigated and resolved.

#### 15.4 **Reimbursing fees to councils**

15.4.1 One month after the end of each quarter – quarters are the three months ending in September, December, March and June – the Office will extract a list of animal records from the Register. This list will show the registration records that were entered during that quarter for animals that are usually kept in the council area. It will include:

- a) date of entry onto the Register (the registration date)
- b) type of registration and amount paid
- c) microchip number.

15.4.2 The Office will calculate the quarterly reimbursement for each council based on these Register reports. Any debit owing to the Office at the end of the quarter may be deducted before the reimbursement payment is made.

15.4.3 Reimbursement will be banked by EFT to the nominated council bank account and a remittance advice will be emailed to council's nominated central email address.

15.4.4 Councils must spend registration fees on companion animals activities – see section 85(1A) of the Act.

#### 15.5 **Audit process**

15.5.1 The Office reconciliation is a simple comparison of amount paid to amount payable. However, the Office will carry out a series of audits to ensure that variances are corrected and any systemic problems are identified.

If any reports generated contain personal information about animal owners, they must be handled, stored and disposed of in accordance with the procedures in Chapter 3.

## 16 ANNUAL REPORTING

### 16.1 Requirements

16.1.1 Each year, councils are required to prepare annual reports on their works and activities (section 428 of the Local Government Act 1993). All councils must now include in their annual reports a detailed statement of their activities during the year relating to enforcing and ensuring compliance with the Companion Animals Act and Regulation.

For more details about this requirement, see clause 217(1)(f) of the Local Government (General) Regulation 2005.

16.1.2 This statement must include information about:

- a) lodgement of pound data collection returns with the Office
- b) lodgement of data about dog attacks with the Office
- c) the amount of funding spent on companion animal management and activities
- d) companion animal community education programs carried out and strategies the council has in place to promote and assist the desexing of dogs and cats
- e) council's strategies for complying with the requirement under section 64 of the Act to seek alternatives to euthanasia for unclaimed animals
- f) off leash areas provided in the council area.

16.1.3 If there are no dog attacks known to council in the year, you must indicate a nil return in the annual statement.

16.1.4 Section 85(1A) of the Act requires councils to use all money paid from the Fund for managing and controlling companion animals in their area. Detailed information about how this money has been used should be included in the annual report.

## 17 COLLECTING AND REPORTING POUND DATA

### 17.1 Requirements

- 17.1.1 The principal objective of the Act is to provide for the effective and responsible care and management of companion animals. This also extends to councils providing appropriate management and care for animals that come into the custody of the council, including accurately managing records of these animals.
- 17.1.2 Under section 30 of the *Impounding Act 1993*, councils that establish pounds are required to keep a pound register of all the animals in their care.
- 17.1.3 Under section 67A of the Companion Animals Act, the Chief Executive, Local Government may require a council to report on any matter relating to the activities of a council pound operated by the council or the council's agent.
- 17.1.4 All council pound activities relating to seizing and holding companion animals must be reported to the Office using the on-line reporting tool for collecting information on council seizures of cats and dogs on the Companion Animals Register.
- 17.1.5 All pound data for the previous financial year must be entered on to the on-line reporting tool by councils by **no later than 31 August each year**. Councils are encouraged to enter information on the on-line reporting tool on a monthly basis.
- 17.1.6 Council pound data is primarily collected to help individual councils with their animal management activities. It assists management decisions but is also useful for planning, budgeting, reporting and allocating council resources as well as promotional activities. The data also provides the NSW Government and the community with a quantitative measure to determine the ongoing impact of the Act – and, specifically, compulsory microchipping.
- 17.1.7 The on-line reporting tool can be accessed on the Register using the *Council seizures of cats and dogs* menu item and is available to level 2 (council data entry and enforcement) and level 3 (council managers) Register users. If required, council managers can request additional Register users by following the procedures in chapter 2 of this Guideline.
- 17.1.8 Councils that use a third party to operate their pound facilities or provide impounding services must still use the on-line tool to report pound data. They must ensure that the third party is aware of the statutory requirement to report pound data and has a suitable mechanism in place to do so. It is recommended that the reporting of pound data be made an explicit delivery item in any service agreement entered into with a third party pound operator.

Further information on using the on-line reporting tool can be found in the *Survey User Guide* available for download in the *Council seizures of cats and dogs* menu item on the Register. If you need further assistance using the on-line reporting tool, please contact the Program Delivery Team at [pets@olq.nsw.gov.au](mailto:pets@olq.nsw.gov.au).

## 18 MANDATORY REPORTING OF DOG ATTACK INFORMATION

### 18.1 Reporting requirements

- 18.1.1 Under clause 33A of the [Companion Animals Regulation 2008](#), councils must report any relevant information they receive about a dog attack within 72 hours of receiving the information, using the dog attack incident reporting module of the Register.
- 18.1.2 This 'relevant information' refers to the initial notification of the attack, the details of the attack as set out in clause 33A(2), and any subsequent information that council becomes aware of when investigating the attack.
- 18.1.3 Clause 33A(4) of the Regulation states that – for mandatory dog attack reporting requirements – a dog attack is 'an incident that involves or is alleged to involve a dog rushing at, attacking, biting, harassing or chasing a person or animal (other than vermin), whether or not an injury is caused to the person or animal'.
- 18.1.4 All dog attack incidents brought to a council's attention, either verbally or in writing, should be reported on the Register. Councils must then decide what further investigation and action, if any, is needed – based on the details of the incident in question.

For detailed instructions on using the dog attack incident reporting module, see the Office's User Guide for the *Companion Animals Register Dog Attack Module*. You can access this via the 'dog attack – enter incident' function on the Register.

- 18.1.5 As well as reporting this information on the Register, councils must – under clause 217(1)(e) of the Local Government (General) Regulation 2005 – provide a statement in their annual report about the dog attack data they have reported to the Office that year.
- 18.1.6 Authorised officers are authorised by the Chief Executive, Local Government – in accordance with section 89(4)(c) of the Act – to disclose any relevant information about a dog attack to an officer of the Office of Local Government, the Minister for Local Government, or a member of that Minister's staff on their request. This authorisation exempts council authorised officers from the offences outlined in section 89(2) of the Act, but only applies to the disclosure of dog attack information to the people specified.
- 18.1.7 The Office will publish quarterly and yearly reports on the dog attack data reported by councils on our website at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

For more information about:

- dog attack reporting requirements, see [Circular 09-08](#).
- companion animals annual reporting requirements, see Chapter 16.

## **19 NEED MORE INFORMATION?**

### **19.1 Companion Animals Forms**

19.1.1 Supplies of all forms are available from the Government's printing contractor are available to order please click [here](#) to submit your order on-line. Alternatively, complete the [form](#) and fax it to Fuji Xerox Document Management Solutions Pty Limited on 02 9612 8605. Forms can also be downloaded electronically from the Office's website at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

### **19.2 Requests for access to the Companion Animals Register**

19.2.1 Authorisation of staff to access the Register can be requested by a Level 3 Register user or Council Manager by sending an email entitled 'Council name – authorisation of staff to use Register' to [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au). The information you need to include is listed in paragraph 2.1.13.

19.2.2 All users of the Register need to be familiar with this Guideline and the Register user manual that can be accessed through the main menu of the Register.

### **19.3 Updating companion animals policy**

19.3.1 The Office issues circulars to councils from time to time about companion animal issues. Topics covered in past circulars include instructions on accessing the Register, dealing with duplicate microchip numbers, and issues to do with proof of desexing. All council officers dealing with companion animals should familiarise themselves with the contents of these circulars and keep copies handy. Previously issued circulars that are still applicable may be seen on – and printed from – the Office's website at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

19.3.2 The companion animals home page on the website also has copies of various frequently asked questions and other publications, brochures and information about the Act. Councils may copy any of this information for their customers or staff.

19.3.3 It is important that councils keep the information available to their residents and ratepayers up-to-date. Information on council websites should be accurate at all times – particularly in relation to registration fees, penalties and any transition legislation. Websites should refer companion animals enquiries to the council, not the Office. The Office does not process registrations or changes of details for NSW residents.

### **19.4 Legislation and other printed publications**

19.4.1 Copies of the Act and the Regulation can be read on the Office's website at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au) or via [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

19.4.2 Authorised printed NSW legislation and legislative information publications are made available to the public by the Department of Finance and Services.



19.4.3 Printed copies of recently released Office publications including fluorescent registration reminder stickers are available to order please click [here](#) to submit your order on-line. Alternatively, complete the [form](#) and fax it to Fuji Xerox Document Management Solutions Pty Limited on 02 9612 8605.

## 19.5 Companion Animals Register User Support

19.5.1 The contact number for the Companion Animals Helpdesk is for authorised users only and must not be given out to members of the public for any reason. The purpose of the Helpdesk is to provide technical support for authorised users of the Register only. You can contact them on 1300 134 460 or [pets@olg.nsw.gov.au](mailto:pets@olg.nsw.gov.au).

19.5.2 Other relevant publications and resources

- a) [State Debt Recovery Office \(SDRO\) Review Guidelines](http://www.sdرو.nsw.gov.au/lib/docs/misc/br_001.pdf) – this document is aimed at members of the public wishing to contest penalty notices. It provides examples of the types of evidence, documents and information required by the SDRO when reviewing penalty notices.  
[http://www.sdرو.nsw.gov.au/lib/docs/misc/br\\_001.pdf](http://www.sdرو.nsw.gov.au/lib/docs/misc/br_001.pdf)
- b) [NSW Environment Protection Authority \(EPA\) Noise Guide for Local Government](http://www.epa.nsw.gov.au/noise/nqlg.htm) – this includes information about issuing nuisance orders under the Act for barking dogs. You can obtain a copy of the guide by calling OEH on 131 555.  
<http://www.epa.nsw.gov.au/noise/nqlg.htm>
- c) [Australian Institute of Local Government Rangers \(Inc\) website](http://www.nswranger.org.au/) – this contains information about upcoming training, meetings and seminars.  
<http://www.nswranger.org.au/>
- d) [The Local Government NSW Learning Solutions website](http://www.lgnsw.org.au/member-services/learning-solutions) – this includes dates and locations for relevant training.  
<http://www.lgnsw.org.au/member-services/learning-solutions>

Links to other relevant publications and resources are available under the 'Links' heading on the Dogs and cats page on the OLG website [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

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## ANNEXURE A

### Companion Animals Regulation 2008 (Extract)

#### Clause 24 Enclosure requirements for dangerous and restricted dogs

- (1) For the purposes of sections 51(1)(c) and 56(1)(a1) of the Act, the requirements set out in subclauses (2)–(4) are prescribed as the requirements that must be complied with in relation to an enclosure for a dangerous or restricted dog.
- (2) The enclosure must:
  - a) be fully enclosed, constructed and maintained in such a way so that the dog is not able to dig or otherwise escape under, over or through the enclosure
  - b) be constructed in such a way so that a person cannot have access to it without the assistance of an occupier of the property who is above the age of 18 years
  - c) be designed to prevent children from having access to the enclosure
  - d) not be located on the property in such a way so that people are required to pass through the enclosure to gain access to other parts of the property
  - e) have a minimum height of 1.8 m and a minimum width of 1.8 m
  - f) have an area of not less than 10 square metres for each dangerous or restricted dog kept on the property
  - g) have walls that are fixed to the floor and constructed to be no more than 50 mm from the floor
  - h) have walls, a fixed covering and a gate that are constructed of:
    - (i) brick, timber, iron or similar solid materials, or
    - (ii) mesh that complies with subclause (4), or
    - (iii) a combination of the materials referred to in subparagraphs (i) and (ii) above
  - i) have a floor that is constructed of sealed concrete and graded to fall to a drain for the removal of effluent, and
  - j) provide a weatherproof sleeping area of sufficient dimensions to enable each dangerous or restricted dog kept on the property to shelter from the weather.
- (3) Any gate to the enclosure must:
  - a) contain a self-closing and self-latching mechanism that enables the enclosure to be securely locked when the dog is in the enclosure
  - b) be kept locked when the dog is in the enclosure, and
  - c) display the warning sign referred to in clause 26.
- (4) Mesh used in the construction of an enclosure must be:
  - (a) chain mesh manufactured from at least 3.15 mm wire to form a maximum mesh spacing of 50 mm, or
  - (b) weldmesh manufactured from at least 4 mm wire with a maximum mesh spacing of 50 mm.

**ANNEXURE B**

**Model certificate of compliance for dangerous and restricted dog enclosures**

<Council Letterhead>

*Companion Animals Act 1998* - section 58H(2)  
Companion Animals Regulation 2008 – clauses 24 and 25

**CERTIFICATE OF COMPLIANCE WITH ENCLOSURE REQUIREMENTS  
FOR DANGEROUS OR RESTRICTED DOGS**

Name of owner(s) of dog(s): \_\_\_\_\_  
\_\_\_\_\_

Address where enclosure is located: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of dog(s): (1) \_\_\_\_\_

*Dog is a <dangerous/restricted> dog within the meaning of section \_\_\_\_\_ of the Companion Animals Act 1998.*

(2) \_\_\_\_\_

*Dog is a <dangerous/restricted> dog within the meaning of section \_\_\_\_\_ of the Companion Animals Act 1998.*

(3) \_\_\_\_\_

*Dog is a <dangerous/restricted> dog within the meaning of section \_\_\_\_\_ of the Companion Animals Act 1998.*

(4) \_\_\_\_\_

*Dog is a <dangerous/restricted> dog within the meaning of section \_\_\_\_\_ of the Companion Animals Act 1998.*

Microchip number(s): (1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_  
(4) \_\_\_\_\_

This is to certify that the enclosure constructed at the above address for the nominated dog(s) complies with the requirements prescribed by clause 24 of the Companion Animals Regulation 2008.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position held / title

**ANNEXURE C**

**<Council Letterhead>**

**<Owner's name>**

**<Owner's Address>**

**<Suburb> <State> <Postcode>**

---

Dear **<Owner's name>**

**NOTICE OF INTENTION TO DECLARE A DOG TO BE A RESTRICTED DOG**

**SECTION 58A COMPANION ANIMALS ACT 1998 ("the Act")**

***This document contains important information about your obligations under the Act. Please read it carefully. Contact the officer of this Council on the number below as soon as possible if you are unsure of your obligations or require further information.***

It has come to this Council's attention that you are the owner of a dog,

**Name (if known): <animal's name>**

**Microchip Number (if known): <microchip number>**

**Description (identifying marks etc, if known): <description>,**

kept at **<address where animal kept >** ("the property").

Council gives you Notice under section 58A of the Act of its intention to declare your dog to be a restricted dog.

This is because Council is of the opinion that your dog is:

**(mark appropriate box)**

- of a breed or kind of dog referred to in section 55(1) of the Act (see Schedule A to this Notice)

**Breed or kind: <insert name of alleged breed/cross-breed here>**

**OR**

- a cross-breed of a breed or kind of dog referred to in section 55(1) of the Act (see Schedule A to this Notice)

**Breed/Cross-breed or kind: <insert name of alleged breed/cross-breed here>**

DATED: **<written date here>**

.....  
**<NAME & TITLE OF PERSON SIGNING NOTICE>**

**<CONTACT PHONE NUMBER>**

## **REQUIREMENTS OF THIS NOTICE OF INTENTION TO BE COMPLIED WITH IMMEDIATELY**

Section 58B of the Act requires that you **immediately** ensure that at all times when the dog is away from the property where it is ordinarily kept:

- it is under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person (section 58B(1)(a)(i)), and
- it has a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal (section 58B(1)(a)(ii)).

**Note:** The dog must also be lifetime registered (including microchipping) within 7 days of the giving of this notice, if it is not already (section 58B(1)(b)).

You should also carefully note that:

- these requirements are in place for **28 days** or until Council notifies you otherwise (section 58B(3)(a) & (b)),
- an authorised officer may seize the dog if:
  - a. the officer is satisfied that the dog is not confined, tethered or restrained in such a way as to prevent the dog attacking or chasing a person lawfully at the property where the dog is ordinarily kept (section 58B(4)(a)(i)&(ii)) **or**
  - b. the dog has not been lifetime registered within 7 days of the giving of this notice (as required by section 58B(1)(b))

**Note:** Section 58B(4)(b) of the Act provides that an authorised officer may seize a dog that is subject to a Notice of Intention to declare the dog to be a Restricted Dog if the dog is not microchipped and lifetime registered at the time the Notice of Intention is issued.

- Sections 57A, 57B & 57C of the Act prohibit the selling (includes giving away), advertising for sale, accepting ownership of or the breeding of a proposed restricted dog or a restricted dog. Penalties apply.

## **WHAT HAPPENS NEXT**

**You have 28 days** from the giving of this Notice to provide proof, in accordance with the processes described in items 1 and 2 below, that your dog is either:

- **not** of a breed or kind referred to in Schedule A to this Notice (a “restricted breed”) **or**
- if it **is** a cross-breed of a restricted breed, that it is **not a danger** to the public **and is not likely**, without provocation, to bite any person or animal.

**Otherwise**, after 28 days this Council will declare your dog to be a restricted dog and you will have to comply with the special control requirements set out under section 56(1) of the Act and in clauses 24, 26 and 27 of the Companion Animals Regulation 2008 (see Schedule B to this Notice).

## **1. HOW TO PROVE THAT YOUR DOG IS NOT OF A RESTRICTED BREED**

- 1. Obtain a Certificate from Dogs NSW (Royal NSW Canine Council Limited)** (clause 28 of the Regulation)

**Within the 28 day notification period** provide this Council with a valid breed identification or registration certificate issued by Dogs NSW that also shows the unique identification (microchip) number implanted in the dog being to the effect that the dog is not a restricted breed or a cross-breed of a restricted breed, **in which case your dog will not be declared by this Council to be a restricted dog.**

(You should contact Dogs NSW on **1300 728 022** during office hours if you require further information regarding such certificates only)

**OR**

- 2. Obtain a Written Statement from an Approved Breed Assessor** (section 58C(2)).

**Within the 28 day notification period** contact the Companion Animals Register Helpdesk of the Division of Local Government on **1300 134 460** during office hours, which will provide you with a list of the approved breed assessors under the Act. You must then contact a breed assessor directly to organise a breed assessment of your dog at your own expense.

The breed assessor's role is to determine whether or not your dog is a restricted breed or a cross-breed of a restricted breed. The breed assessor will supply both you and this Council with a statement detailing the result of the breed assessment.

**NOTE:** Your dog **MUST** be microchipped prior to any assessment being undertaken by a breed and/or temperament assessor.

Under Guidelines for breed and temperament assessors, assessors may not conduct an assessment unless the dog's identity is able to be verified by its microchip.

## **OUTCOMES**

There are three possible outcomes of the **breed assessment** process:

### **a. Not Restricted**

If the approved breed assessor is of the opinion that your dog is **NOT a restricted breed or NOT a cross-breed of a restricted breed**, then this Council will **NOT** declare your dog to be a restricted dog. (The temperament assessment process outlined in item 2 below does not apply.)

### **b. Restricted**

If the approved breed assessor is of the opinion that your dog **IS a restricted breed**, then this Council **will declare your dog to be a RESTRICTED DOG. You MUST then, by law, comply with the control requirements set out in Schedule B to this Notice.**

### **c. Possible Restricted Cross-breed**

If the approved breed assessor is of the opinion that your dog **IS a CROSS-BREED** of a restricted breed then your dog will be declared to be a restricted dog **unless** you provide proof that your dog is **not a danger to the public and is not likely, without provocation, to bite any person or animal** (in accordance with the *temperament assessment* process outlined in item 2 below).

## **2. HOW TO PROVE THAT YOUR CROSS-BREED IS NOT A DANGER TO THE PUBLIC**

**Obtain a Written Statement from an Approved Temperament Assessor** (section 58C(2))

**Within the 28 day period** contact the Companion Animals Register Helpdesk of the Division of Local Government on **1300 134 460** during office hours, which will provide you with a list of the approved temperament assessors under the Act. You must then contact a temperament assessor directly to organise a temperament assessment of your dog at your own expense.

The temperament assessor's role is to determine whether or not your dog is a danger to the public and whether or not it is likely, without provocation, to attack or bite any person or animal. The temperament assessor will then supply both you and this Council with a statement detailing the result of the assessment.

### **OUTCOMES**

There are two possible outcomes of the **temperament assessment** process:

#### **a. Not Restricted**

If the approved temperament assessor is of the opinion that your dog is **NOT** a danger to the public and is **NOT LIKELY**, without provocation, to attack or bite any person or animal then your dog will **NOT** be declared a restricted dog by this Council.

#### **b. Restricted**

If the approved temperament assessor is of the opinion that your dog **IS** a danger to the public and **IS LIKELY**, without provocation, to attack or bite any person or animal **the Council will declare your dog to be a RESTRICTED DOG. You MUST then, by law, comply with the control requirements as set out in Schedule B to this Notice.**

***Council will contact you regarding the outcomes of the breed and temperament assessment processes.***

## **3. CAN I OBTAIN AN EXTENSION OF TIME?**

You should contact this Council as soon as possible if you are unable to obtain a breed assessment or temperament assessment **within 28 days**. Under section 58C(5) of the Act, the Council may grant an extension of time because of such extenuating circumstances.

**NOTE:** If you decide not to provide this Council with the written information described in items 1 or 2 above within the 28 day notification period, or are not given an extension of time as described in item 3 above, then this Council will declare your dog to be a restricted dog.

**If you wish to obtain copies of the sections of the *Companion Animals Act 1998* or clauses of the *Companion Animals Regulation 2008* that set out the requirements listed below, please contact this Council, download from <http://www.legislation.nsw.gov.au/>, or contact Fuji Xerox Document Management Solutions on telephone (02) 9311 9899 for information about purchasing printed copies.**

## **SCHEDULE A**

### **RESTRICTED BREEDS UNDER SECTION 55(1) OF THE *COMPANION ANIMALS ACT 1998*:**

- (a) American pit bull terrier or pit bull terrier
- (b) Japanese tosa
- (c) dogo Argentino
- (d) fila Brasileiro
- (e) Perro de Presa Canario or Presa Canario
- (f) any other dog of a breed, kind or description whose importation into Australia is prohibited by or under the *Customs Act 1901*.

## **SCHEDULE B**

### **PART 1**

### **CONTROL REQUIREMENTS FOR RESTRICTED DOGS UNDER SECTION 56 OF THE *COMPANION ANIMALS ACT 1998***

**If your dog is declared by this Council to be a restricted dog you MUST comply with the following control requirements:**

#### **Section 56 Owner of restricted dog must comply with control requirements**

- (1) The owner of a restricted dog must ensure that each of the following requirements is complied with:

(a) **Desexing**

In the case of a dog declared by a council under Division 6 of Part 5 to be a restricted dog, the dog must be desexed within 28 days after it is declared to be a restricted dog (if not already desexed).

(a1) **Enclosure requirements**

While the dog is on the property on which the dog is ordinarily kept, the dog must be kept in an enclosure that complies with the requirements prescribed by the regulations.

*(See clause 24 of the Regulation as set out under Part 2 of this Schedule for specific enclosure requirements).*

The owner has 3 months from the date on which the dog is declared to be a restricted dog under Division 6 of Part 5 to comply with this paragraph.

- (a2) Until such time as the requirement under paragraph (a1) is complied with in relation to the dog, the dog must, while on property on which it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

- (b) The dog must not at any time be in the **sole charge** of a person **under the age of 18 years**.

- (c) One or more **signs** must be displayed on that property showing the words **“Warning Dangerous Dog”** in letters clearly visible from the boundaries of the property on which



the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.

*(See clause 26 of the Regulation as set out under Part 2 to this Schedule for specific signage requirements.)*

**(c1) Distinctive collar must be worn**

The dog must at all times wear a collar of the kind prescribed by the regulations.

*(See clause 27 of the Regulation as set out under Part 2 of this Schedule for specific collar requirements.)*

**(d) Dog must be kept on lead and be muzzled**

Whenever the dog is outside its enclosure, the dog:

- (i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
- (ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the restricted dog) under his or her control at the one time.

(e), (f) (Repealed)

**(g) The owner must notify the council** of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:

- (i) that the dog (with or without provocation) has attacked or injured a person or animal (other than vermin)—notice to be given within 24 hours after the attack or injury.
- (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed.
- (iii) that the dog has died—notice to be given as soon as practicable after the death.
- (iv) (Repealed)
- (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location.
- (vi) that the dog is being ordinarily kept at a different location in the area of the council - notice to be given as soon as practicable after the change of location.

**(h) Registration of dog**

In the case of a dog declared by a council under Division 6 of Part 5 to be a restricted dog, the dog must, regardless of its age, be registered (if not already registered) within 7 days after it is declared to be a restricted dog.

- (2) An owner of a dog who does not comply with any of the requirements of this section is guilty of an offence.

Maximum penalty: 150 penalty units.

- (3) The requirements imposed under this section on the owner of a restricted dog are additional to the other requirements of this Act imposed on the owner of a dog.
- (4) In the event of an inconsistency between this section and the provisions of any agreement, covenant or instrument, this section is to prevail, but to the extent only of the inconsistency.

## **PART 2**

### **CONTROL REQUIREMENTS FOR RESTRICTED DOGS UNDER THE COMPANION ANIMALS REGULATION 2008**

**If your dog is declared by this Council to be a restricted dog you MUST comply with the following control requirements:**

#### **Clause 24 Enclosure requirements for restricted dogs**

- (1) For the purposes of section 56(1)(a1) of the Act, the requirements set out in subclauses (2)–(4) are prescribed as the requirements that must be complied with in relation to an enclosure for a dangerous or restricted dog.
- (2) The enclosure must:
- (a) be fully enclosed, constructed and maintained in such a way that the dog is not able to dig or otherwise escape under, over or through the enclosure, and
  - (b) be constructed in such a way that a person cannot have access to it without the assistance of an occupier of the property who is above the age of 18 years, and
  - (c) be designed to prevent children from having access to the enclosure, and
  - (d) not be located on the property in such a way that people are required to pass through the enclosure to gain access to other parts of the property, and
  - (e) have a minimum height of 1.8 m and a minimum width of 1.8 m, and
  - (f) have an area of not less than 10 square metres for each dangerous or restricted dog kept on the property, and
  - (g) have walls that are fixed to the floor and constructed to be no more than 50 mm from the floor, and
  - (h) have walls, a fixed covering and a gate that are constructed of:
    - (i) brick, timber, iron or similar solid materials, or
    - (ii) mesh that complies with subclause (4), or
    - (iii) a combination of the materials referred to in subparagraphs (i) and (ii), and

- (i) have a floor that is constructed of sealed concrete and graded to fall to a drain for the removal of effluent, and
- (j) provide a weatherproof sleeping area of sufficient dimensions to enable each dangerous or restricted dog kept on the property to shelter from the weather.

(3) Any gate to the enclosure must:

- (a) contain a self-closing and self-latching mechanism that enables the enclosure to be securely locked when the dog is in the enclosure, and
- (b) be kept locked when the dog is in the enclosure, and
- (c) display the warning sign referred to in clause 26.

(4) Mesh used in the construction of an enclosure must be:

- (a) chain mesh manufactured from at least 3.15mm wire to form a maximum mesh spacing of 50mm, or
- (b) weldmesh manufactured from at least 4mm wire with a maximum mesh spacing of 50mm.

### **Clause 25 Certificate of Compliance for restricted dog enclosures**

Owners of restricted dogs must obtain a one-off certificate of compliance issued by an authorised officer of this council for the prescribed enclosure (section 58H).

The certificate will verify that the enclosure for the dangerous or restricted dog required under section 56(1)(a1) of the Act is compliant with the specifications for building such enclosures that are set out under clause 24 of the Regulation.

The fee for the issue of a certificate of compliance (after inspection) is currently prescribed by clause 25 of the Regulation and set at a maximum of \$150.

The certificate must be obtained within the time limit for construction of the enclosure under section 56(1)(a1).

### **Clause 26 Warning signs for restricted dogs**

For the purposes of section 56(1)(c) of the Act, a sign to be displayed on the property on which a dangerous dog or restricted dog is ordinarily kept must comply with the following requirements:

- (a) the sign must be no smaller than 40cm x 40cm
- (b) the sign must be made of durable materials
- (c) the sign must show the words "Warning Dangerous Dog" in letters:
  - (i) that are of sufficient size so as to be clearly visible from the boundaries of the property, and
  - (ii) that are, in any case, at least 50mm high and 10mm wide.

## **Clause 27 Distinctive collars for restricted dogs**

For the purposes of section 56(1)(c1) of the Act, a collar is of the prescribed kind if:

- (a) it consists of red stripes alternatively spaced with yellow stripes each being a width of 25mm and set diagonal to the rim of the collar at an angle of 45 degrees, and
- (b) at least one of the 2 colours reflects light in the dark, and
- (c) it is made of durable materials, and
- (d) it is able to be securely fastened, and
- (e) it has a device or other facility that enables it to be attached to a leash, and
- (f) it has a minimum width of:
  - (i) 25mm for a dog weighing less than 20 kg or
  - (ii) 40mm for a dog weighing between 20 kg and 40 kg or
  - (iii) 50mm for a dog weighing more than 40 kg.

## **PART 3**

### **SEIZURE AND IMMEDIATE DESTRUCTION OF RESTRICTED DOGS**

Under section 58G(1) of the *Companion Animals Act 1998*, if your dog is declared to be a restricted dog, an authorised officer may seize and immediately destroy the dog if it attacks or bites a person or animal (other than vermin) without provocation. A restricted dog that attacks or bites a person or animal has demonstrated that it cannot be kept safely in the community.

## ANNEXURE D

### Model Restricted Dog Declaration

**Note:** Authorised officers should refer to section 10.7 of this Guideline when using this model declaration.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

---

Dear <Owner's name>

### RESTRICTED DOG DECLARATION

Section 58C Companion Animals Act 1998 (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a dog:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>

kept at <address where the dog is ordinarily kept > (the property).

Council declares the dog to be a restricted dog under section 58C of the Act.

The dog is declared to be a restricted dog because:

(please mark appropriate box)

- It has been found by an approved breed assessor to be a pure bred restricted dog.
- It has been found by an approved breed assessor to be a cross-breed of a restricted dog and has been found by an approved temperament assessor to be likely, without provocation, to attack or bite any person or animal.
- It has not been assessed by an approved breed assessor within the time period specified in the Notice of Intention to Declare a Dog to be a Restricted Dog that you were given by council.
- It has not been assessed by an approved temperament assessor within the time period specified in the Notice of Intention to Declare a Dog to be a Restricted Dog that you were given by council.

This declaration:

- a) has effect from the date of this declaration <insert date> or the date on which the declaration is given (whichever is the later).
- b) applies throughout NSW. It is not limited in its operation to the council area where the declaration was made.
- c) is final and is not subject to any appeal or review.

### **What are the requirements of this declaration?**

Under section 56 of the Act, you must comply with all of the following requirements within the time periods specified below.

**Note:** Schedule B, Part 2 of this declaration contains detailed specifications about the control requirements referred to below. However, you may also wish to seek and be guided by independent legal advice. It is also recommended that you keep any related documentation for your records – for example, the Notice of Intention to Declare a Dog to be a Restricted Dog, Breed Assessment Statement, Temperament Assessment Statement etc.

### **What must you do immediately?**

1. Ensure that, while on the property on which it is ordinarily kept, the dog is kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

**Note:** This requirement remains in force until the prescribed enclosure requirements set out in Clause 24 of the Regulation are complied with (attached at Schedule B, Part 2).

2. Ensure that at all times when the dog is away from the property where it is ordinarily kept:
  - a) it is under the effective control of some competent person by means of an adequate chain, cord or leash
  - b) it has a muzzle securely fixed on its mouth that will prevent it biting any person or animal.

**Note:** A dog is not considered to be under 'effective control' if a person has more than 2 dogs, one of which is the dog the subject of the declaration, under his or her control at the one time.

3. Ensure that the dog is not at any time in the sole charge of a person under the age of 18 years.

### **What must you do within 7 days of the date of this declaration?**

1. Register the dog, if it is not already registered. The dog must be microchipped before you can register it.

### **What must you do within 28 days of the date of this declaration?**

1. Ensure that the dog is desexed.
2. Ensure that one or more warning signs are displayed on the property where the dog is ordinarily kept showing the words 'Warning Dangerous Dog' in letters clearly visible from the boundaries of the property.

**Note:** Refer to clause 26 of the Companion Animals Regulation 2008 excerpt (attached at Schedule B, Part 2) for specifications.

3. Ensure that the dog at all times wears the distinctive collar prescribed by the regulations.

**Note:** Refer to clause 27 of the Companion Animals Regulation 2008 excerpt (attached at Schedule B, Part 2) for specifications.

### **What must you do within 90 days of the date of this declaration?**

1. Ensure that the dog is kept in the prescribed enclosure in accordance with the specifications set out in Clause 24 of the Regulation (attached at Schedule B, Part 2 to this declaration).

**Note:** Owners of restricted dogs must obtain a one-off certificate of compliance issued by an authorised officer of this council for the prescribed enclosure (see Schedule B, Part 2 for more information). Also, until this requirement is complied with, the dog must, while on the property where it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

### **What must you not do?**

You must not:

1. Sell or advertise the sale of the dog or you will be guilty of an offence. Anyone who accepts ownership of the dog is also guilty of an offence. The term 'sell' includes transferring ownership by any means, including as a gift.
2. Cause or permit the dog to breed with any other dog or advertise that the dog is available for breeding or you will be guilty of an offence.

### **What changes must be notified?**

You must notify the council of the area in which the dog is ordinarily kept of the following matters within the times specified:

- a) That the dog, with or without provocation, has attacked or injured a person or animal (other than vermin) – notice to be given within 24 hours after the attack or injury.
- b) That the dog cannot be found – notice to be given within 24 hours after the dog's absence is first noticed.
- c) That the dog has died – notice to be given as soon as practicable after the death.
- d) That the dog is no longer being ordinarily kept in the council area – notice to be given as soon as practicable after the change of location.
- e) That the dog is being ordinarily kept at a different location in the council area – notice to be given as soon as practicable after the change of location.

### **What happens if you do not comply with these requirements?**

There is a maximum penalty of \$16,500 for failing to comply with any of the requirements of this declaration.

An authorised council officer may also seize and immediately destroy the dog if:

- a) The dog attacks or bites a person or animal (other than vermin) without provocation (in accordance with section 58G(1) of the Act). A restricted dog that attacks or bites a person or animal has demonstrated that it cannot be kept safely in the community.
- b) The control requirements for the dog are not complied with. However, if the dog has been seized on this ground, the authorised officer may authorise the destruction of the dog only if they are satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.

If the dog is seized for any of these reasons, you cannot make a claim for the dog unless an authorised council officer is satisfied that each of the requirements set out in this declaration is capable of being complied with.

If you need any further information about this declaration, please contact the officer listed below.

Dated: <insert date here>

.....

<Name & title of person signing the declaration>

<Contact phone number>

## SCHEDULE A

### RESTRICTED BREEDS UNDER SECTION 55 (1) OF THE *COMPANION ANIMALS ACT 1998*:

- a) American pit bull terrier or pit bull terrier
- b) Japanese tosa
- c) dogo Argentino
- d) fila Brasileiro
- e) Perro de Presa Canario or Presa Canario
- f) any other dog of a breed, kind or description whose importation into Australia is prohibited by or under the Customs Act 1901.

## SCHEDULE B

### PART 1 CONTROL REQUIREMENTS FOR RESTRICTED DOGS UNDER SECTION 56 OF THE *COMPANION ANIMALS ACT 1998*

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared restricted dogs only.

**As the owner of a declared restricted dog you must comply with the following control requirements:**

#### **Section 56 - Owner of restricted dog must comply with control requirements**

(1) The owner of a restricted dog must ensure that each of the following requirements is complied with:

a) **Desexing**

In the case of a dog declared by a council under Division 6 of Part 5 to be a restricted dog, the dog must be desexed within 28 days after it is declared to be a restricted dog.

a1) **Enclosure requirements**

While the dog is on property on which the dog is ordinarily kept, the dog must be kept in an enclosure that complies with the requirements prescribed by the regulations.

*(See clause 24 of the Regulation as set out under Part 2 of this Schedule for specific enclosure requirements).*

The owner has 3 months from the date on which the dog is declared to be a restricted dog under Division 6 of Part 5 to comply with this paragraph.

a2) Until such time as the requirement under paragraph (a1) is complied with in relation to the dog, the dog must, while on property on which it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

b) The dog must not at any time be in the sole charge of a person under the age of 18 years.

c) One or more signs must be displayed on that property showing the words "Warning Dangerous Dog" in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.

*(See clause 26 of the Regulation as set out under Part 2 to this Schedule for specific signage requirements.)*



**c1) Distinctive collar must be worn**

The dog must at all times wear a collar of the kind prescribed by the regulations.

*(See clause 27 of the Regulation as set out under Part 2 of this Schedule for specific collar requirements.)*

**d) Dog must be kept on lead and be muzzled**

Whenever the dog is outside its enclosure, the dog:

- (i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
- (ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the restricted dog) under his or her control at the one time.

**e) - f) (Repealed)**

**g) The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:**

- (i) that the dog (with or without provocation) has attacked or injured a person or animal (other than vermin)—notice to be given within 24 hours after the attack or injury
- (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed
- (iii) that the dog has died—notice to be given as soon as practicable after the death
- (iv) (Repealed)
- (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location
- (vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location.

**h) Registration of dog**

In the case of a dog declared by a council under Division 6 of Part 5 to be a restricted dog, the dog must, regardless of its age, be registered (if not already registered) within 7 days after it is declared to be a restricted dog.

- (2) An owner of a dog who does not comply with any of the requirements of this section is guilty of an offence.
- (3) Maximum penalty: 150 penalty units (\$16,500).
- (4) The requirements imposed under this section on the owner of a restricted dog are additional to the other requirements of this Act imposed on the owner of a dog.
- (5) In the event of an inconsistency between this section and the provisions of any agreement, covenant or instrument, this section is to prevail, but to the extent only of the inconsistency.

## **PART 2 - CONTROL REQUIREMENTS FOR RESTRICTED DOGS UNDER THE COMPANION ANIMALS REGULATION 2008**

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared restricted dogs only.

**As the owner of a declared restricted dog you must comply with the following control requirements:**

### **Clause 24 Enclosure requirements for restricted dogs**

(1) For the purposes of sections 51 (1) (c) and 56 (1) (a1) of the Act, the requirements set out in subclauses (2)–(4) are prescribed as the requirements that must be complied with in relation to an enclosure for a restricted dog.

(2) The enclosure must:

- a) be fully enclosed, constructed and maintained in such a way so that the dog is not able to dig or otherwise escape under, over or through the enclosure, and
- b) be constructed in such a way so that a person cannot have access to it without the assistance of an occupier of the property who is above the age of 18 years, and
- c) be designed to prevent children from having access to the enclosure, and
- d) not be located on the property in such a way so that people are required to pass through the enclosure to gain access to other parts of the property, and
- e) have a minimum height of 1.8 m and a minimum width of 1.8 m, and
- f) have an area of not less than 10 square metres for each dangerous or restricted dog kept on the property, and
- g) have walls that are fixed to the floor and constructed to be no more than 50 mm from the floor, and
- h) have walls, a fixed covering and a gate that are constructed of:
  - (i) brick, timber, iron or similar solid materials, or
  - (ii) mesh that complies with subclause (4), or
  - (iii) a combination of the materials referred to in subparagraphs (i) and (ii), and
- i) have a floor that is constructed of sealed concrete and graded to fall to a drain for the removal of effluent, and
- j) provide a weatherproof sleeping area of sufficient dimensions to enable each dangerous or restricted dog kept on the property to shelter from the weather.

(3) Any gate to the enclosure must:

- a) contain a self-closing and self-latching mechanism that enables the enclosure to be securely locked when the dog is in the enclosure, and
- b) be kept locked when the dog is in the enclosure, and
- c) display the warning sign referred to in clause 26.

(4) Mesh used in the construction of an enclosure must be:

- a) chain mesh manufactured from at least 3.15 mm wire to form a maximum mesh spacing of 50 mm, or
- b) weldmesh manufactured from at least 4 mm wire with a maximum mesh spacing of 50 mm.

### **Clause 25 Certificate of Compliance for restricted dog enclosures**

Owners of restricted dogs must obtain a one-off certificate of compliance issued by an authorised officer of this council for the prescribed enclosure (sec 58H).

The certificate will verify that the enclosure for the dangerous or restricted dog required under sections 51(1)(c) and 56(1)(a1) of the Act is compliant with the specifications for building such enclosures that are set out under clause 24 of the Regulation.

The fee for the issue of a certificate of compliance (after inspection) is currently prescribed by clause 25 of the Regulation and set at a maximum of \$150.

The certificate must be obtained within the time limit for construction of the enclosure under section 56(1)(a1).

### **Clause 26 Warning signs for restricted dogs**

For the purposes of sections 51 (1) (d) and 56 (1) (c) of the Act, a sign to be displayed on the property on which a dangerous dog or restricted dog is ordinarily kept must comply with the following requirements:

- a) the sign must be no smaller than 40 cm × 40 cm
- b) the sign must be made of durable materials
- c) the sign must show the words “Warning Dangerous Dog” in letters:
  - (i) that are of sufficient size so as to be clearly visible from the boundaries of the property, and
  - (ii) that are, in any case, at least 50 mm high and 10 mm wide.

### **Clause 27 Distinctive collars for restricted dogs**

For the purposes of section 56 (1) (c1) of the Act, a collar is of the prescribed kind if:

- a) it consists of red stripes alternatively spaced with yellow stripes each being a width of 25 mm and set diagonal to the rim of the collar at an angle of 45 degrees, and
- b) at least one of the 2 colours reflects light in the dark, and
- c) it is made of durable materials, and
- d) it is able to be securely fastened, and
- e) it has a device or other facility that enables it to be attached to a leash, and
- f) it has a minimum width of:
  - (i) 25 mm for a dog weighing less than 20 kg or
  - (ii) 40 mm for a dog weighing between 20 kg and 40 kg or
  - (iii) 50 mm for a dog weighing more than 40 kg.

### **Clause 28 Breed identification or registration certificates issued by Canine Council (Dogs NSW)**

Any breed identification certificate or breed registration certificate issued by the Royal New South Wales Canine Council Limited in relation to a dog is prescribed for the purposes of section 58C(3) of the Act, but only if the certificate contains the unique identification number allocated to the microchip that has been implanted in the dog in connection with its identification under this Regulation.

## **PART 3 ADDITIONAL REQUIREMENTS OF COMPANION ANIMALS ACT 1998 FOR RESTRICTED DOGS**

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared restricted dogs only.

**As the owner of a declared restricted dog you must comply with the following control requirements:**

### **57 Restricted dog may be seized if control requirements not complied with**

#### **(1) Seizure during transition period**

An authorised officer may, during the transition period, seize a restricted dog if the officer is satisfied that any of the requirements of section 56 have not been complied with in relation to the dog.

#### **(2) If a dog is seized under subsection (1), Part 7 applies in relation to the dog.**

#### **(3) However, a claim for the dog may be made under section 64 only if an authorised officer of the council of the area in which the dog is ordinarily kept is satisfied that each of the requirements of section 56 is capable of being complied with in relation to the dog.**

#### **(4) Seizure after transition period**

If, after the transition period, an authorised officer of a council is satisfied that any of the requirements of section 56 have not been complied with in relation to a restricted dog, the authorised officer may seize the dog.

#### **(5) If a dog is seized under subsection (4):**

(a) the dog is to be delivered as soon as possible to a council pound, and

(b) the council or the pound operator, as the case requires, may destroy the dog.

#### **(6) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under subsection (4).**

### **57A Prohibition on selling restricted dog or proposed restricted dog**

#### **(1) A person who sells, or advertises the sale of, a restricted dog or proposed restricted dog is guilty of an offence.**

Maximum penalty: 150 penalty units (\$16,500).

**Note.** The term “sell” extends to the transfer of owner by any means, including by gift.

Abandoning an animal is also an offence— see section 11 of the *Prevention of Cruelty to Animals Act 1979*.

#### **(2) A person does not commit an offence under this section by reason only of surrendering a restricted dog or proposed restricted dog to a council pound or an approved animal welfare organisation.**

**Note.** A restricted dog that is surrendered to a council pound or an approved animal welfare organisation cannot be sold.

### **57B Prohibition on accepting ownership of restricted dog or proposed restricted dog**

#### **(1) A person who accepts ownership of a restricted dog or a proposed restricted dog is guilty of an offence.**

Maximum penalty: 150 penalty units (\$16,500).

- (2) A person does not commit an offence under this section:
- a) by reason only of taking delivery of, or detaining, a dog under Part 7 or as the consequence of a dog being surrendered to a council pound or an approved animal welfare organisation, or
  - b) if the person does not know, or could not reasonably be expected to know, that the dog was a restricted dog or proposed restricted dog.

### **57C Prohibition on breeding restricted dog or proposed restricted dog**

A person:

- a) who causes or permits a restricted dog or proposed restricted dog to breed with any other dog, or
- b) who advertises that a restricted dog or proposed restricted dog is available for breeding, is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

### **57D Declared restricted dogs may be seized and destroyed after transition period**

- (1) This section applies to any dog that becomes, any time after the transition period, a restricted dog because of a declaration by an authorised officer of a council under Division 6 of this Part.
- (2) However, this section does not apply to any such dog if:
- a) the dog was, before the relevant date, registered under this Act (or a corresponding Act of another State or Territory) otherwise than as a breed or kind of dog referred to in section 55 (1) (a)–(d1) or as a cross-breed of any such breed or kind of dog, and
  - b) no person has been convicted, whether before or after the relevant date, of an offence under section 16 (1), (1AA) or (1AB) (or a similar offence under a corresponding Act of another State or Territory) as a result of the dog rushing at, attacking, biting, harassing or chasing any person or animal.
- (3) An authorised officer may seize a dog to which this section applies. The officer may do so regardless of whether the requirements of section 56 have been, or are capable of being, complied with in relation to the dog.
- (4) If a dog is seized under subsection (3):
- a) the dog is to be delivered as soon as possible to a council pound, and
  - b) an authorised officer of a council may authorise the destruction of the dog.
- (5) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under subsection (3).

### **58 Civil liability of owner of restricted dog**

The mere fact that a dog has at any time been declared to be restricted under this Act does not affect the civil liability of the owner of the dog in any proceedings (other than proceedings under this Act).

## **58G Power to seize restricted dog in certain circumstances**

### **(1) Seizing restricted dog that attacks**

An authorised officer may seize a restricted dog if the dog attacks or bites a person or animal (other than vermin) without provocation.

**Note.** See section 57 (4) for the power to seize a restricted dog for non-compliance with any of the control requirements under section 56.

### **(2) If a dog is seized under this section:**

- a) the dog is to be delivered as soon as possible to a council pound, and
- b) an authorised officer of a council may authorise the destruction of the dog.

### **(3) However, if the dog has been seized under subsection (1A), the authorised officer may authorise the destruction of the dog only if the officer is satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.**

### **(4) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under this section.**

### **(5) This section does not limit the power of an authorised officer to seize a dangerous or restricted dog under any other provision of this Act.**

## **58H Certificate of compliance required restricted dog enclosures**

### **(1) A person must not own a dangerous dog or restricted dog unless a certificate of compliance under this section is in force in relation to the enclosure in which the dog is required to be kept under section 51 (1) (c) or 56 (1) (a1) (as the case requires).**

Maximum penalty: 100 penalty units (\$11,000).

### **(2) An authorised officer of a council may issue a certificate of compliance in relation to the enclosure in which a dangerous or restricted dog is required to be kept if:**

- a) the officer is satisfied that the enclosure complies with the relevant requirements imposed under section 51 (1) (c) or 56 (1) (a1), and
- b) the fee prescribed by the regulations (or such fee as does not exceed the prescribed fee) in connection with issuing the certificate is paid to the council.

### **(3) A certificate of compliance in relation to a dog enclosure may be revoked at any time by an authorised officer of a council if the officer is satisfied that the enclosure does not comply with the relevant requirements.**

### **(4) A person does not commit an offence under this section:**

- a) in the case of a dog that is a dangerous dog or restricted dog as at the date on which this section commences – until after the period of 28 days following that commencement, or
- b) in any other case—until after sections 51 (1) (c) or 56 (1) (a1) is required to be complied with.

## ANNEXURE E

### Model Notice of Intention to Declare a Dog to be a Dangerous Dog

**Note:** Authorised officers should refer to section 9.6 of this Guideline when using this model notice.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

---

---

Dear <Owner's name>

#### **NOTICE OF INTENTION TO DECLARE A DOG TO BE A DANGEROUS DOG**

Section 35 *Companion Animals Act 1998* (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a dog:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>  
kept at <address where animal kept > (the property).

Council gives notice of its intention to declare the dog to be a dangerous dog under section 35 of the Act.

The dog is intended to be declared dangerous because Council alleges that it:

(please mark appropriate box)

- has, without provocation, killed a person or animal (other than vermin)
- has, without provocation, attacked a person or animal (other than vermin)
- has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin)
- is kept or used for hunting
- has been declared a dangerous dog under a law of another State or a Territory that corresponds with this Act.

#### **Details of alleged incident (or relevant jurisdiction)**

<insert details of alleged incident or relevant jurisdiction>

## What must you do immediately?

Under section 36 of the Act, you must comply with all of the following requirements from the date you receive this notice. You must:

1. Ensure that at all times when the dog is away from the property where it is ordinarily kept:
  - a) it is under the effective control of some competent person by means of an adequate chain, cord or leash
  - b) it has a muzzle securely fixed on its mouth that will prevent it from biting any person or animal.

**Note:** A dog is not considered to be under 'effective control' if a person has more than 2 dogs, one of which is the dog the subject of this proposed declaration, under his or her control at the one time.

2. Register the dog (if it is not already registered) within 7 days after receiving this notice. The dog must be microchipped before you can register it.

**Note:** Section 36(3)(b) of the Act provides that an authorised officer may seize a dog that is subject to a notice of intention to declare the dog to be a Dangerous Dog, if the dog is not microchipped and lifetime registered at the time the Notice of Intention is issued.

## What happens if you do not comply with these requirements?

There is a maximum penalty of \$5,500 if all of these conditions are not met.

An authorised council officer may also seize the dog if they are satisfied that you have not complied with all these requirements.

If your dog is seized for this reason, you cannot make a claim for the dog unless an authorised council officer is satisfied that:

- a) you are capable of complying with the 'immediate' requirements listed above
- b) the dog has been registered.

## Can you contest this notice?

You (or someone on your behalf) may make representations to Council – within 7 days of the date this notice was given to you – about:

- a) why the declaration should not be made
- b) the terms of the declaration
- c) the period for compliance with the declaration.

Any representations made by you (or on your behalf) must be made to  
<Insert Council contact details>

If you choose to contest this notice, Council has 28 days after the date the notice is given to you to assess your representations and notify you of its decision. During this period you must still continue to comply with the 'immediate' requirements set out above.

If you choose not to contest this declaration, the dog will be declared dangerous after 7 days from the date this notice was given to you.



**What happens if your dog is declared dangerous?**

If your dog is declared dangerous, Council will serve you with a Dangerous Dog Declaration. You must then, by law, comply with the control requirements set out in Schedule A to this Notice. This is an excerpt from the *Companion Animals Act 1998* and Companion Animals Regulation 2008 about declared dangerous dogs.

Note: A dangerous dog declaration applies throughout NSW. It is not limited to the council area where the declaration was made.

If you need any further information about this notice, please contact the officer listed below.

Dated: *<insert date here>*

.....

*<Name & title of person signing the notice>*

*<Contact phone number>*

## SCHEDULE A

### PART 1 - CONTROL REQUIREMENTS OF *COMPANION ANIMALS ACT 1998* REGARDING DECLARED DANGEROUS DOGS

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared dangerous dogs only.

**If your dog is declared dangerous by this Council you must comply with the following control requirements:**

#### Division 4 Responsibilities of owners of dangerous dogs

##### 51 Owner of dangerous dog must comply with control requirements

(1) The owner of a dog that is declared to be dangerous under this Act must ensure that each of the following requirements is complied with while the declaration is in force:

- a) The dog must be desexed (if it is not already desexed) within 28 days after it is declared a dangerous dog. If the owner appeals against the declaration, the operation of this paragraph is stayed until the appeal is either withdrawn or determined.
- b) The dog must not at any time be in the sole charge of a person under the age of 18 years.
- c) **Enclosure requirements**

While the dog is on property on which the dog is ordinarily kept, the dog must be kept in an enclosure that complies with the requirements prescribed by the regulations. The owner has 3 months from the date on which the dog is declared dangerous to comply. In the case of an existing dangerous dog, the owner has 6 months from the relevant date to comply.

**Note.** A certificate of compliance in relation to the prescribed enclosure must be obtained by the owner of the dog—see section 58H.

- c1) Until such time as the requirement under paragraph (c) is complied with, the dog must, while on property on which it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.
- d) One or more signs must be displayed on that property showing the words “Warning Dangerous Dog” in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.

##### d1) **Distinctive collar must be worn**

The dog must at all times wear a collar of the kind prescribed by the regulations.

##### e) **Dog must be kept on lead and be muzzled**

Whenever the dog is outside its enclosure, the dog:

- (i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
- (ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

**Note:** For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the dangerous dog) under his or her control at the one time.

f)–h) (Repealed)

- i) The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:
  - (i) that the dog (with or without provocation) has attacked or injured a person or an animal (other than vermin)—notice to be given within 24 hours after the attack or injury,
  - (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed,
  - (iii) that the dog has died—notice to be given as soon as practicable after the death,
  - (iv) (Repealed)
  - (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location,
  - (vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location.
- j) If the owner intends to keep the dog in the area of a council that is not the area in which the dog was ordinarily kept when the declaration was made, the owner must notify the council of the area in which the dog is intended to be ordinarily kept of his or her intention to do so.
- k) The dog must, regardless of its age, be registered under this Act (if not already so registered) within 7 days after it is declared a dangerous dog.

**Note.** Section 11 also requires the owner of a dog to notify the Chief Executive, Local Government within 7 days after a Court declares the dog a dangerous dog or revokes the declaration. If the declaration is made or revoked by a council, the council is required to notify the Chief Executive, Local Government (see section 40).

- (2) An owner of a dog who does not comply with any of the requirements of this section is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

- (3) **Exemption from being on lead and muzzled while hunting**  
In the case of a dog that has been declared dangerous on the ground that it is kept or used for the purposes of hunting, the requirements imposed under subsection (1) (e) do not apply while the dog is actually engaged in lawful hunting.
- (4) The requirements imposed under this section on the owner of a dangerous dog are additional to the other requirements of this Act imposed on the owner of a dog.
- (5) In subsection (1) (c):

**existing dangerous dog** means a dog that is the subject of a declaration by a council or court under this Part and in force immediately before the relevant date.

**relevant date** means the date on which this subsection (as inserted by the *Companion Animals Amendment Act 2005*) commences.

## **52 Dangerous dog may be seized if control requirements not complied with**

- (1) An authorised officer may seize a dangerous dog if the officer is satisfied that any of the requirements of section 51 have not been complied with in relation to the dog.
- (2) If a dog is seized under subsection (1), Part 7 applies in relation to the dog.
- (3) However, a claim for the dog may be made under section 64 only if an authorised officer of the council of the area in which the dog is ordinarily kept is satisfied that each of the requirements of section 51 is capable of being complied with in relation to the dog.

## **52A Prohibition on selling dangerous dog or proposed dangerous dog**

- (1) A person who sells, or advertises the sale of, a dangerous dog or proposed dangerous dog is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

**Note.** The term “sell” extends to the transfer of owner by any means, including by gift.

Abandoning an animal is also an offence—see section 11 of the *Prevention of Cruelty to Animals Act 1979*.

- (2) A person does not commit an offence under this section by reason only of surrendering a dangerous dog or proposed dangerous dog to a council pound or an approved animal welfare organisation.

**Note.** A dangerous dog that is surrendered to a council pound or an approved animal welfare organisation cannot be sold.

- (3) In this section and in section 52B, **proposed dangerous dog** means a dog that is the subject of a proposed declaration under Division 1.

## **52B Prohibition on accepting ownership of dangerous dog or proposed dangerous dog**

- (1) A person who accepts ownership of a dangerous dog or proposed dangerous dog is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

- (2) A person does not commit an offence under this section:

- a) by reason only of taking delivery of, or detaining, a dog under Part 7 or as the consequence of a dog being surrendered to a council pound or an approved animal welfare organisation, or
- b) if the person does not know, or could not reasonably be expected to know, that the dog was a dangerous dog or proposed dangerous dog.

## **53 Inconsistency with agreements**

In the event of an inconsistency between this Division and the provisions of any agreement, covenant or instrument, this Division is to prevail, but to the extent only of the inconsistency.

**Note.** For example, the requirement under this Division that the owner of a dangerous dog display a warning sign on premises would override a provision in a lease prohibiting the fixing of any sign to a building.

## **54 Civil liability of owner of dangerous dog**

The mere fact that a dog has at any time been declared to be dangerous under this Act does not affect the civil liability of the owner of the dog in any proceedings (other than proceedings under this Act).

## **58G Power to seize and destroy dangerous dog in certain circumstances**

- (1) **Seizing dangerous dog that attacks**

An authorised officer may seize a dangerous dog if the dog attacks or bites a person or animal (other than vermin) without provocation.

**(1A) Seizing dangerous dog if certain control requirements not complied with**

An authorised officer may seize a dangerous dog if the requirements referred to in section 51 (1) (c), (c1) or (e) are not complied

- (2) If a dog is seized under this section:
- a) the dog is to be delivered as soon as possible to a council pound, and
  - b) an authorised officer of a council may authorise the destruction of the dog.
- (3) However, if the dog has been seized under subsection (1A), the authorised officer may authorise the destruction of the dog only if the officer is satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.
- (4) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under this section.
- (5) This section does not limit the power of an authorised officer to seize a dangerous or restricted dog under any other provision of this Act.

**58H Certificate of compliance required for dangerous dog enclosures**

- (1) A person must not own a dangerous dog unless a certificate of compliance under this section is in force in relation to the enclosure in which the dog is required to be kept under section 51 (1) (c).  
Maximum penalty: 100 penalty units (\$11,000).
- (2) An authorised officer of a council may issue a certificate of compliance in relation to the enclosure in which a dangerous dog is required to be kept if:
- a) the officer is satisfied that the enclosure complies with the relevant requirements imposed under section 51 (1) (c), and
  - b) the fee prescribed by the regulations (or such fee as does not exceed the prescribed fee) in connection with issuing the certificate is paid to the council.
- (3) A certificate of compliance in relation to a dog enclosure may be revoked at any time by an authorised officer of a council if the officer is satisfied that the enclosure does not comply with the relevant requirements.
- (4) A person does not commit an offence under this section:
- a) in the case of a dog that is a dangerous dog as at the date on which this section commences—until after the period of 28 days following that commencement, or
  - b) in any other case—until after section 51 (1) (c) is required to be complied with.

## **PART 2 - CONTROL REQUIREMENTS OF COMPANION ANIMALS REGULATION 2008**

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared dangerous dogs only.

**If your dog is declared dangerous by this Council you must comply with the following control requirements:**

### **24 Enclosure requirements for dangerous dogs**

- (1) For the purposes of section 51 (1) (c) of the Act, the requirements set out in subclauses (2)–(4) are prescribed as the requirements that must be complied with in relation to an enclosure for a dangerous or restricted dog.
- (2) The enclosure must:
  - a) be fully enclosed, constructed and maintained in such a way so that the dog is not able to dig or otherwise escape under, over or through the enclosure, and
  - b) be constructed in such a way so that a person cannot have access to it without the assistance of an occupier of the property who is above the age of 18 years, and
  - c) be designed to prevent children from having access to the enclosure, and
  - d) not be located on the property in such a way so that people are required to pass through the enclosure to gain access to other parts of the property, and
  - e) have a minimum height of 1.8 m and a minimum width of 1.8 m, and
  - f) have an area of not less than 10 square metres for each dangerous or restricted dog kept on the property, and
  - g) have walls that are fixed to the floor and constructed to be no more than 50 mm from the floor, and
  - h) have walls, a fixed covering and a gate that are constructed of:
    - (i) brick, timber, iron or similar solid materials, or
    - (ii) mesh that complies with subclause (4), or
    - (iii) a combination of the materials referred to in subparagraphs (i) and (ii), and
  - i) have a floor that is constructed of sealed concrete and graded to fall to a drain for the removal of effluent, and
  - j) provide a weatherproof sleeping area of sufficient dimensions to enable each dangerous or restricted dog kept on the property to shelter from the weather.
- (3) Any gate to the enclosure must:
  - a) contain a self-closing and self-latching mechanism that enables the enclosure to be securely locked when the dog is in the enclosure, and
  - b) be kept locked when the dog is in the enclosure, and
  - c) display the warning sign referred to in clause 26.
- (4) Mesh used in the construction of an enclosure must be:
  - a) chain mesh manufactured from at least 3.15 mm wire to form a maximum mesh spacing of 50 mm, or
  - b) weldmesh manufactured from at least 4 mm wire with a maximum mesh spacing of 50 mm.

## **25 Maximum fee for issuing certificate of compliance in relation to prescribed enclosure**

For the purposes of section 58H (2) (b) of the Act, the maximum fee of \$150 is prescribed.

## **26 Warning signs for dangerous dogs**

- (1) For the purposes of section 51 (1) (d) of the Act, a sign or signs complying with subclause (2) must be situated so that the words “Warning Dangerous Dog” are legible to any person immediately before entering the property by way of any gate, door or other entry point.
- (2) Each such sign must:
  - a) be no smaller than 40 cm × 40 cm, and
  - b) be made of durable materials, and
  - c) show the words “Warning Dangerous Dog” in letters that are, in any case, at least 50 mm high and 10 mm wide.

## **27 Distinctive collars for dangerous dogs**

- (1) For the purposes of section 51 (1) (d1) of the Act, a collar is of the prescribed kind if:
  - a) it consists of red stripes alternatively spaced with yellow stripes, each stripe being 25 mm wide and set diagonal to the rim of the collar at an angle of 45 degrees, and
  - b) all of the stripes of at least 1 of the 2 colours are sufficiently reflective so as to be visible in low light, and
  - c) it is made of durable materials, and
  - d) it is able to be securely fastened, and
  - e) it has a device or other facility that enables it to be attached to a leash, and
  - f) it has a minimum width of:
    - (i) 25 mm for a dog weighing less than 20 kg, or
    - (ii) 40 mm for a dog weighing between 20 kg and 40 kg, or
    - (iii) 50 mm for a dog weighing more than 40 kg.
- (2) A dog must not wear any such collar unless the dog is a dangerous dog or a restricted dog.
- (3) If subclause (2) is contravened:
  - a) the owner of the dog, or
  - b) if the owner is not present at the time of the offence and another person who is of or above the age of 16 years is in charge of the dog at that time—that other person,
  - c) is guilty of an offence.

Maximum penalty: 8 penalty units. (\$880)
- (4) A person does not commit an offence under this clause if the person does not know, or could not reasonably be expected to know, that the collar is of the kind prescribed for the purposes of section 51 (1) (d1) of the Act.

## ANNEXURE F

### Model Dangerous Dog Declaration

**Note:** Authorised officers should refer to section 9.7 of this Guideline when using this model declaration.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

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Dear <Owner's name>

#### **DANGEROUS DOG DECLARATION**

Section 34(1) *Companion Animals Act 1998* (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a dog:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>, kept at <address where animal kept > (the property).

Council declares the dog to be a dangerous dog under section 34(1) of the Act.

The dog is declared to be a dangerous dog because it:  
(please mark appropriate box)

- has, without provocation, killed a person or animal (other than vermin)
- has, without provocation, attacked a person or animal (other than vermin)
- has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin)
- is kept or used for hunting.
- has been declared a dangerous dog under a law of another State or a Territory that corresponds with this Act.

#### **Details of alleged incident (or relevant jurisdiction)**

<insert details of alleged incident or relevant jurisdiction>

This declaration:

- a) Has effect from the date of this declaration <insert date> or the date on which the declaration is given (whichever is the later).
- b) Applies throughout NSW. It is not limited in its operation to the council area where the declaration was made.



## What are the requirements of this declaration?

Under section 51 of the Act, you must comply with all of the following requirements within the time periods specified below.

**Note:** Schedule A of this declaration contains detailed specifications about the control requirements outlined below. However, you may also wish to seek and be guided by independent legal advice. It is also recommended that you keep any related documentation for your records – for example, the Notice of Intention to Declare a Dog to be a Dangerous Dog.

## What must you do immediately?

1. Ensure that, while on the property on which it is ordinarily kept, the dog is kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

Note: This requirement remains in force until the prescribed enclosure requirements in clause 24 of the Companion Animals Regulation 2008 are complied with (attached at Schedule A, Part 2).

2. Ensure that at all times when the dog is away from the property where it is ordinarily kept:
  - (a) it is under the effective control of some competent person by means of an adequate chain, cord or leash
  - (b) it has a muzzle securely fixed on its mouth that will prevent it from biting any person or animal.

**Note:** A dog is not considered to be under 'effective control' if a person has more than 2 dogs, one of which is the dog the subject of the declaration, under his or her control at the one time.

3. Ensure that the dog is not at any time in the sole charge of a person under the age of 18 years.

## What must you do within 7 days of the date of this declaration?

Register the dog, if it is not already registered. The dog must be microchipped before you can register it.

## What must you do within 28 days of the date of this declaration?

1. Ensure that the dog is desexed.
2. Ensure that one or more warning signs are displayed on the property where the dog is ordinarily kept showing the words 'Warning Dangerous Dog' in letters clearly visible from the boundaries of the property.

Note: Refer to clause 26 of the Companion Animals Regulation 2008 excerpt (attached at Schedule A, Part 2) for specifications.

3. Ensure that the dog at all times wears the distinctive collar prescribed by the regulations.

Note: Refer to clause 27 of the Companion Animals Regulation 2008 excerpt (attached at Schedule A, Part 2) for specifications.

## What must you do within 90 days of the date of this declaration?

Ensure that the dog is kept in the prescribed enclosure, in accordance with the specifications set out in Schedule A, Part 2 (clause 24) to this declaration.

**Note:** The owner of a dangerous dog must obtain a one-off certificate of compliance issued by an authorised officer of this council for the prescribed enclosure (see Schedule A, Part 2 for more information). Also, until this requirement is complied with, the dog must, while on the property where it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

### **What changes must be notified?**

You are also required to notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified:

- a) That the dog, with or without provocation, has attacked or injured a person or animal (other than vermin) – notice to be given within 24 hours after the attack or injury.
- b) That the dog cannot be found – notice to be given within 24 hours after the dog's absence is first noticed.
- c) That the dog has died – notice to be given as soon as practicable after the death.
- d) That the dog is no longer being ordinarily kept in the council area – notice to be given as soon as practicable after the change of location.
- e) That the dog is being ordinarily kept at a different location in the council area – notice to be given as soon as practicable after the change of location.

### **What happens if you do not comply with these requirements?**

There is a maximum penalty of \$16,500 for failing to comply with any of the requirements of this declaration.

An authorised council officer may also seize and immediately destroy the dog if:

- a) The dog attacks or bites a person or animal (other than vermin) without provocation (in accordance with section 58G(1) of the Act). A dangerous dog that attacks or bites a person or animal has demonstrated that it cannot be kept safely in the community.
- b) The following control requirements for the dog are not complied with:
  - section 51(1)(c) – enclosure requirements
  - section 51(1)(c1) – temporary enclosure requirements
  - section 51(1)(e) – dog must be kept on a lead and be muzzled.

However, if the dog has been seized on this ground, the authorised officer may authorise the destruction of the dog only if they are satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.

If your dog is seized for any of these reasons, you cannot make a claim for the dog unless an authorised council officer is satisfied that each of the requirements set out in this declaration is capable of being complied with.

### **Can you appeal against this declaration?**

You may appeal to a Local Court within 28 days of the date of this declaration. If you choose to do this, you should seek independent legal advice. Free legal advice may be obtained by contacting the Chamber Magistrate of the Local Court or a Community Legal Centre.

The fact that an appeal is pending will not affect your dog's status as a dangerous dog or your obligations under the Act as the owner of a dangerous dog, unless the Court orders otherwise.

### **Can this declaration be revoked?**

Yes, but not until 12 months after the date of this declaration. After that time, you can apply to the council of the area where the dog is ordinarily kept (whether or not it is the council whose authorised officer made this declaration) to have this declaration revoked. The council must consider your application and advise you of its decision as soon as practicable.

**Statement regarding behavioural assessment requirement for the purposes of revoking a dangerous dog declaration**

In accordance with section 39(2)(b) of the Act, the issuing Council has determined that it is necessary for this dog to undergo appropriate behavioural training before the Council will consider any application to revoke the declaration.

Yes

No

If you need any further information about this declaration, please contact the officer listed below.

Dated: *<insert date here>*

.....  
*<Name & title of person signing the declaration>*  
*<Contact phone number>*

## SCHEDULE A

### PART 1 CONTROL REQUIREMENTS FOR DANGEROUS DOGS UNDER SECTION 51 OF THE *COMPANION ANIMALS ACT 1998*

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared dangerous dogs only.

**As the owner of a declared dangerous dog you must comply with the following control requirements:**

#### **Section 51 - Owner of Dangerous dog must comply with control requirements**

(1) The owner of a Dangerous dog must ensure that each of the following requirements is complied with:

**a) Desexing**

In the case of a dog declared by a council under Division 1 of Part 5 to be a Dangerous dog, the dog must be desexed within 28 days after it is declared to be a Dangerous dog.

**a1) Enclosure requirements**

While the dog is on property on which the dog is ordinarily kept, the dog must be kept in an enclosure that complies with the requirements prescribed by the regulations.

*(See clause 24 of the Regulation as set out under Part 2 of this Schedule for specific enclosure requirements).*

The owner has 3 months from the date on which the dog is declared to be a Dangerous dog under Division 1 of Part 5 to comply with this paragraph.

a2) Until such time as the requirement under paragraph (a1) is complied with in relation to the dog, the dog must, while on property on which it is ordinarily kept, be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog.

b) The dog must not at any time be in the sole charge of a person under the age of 18 years.

c) One or more signs must be displayed on that property showing the words "Warning Dangerous Dog" in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations.

*(See clause 26 of the Regulation as set out under Part 2 to this Schedule for specific signage requirements.)*

**c1) Distinctive collar must be worn**

The dog must at all times wear a collar of the kind prescribed by the regulations.

*(See clause 27 of the Regulation as set out under Part 2 of this Schedule for specific collar requirements.)*

d) **Dog must be kept on lead and be muzzled**

Whenever the dog is outside its enclosure, the dog:

- (i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
- (ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the Dangerous dog) under his or her control at the one time.

e), f) (Repealed)

g) The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:

- (i) that the dog (with or without provocation) has attacked or injured a person or animal (other than vermin)—notice to be given within 24 hours after the attack or injury
- (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed
- (iii) that the dog has died—notice to be given as soon as practicable after the death
- (iv) (Repealed)
- (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location
- (vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location.

h) **Registration of dog**

In the case of a dog declared by a council under Division 1 of Part 5 to be a Dangerous dog, the dog must, regardless of its age, be registered (if not already registered) within 7 days after it is declared to be a Dangerous dog.

(2) An owner of a dog who does not comply with any of the requirements of this section is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

(3) The requirements imposed under this section on the owner of a Dangerous dog are additional to the other requirements of this Act imposed on the owner of a dog.

(4) In the event of an inconsistency between this section and the provisions of any agreement, covenant or instrument, this section is to prevail, but to the extent only of the inconsistency.

## **PART 2 CONTROL REQUIREMENTS FOR DANGEROUS DOGS UNDER THE COMPANION ANIMALS REGULATION 2008**

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared dangerous dogs only.

**As the owner of a declared dangerous dog you must comply with the following control requirements:**

### **Clause 24 Enclosure requirements for dangerous dogs**

- (1) For the purposes of section 51(1)(c) of the Act, the requirements set out in subclauses (2)–(4) are prescribed as the requirements that must be complied with in relation to an enclosure for a dangerous or restricted dog.
- (2) The enclosure must:
  - a) be fully enclosed, constructed and maintained in such a way so that the dog is not able to dig or otherwise escape under, over or through the enclosure, and
  - b) be constructed in such a way so that a person cannot have access to it without the assistance of an occupier of the property who is above the age of 18 years, and
  - c) be designed to prevent children from having access to the enclosure, and
  - d) not be located on the property in such a way so that people are required to pass through the enclosure to gain access to other parts of the property, and
  - e) have a minimum height of 1.8 m and a minimum width of 1.8 m, and
  - f) have an area of not less than 10 square metres for each dangerous or Restricted dog kept on the property, and
  - g) have walls that are fixed to the floor and constructed to be no more than 50 mm from the floor, and
  - h) have walls, a fixed covering and a gate that are constructed of:
    - (i) brick, timber, iron or similar solid materials, or
    - (ii) mesh that complies with subclause (4), or
    - (iii) a combination of the materials referred to in subparagraphs (i) and (ii), and
  - i) have a floor that is constructed of sealed concrete and graded to fall to a drain for the removal of effluent, and
  - j) provide a weatherproof sleeping area of sufficient dimensions to enable each dangerous or restricted dog kept on the property to shelter from the weather.
- (3) Any gate to the enclosure must:
  - a) contain a self-closing and self-latching mechanism that enables the enclosure to be securely locked when the dog is in the enclosure, and
  - b) be kept locked when the dog is in the enclosure, and
  - c) display the warning sign referred to in clause 26.
- (4) Mesh used in the construction of an enclosure must be:
  - a) chain mesh manufactured from at least 3.15 mm wire to form a maximum mesh spacing of 50 mm, or
  - b) weldmesh manufactured from at least 4 mm wire with a maximum mesh spacing of 50 mm.

## **Clause 25 Certificate of Compliance for dangerous dog enclosures**

Owners of dangerous dogs must obtain a one-off certificate of compliance issued by an authorised officer of this council for the prescribed enclosure (sec 58H).

The certificate will verify that the enclosure for the dangerous dog required under section 51(1)(c) of the Act is compliant with the specifications for building such enclosures that are set out in clause 24 of the Regulation.

The fee for the issue of a certificate of compliance (after inspection) is currently prescribed by clause 25 of the Regulation and set at a maximum of \$150.

The certificate must be obtained within the time limit for construction of the enclosure under section 51(1)(c).

## **Clause 26 Warning signs for dangerous dogs**

For the purposes of sections 51(1)(d) of the Act, a sign to be displayed on the property on which a dangerous dog is ordinarily kept must comply with the following requirements:

- a) the sign must be no smaller than 40 cm x 40 cm
- b) the sign must be made of durable materials
- c) the sign must show the words "Warning Dangerous Dog" in letters:
  - (i) that are of sufficient size so as to be clearly visible from the boundaries of the property, and
  - (ii) that are, in any case, at least 50 mm high and 10 mm wide.

## **Clause 27 Distinctive collars for dangerous dogs**

For the purposes of sections 51(1)(d1) of the Act, a collar is of the prescribed kind if:

- a) it consists of red stripes alternatively spaced with yellow stripes each being a width of 25 mm and set diagonal to the rim of the collar at an angle of 45 degrees, and
- b) at least one of the 2 colours reflects light in the dark, and
- c) it is made of durable materials, and
- d) it is able to be securely fastened, and
- e) it has a device or other facility that enables it to be attached to a leash, and
- f) it has a minimum width of:
  - (i) 25 mm for a dog weighing less than 20 kg or
  - (ii) 40 mm for a dog weighing between 20 kg and 40 kg or
  - (iii) 50 mm for a dog weighing more than 40 kg.

## ANNEXURE G

### Model Notice of Intention to Declare a Dog to be a Menacing Dog

**Note:** Authorised officers should refer to section 9.6 of this Guideline when using this model notice.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

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Dear <Owner's name>

#### **NOTICE OF INTENTION TO DECLARE A DOG TO BE A MENACING DOG**

Section 35 *Companion Animals Act 1998* (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a dog:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>  
kept at <address where animal kept > (the property).

Council gives notice of its intention to declare the dog to be a menacing dog under section 35 of the Act.

The dog is intended to be declared menacing because Council alleges that it:

(please mark appropriate box)

- has displayed unreasonable aggression towards a person or animal (other than vermin)
- has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death
- has been declared a menacing dog under a law of another State or a Territory that corresponds with this Act.

**Details of alleged incident (or relevant jurisdiction)**

<insert details of alleged incident or relevant jurisdiction>



### **What must you do immediately?**

Under section 36 of the Act, you must comply with all of the following requirements from the date you receive this notice. You must:

1. Ensure that at all times when the dog is away from the property where it is ordinarily kept:
  - a) it is under the effective control of some competent person by means of an adequate chain, cord or leash
  - b) it has a muzzle securely fixed on its mouth that will prevent it from biting any person or animal.

**Note:** A dog is not considered to be under 'effective control' if a person has more than 2 dogs, one of which is the dog the subject of this proposed declaration, under his or her control at the one time.

2. Register the dog (if it is not already registered) within 7 days after receiving this notice. The dog must be microchipped before you can register it.

**Note:** Section 36(3)(b) of the Act provides that an authorised officer may seize a dog that is subject to a Notice of Intention to declare the dog to be a Menacing Dog, if the dog is not microchipped and lifetime registered at the time the Notice of Intention is issued.

### **What happens if you do not comply with these requirements?**

There is a maximum penalty of \$5,500 if all of these conditions are not met.

An authorised council officer may also seize the dog if they are satisfied that you have not complied with all these requirements.

If your dog is seized for this reason, you cannot make a claim for the dog unless an authorised council officer is satisfied that:

- a) you are capable of complying with the 'immediate' requirements listed above
- b) the dog has been registered.

### **Can you contest this notice?**

You (or someone on your behalf) may make representations to Council – within 7 days of the date this notice was given to you – about:

Any representations made by you (or on your behalf) must be made to  
<Insert Council contact details>

If you choose to contest this notice, Council has 28 days after the date the notice is given to you to assess your representations and notify you of its decision. During this period you must still continue to comply with the 'immediate' requirements set out above.

If you choose not to contest this declaration, the dog will be declared menacing after 7 days from the date this notice was given to you.

**What happens if your dog is declared menacing?**

If your dog is declared menacing, Council will serve you with a Menacing Dog Declaration. You must then, by law, comply with the control requirements set out in Schedule A to this Notice. This is an excerpt from the *Companion Animals Act 1998* and *Companion Animals Regulation 2008* about declared dangerous dogs.

Note: A menacing dog declaration applies throughout NSW. It is not limited to the council area where the declaration was made.

If you need any further information about this notice, please contact the officer listed below.

Dated: *<insert date here>*

.....  
*<Name & title of person signing the notice>*  
*<Contact phone number>*

## SCHEDULE A

### PART 1 – CONTROL REQUIREMENTS OF COMPANION ANIMALS ACT 1998 REGARDING DECLARED MENACING DOGS

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared menacing dogs only.

**If your dog is declared by this Council to be a menacing dog you must comply with the following control requirements:**

#### Division 4 Responsibilities of owners of menacing dogs

##### 51 Owner of menacing dog must comply with control requirements

(1A) The owner of a dog that is declared to be a menacing dog under this Act must ensure that each of the following requirements is complied with while the declaration is in force:

(a) **The dog must be desexed** (if it is not already desexed) within 28 days after it is declared to be a menacing dog.

(b) **Enclosure requirements**

During any period that the menacing dog:

(i) is on property on which the dog is ordinarily kept, and

(ii) is not under the effective control of a person of or above the age of 18 years, the dog must be enclosed in a manner that is sufficient to restrain the dog and prevent a child from having access to the dog.

(c) **Dog must be kept on lead and be muzzled**

Whenever the menacing dog is outside property on which the dog is ordinarily kept, the dog:

(i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and

(ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the menacing dog) under his or her control at the one time.

(d) **The requirements set out in section 51(1) (b), (d), (d1), (i), (j) and (k) of the Act, being:**

- The dog must not at any time be in the sole charge of a person under the age of 18 years - *section 51(1)(b)*.
- One or more signs must be displayed on that property showing the words "Warning Dangerous Dog" in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations - *section 51(1)(d)*.
- Distinctive collar must be worn - The dog must at all times wear a collar of the kind prescribed by the regulations - *section 51(1)(d1)*.
- The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:

- (i) that the dog (with or without provocation) has attacked or injured a person or an animal (other than vermin)—notice to be given within 24 hours after the attack or injury,
- (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed,
- (iii) that the dog has died—notice to be given as soon as practicable after the death,
- (iv) (Repealed)
- (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location,
- (vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location – *section 51(1)(i)*.

- If the owner intends to keep the dog in the area of a council that is not the area in which the dog was ordinarily kept when the declaration was made, the owner must notify the council of the area in which the dog is intended to be ordinarily kept of his or her intention to do so – *section 51(1)(j)*.

- The dog must, regardless of its age, be registered under this Act (if not already so registered) within 7 days after it is declared a dangerous dog - *section 51(1)(k)*.

**Note:** The reference in subsection 51(1) (k) to a dangerous dog is taken for the purposes of this paragraph to be a reference to a menacing dog.

**Note.** Section 11 also requires the owner of a dog to notify the Director-General within 7 days after a Court declares the dog a menacing dog or revokes the declaration. If the declaration is made or revoked by a council, the council is required to notify the Director-General (see section 40).

## **52 Menacing dog may be seized if control requirements not complied with**

- (1) An authorised officer may seize a menacing dog if the officer is satisfied that any of the requirements of section 51 have not been complied with in relation to the dog.
- (2) If a dog is seized under subsection (1), Part 7 applies in relation to the dog.
- (3) However, a claim for the dog may be made under section 64 only if an authorised officer of the council of the area in which the dog is ordinarily kept is satisfied that each of the requirements of section 51 is capable of being complied with in relation to the dog.

## **52A Prohibition on selling menacing dog or proposed dangerous or menacing dog**

- (1) A person who sells, or advertises the sale of, a menacing dog or proposed menacing dog is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

**Note.** The term “sell” extends to the transfer of owner by any means, including by gift.

Abandoning an animal is also an offence—see section 11 of the *Prevention of Cruelty to Animals Act 1979*.

- (2) A person does not commit an offence under this section by reason only of surrendering a menacing dog or proposed dangerous or menacing dog to a council pound or an approved animal welfare organisation.

**Note.** A menacing dog that is surrendered to a council pound or an approved animal welfare organisation cannot be sold.

- (3) In this section and in section 52B, **proposed menacing dog** means a dog that is the subject of a proposed declaration under Division 1.

### **52B Prohibition on accepting ownership of menacing dog or proposed menacing dog**

(1) A person who accepts ownership of a menacing dog or proposed menacing dog is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

(2) A person does not commit an offence under this section:

- a) by reason only of taking delivery of, or detaining, a dog under Part 7 or as the consequence of a dog being surrendered to a council pound or an approved animal welfare organisation, or
- b) if the person does not know, or could not reasonably be expected to know, that the dog was a menacing dog or proposed menacing dog.

### **53 Inconsistency with agreements**

In the event of an inconsistency between this Division and the provisions of any agreement, covenant or instrument, this Division is to prevail, but to the extent only of the inconsistency.

**Note.** For example, the requirement under this Division that the owner of a menacing dog display a warning sign on premises would override a provision in a lease prohibiting the fixing of any sign to a building.

### **54 Civil liability of owner of menacing dog**

The mere fact that a dog has at any time been declared to be menacing under this Act does not affect the civil liability of the owner of the dog in any proceedings (other than proceedings under this Act).

### **58G Power to seize and destroy menacing dog in certain circumstances**

#### **(1B) Seizing menacing dog if certain control requirements not complied with**

An authorised officer may seize a menacing dog if the requirements referred to in section 51(1A) (b) or (c) are not complied with in relation to the dog on at least 2 separate occasions over any period of 12 months (whether or not each occasion relates to the same requirement).

(2) If a dog is seized under this section:

- a) the dog is to be delivered as soon as possible to a council pound, and
- b) an authorised officer of a council may authorise the destruction of the dog.

(3) However, if the dog has been seized under subsection (1B), the authorised officer may authorise the destruction of the dog only if the officer is satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.

(4) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under this section.

(5) This section does not limit the power of an authorised officer to seize a dangerous or restricted dog under any other provision of this Act.

## **PART 2 - CONTROL REQUIREMENTS FOR MENACING DOGS UNDER THE COMPANION ANIMALS REGULATION 2008**

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared menacing dogs only.

**If your dog is declared by this Council to be a menacing dog you must comply with the following control requirements:**

### **Clause 26 Warning signs for menacing dogs**

For the purposes of sections 51(1)(d) of the Act, a sign to be displayed on the property on which a menacing dog is ordinarily kept must comply with the following requirements:

- a) the sign must be no smaller than 40 cm x 40 cm
- b) the sign must be made of durable materials
- c) the sign must show the words "Warning Dangerous Dog" in letters:
  - (i) that are of sufficient size so as to be clearly visible from the boundaries of the property, and
  - (ii) that are, in any case, at least 50 mm high and 10 mm wide.

### **Clause 27 Distinctive collars for menacing dogs**

For the purposes of sections 51(1)(d1) of the Act, a collar is of the prescribed kind if:

- a) it consists of red stripes alternatively spaced with yellow stripes each being a width of 25 mm and set diagonal to the rim of the collar at an angle of 45 degrees, and
- b) at least one of the 2 colours reflects light in the dark, and
- c) it is made of durable materials, and
- d) it is able to be securely fastened, and
- e) it has a device or other facility that enables it to be attached to a leash, and
- f) it has a minimum width of:
  - (i) 25 mm for a dog weighing less than 20 kg or
  - (ii) 40 mm for a dog weighing between 20 kg and 40 kg or
  - (iii) 50 mm for a dog weighing more than 40 kg.

## ANNEXURE H

### Model Menacing Dog Declaration

**Note:** Authorised officers should refer to section 9.7 of this Guideline when using this model declaration.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

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Dear <Owner's name>

#### **MENACING DOG DECLARATION**

Section 34 (1A) *Companion Animals Act 1998* (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a dog:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>, kept at <address where animal kept > (the property).

Council declares the dog to be a menacing dog under section 34 of the Act.

The dog is declared to be a menacing dog because it:  
(please mark appropriate box)

- has displayed unreasonable aggression towards a person or animal (other than vermin)
- has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death
- has been declared a menacing dog under a law of another State or a Territory that corresponds with this Act.

#### **Details of alleged incident (or relevant jurisdiction)**

<insert details of alleged incident or relevant jurisdiction>

This declaration:

- a) Has effect from the date of this declaration <insert date> or the date on which the declaration is given (whichever is the later).
- b) Applies throughout NSW. It is not limited in its operation to the council area where the declaration was made.

## What are the requirements of this declaration?

Under section 51(1A) of the Act, you must comply with all of the following requirements within the time periods specified below.

**Note:** Schedule A of this declaration contains detailed specifications about the control requirements outlined below. However, you may also wish to seek and be guided by independent legal advice. It is also recommended that you keep any related documentation for your records – for example, the Notice of Intention to Declare a Dog to be a Menacing Dog.

## What must you do immediately?

1. During any period that the menacing dog:
  - a. is on property on which the dog is ordinarily kept, and
  - b. is not under the effective control of a person of or above the age of 18 years, the dog must be enclosed in a manner that is sufficient to restrain the dog and prevent a child from having access to the dog.
  
2. Whenever the menacing dog is outside property on which the dog is ordinarily kept, the dog:
  - a. must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
  - b. (must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.  
**Note:** a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the menacing dog) under his or her control at the one time.
  
3. Ensure that the dog is not at any time in the sole charge of a person under the age of 18 years.

## What must you do within 7 days of the date of this declaration?

Register the dog, if it is not already registered. The dog must be microchipped before you can register it.

## What must you do within 28 days of the date of this declaration?

1. Ensure that the dog is desexed.
2. Ensure that one or more warning signs are displayed on the property where the dog is ordinarily kept showing the words 'Warning Dangerous Dog' in letters clearly visible from the boundaries of the property.  
**Note:** Refer to clause 26 of the Companion Animals Regulation 2008 excerpt (attached at Schedule A, Part 2) for specifications.
3. Ensure that the dog at all times wears the distinctive collar prescribed by the regulations.  
**Note:** Refer to clause 27 of the Companion Animals Regulation 2008 excerpt (attached at Schedule A, Part 2) for specifications.



### **What changes must be notified?**

You are also required to notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified:

- a) That the dog, with or without provocation, has attacked or injured a person or animal (other than vermin) – notice to be given within 24 hours after the attack or injury.
- b) That the dog cannot be found – notice to be given within 24 hours after the dog's absence is first noticed.
- c) That the dog has died – notice to be given as soon as practicable after the death.
- d) That the dog is no longer being ordinarily kept in the council area – notice to be given as soon as practicable after the change of location.
- e) That the dog is being ordinarily kept at a different location in the council area – notice to be given as soon as practicable after the change of location.

### **What happens if you do not comply with these requirements?**

There is a maximum penalty of \$16,500 for failing to comply with any of the requirements of this declaration.

An authorised council officer may also seize and immediately destroy the dog if:

- a) The dog attacks or bites a person or animal (other than vermin) without provocation (in accordance with section 58G(1) of the Act). A dangerous dog that attacks or bites a person or animal has demonstrated that it cannot be kept safely in the community.
- b) The following control requirements for the dog are not complied with on at least 2 separate occasions over any period of 12 months (whether or not each occasion relates to the same requirement):
  - section 51(1A)(b) – enclosure requirements
  - section 51(1A)(c) – dog must be kept on a lead and be muzzled.

However, if the dog has been seized on this ground, the authorised officer may authorise the destruction of the dog only if they are satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.

If your dog is seized for any of these reasons, you cannot make a claim for the dog unless an authorised council officer is satisfied that each of the requirements set out in this declaration is capable of being complied with.

### **Can you appeal against this declaration?**

No. Unlike a dangerous dog declaration, under section 41(1) of the Act no appeal lies to the Local Court against a declaration by an authorised officer of a council that a dog is a menacing dog.

### **Can this declaration be revoked?**

Yes, but not until 12 months after the date of this declaration. After that time, you can apply to the council of the area where the dog is ordinarily kept (whether or not it is the council whose authorised officer made this declaration) to have this declaration revoked.

The council must consider your application and advise you of its decision as soon as practicable. However, under section 41(1) of the Act, unlike a dangerous dog, no appeal lies to the Local Court against a refusal by a council to revoke a declaration that the dog is a menacing dog.

**Statement regarding behavioural assessment requirement for the purposes of revoking a menacing dog declaration**

In accordance with section 39(2)(b) of the Act, the issuing Council has determined that it is necessary for this dog to undergo appropriate behavioural training before the Council will consider any application to revoke the declaration.

- Yes
- No

If you need any further information about this declaration, please contact the officer listed below.

Dated: *<insert date here>*

.....  
*<Name & title of person signing the declaration>*  
*<Contact phone number>*

## SCHEDULE A

### PART 1 – CONTROL REQUIREMENTS OF COMPANION ANIMALS ACT 1998 REGARDING DECLARED MENACING DOGS

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared menacing dogs only.

**As the owner of a declared menacing dog you must comply with the following control requirements:**

#### Division 4 Responsibilities of owners of menacing dogs

##### 51 Owner of menacing dog must comply with control requirements

(1A) The owner of a dog that is declared to be a menacing dog under this Act must ensure that each of the following requirements is complied with while the declaration is in force:

(a) The dog must be desexed (if it is not already desexed) within 28 days after it is declared to be a menacing dog.

(b) **Enclosure requirements**

During any period that the menacing dog:

- (i) is on property on which the dog is ordinarily kept, and
- (ii) is not under the effective control of a person of or above the age of 18 years, the dog must be enclosed in a manner that is sufficient to restrain the dog and prevent a child from having access to the dog.

(c) **Dog must be kept on lead and be muzzled**

Whenever the menacing dog is outside property on which the dog is ordinarily kept, the dog:

- (i) must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person, and
- (ii) must be muzzled in a manner that is sufficient to prevent it from biting any person or animal.

For the purposes of this paragraph, a dog is not considered to be under the effective control of a person if the person has more than 2 dogs (one of which is the menacing dog) under his or her control at the one time.

(d) **The requirements set out in section 51(1) (b), (d), (d1), (i), (j) and (k) of the Act, being:**

- The dog must not at any time be in the sole charge of a person under the age of 18 years - *section 51(1)(b)*.
- One or more signs must be displayed on that property showing the words "Warning Dangerous Dog" in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept or, if the regulations provide for the signs required by this paragraph, complying with the regulations - *section 51(1)(d)*.
- Distinctive collar must be worn - The dog must at all times wear a collar of the kind prescribed by the regulations - *section 51(1)(d1)*.
- The owner must notify the council of the area in which the dog is ordinarily kept of the following matters within the time specified in relation to each of those matters:

- (i) that the dog (with or without provocation) has attacked or injured a person or an animal (other than vermin)—notice to be given within 24 hours after the attack or injury,
- (ii) that the dog cannot be found—notice to be given within 24 hours after the dog's absence is first noticed,
- (iii) that the dog has died—notice to be given as soon as practicable after the death,
- (iv) (Repealed)
- (v) that the dog is no longer being ordinarily kept in the area of the council—notice to be given as soon as practicable after the change of location,
- (vi) that the dog is being ordinarily kept at a different location in the area of the council—notice to be given as soon as practicable after the change of location – *section 51(1)(i)*.

- If the owner intends to keep the dog in the area of a council that is not the area in which the dog was ordinarily kept when the declaration was made, the owner must notify the council of the area in which the dog is intended to be ordinarily kept of his or her intention to do so – *section 51(1)(j)*.
- The dog must, regardless of its age, be registered under this Act (if not already so registered) within 7 days after it is declared a dangerous dog - *section 51(1)(k)*.

**Note:** The reference in subsection 51(1) (k) to a dangerous dog is taken for the purposes of this paragraph to be a reference to a menacing dog.

**Note.** Section 11 also requires the owner of a dog to notify the Director-General within 7 days after a Court declares the dog a menacing dog or revokes the declaration. If the declaration is made or revoked by a council, the council is required to notify the Director-General (see section 40).

## **52 Menacing dog may be seized if control requirements not complied with**

- (1) An authorised officer may seize a menacing dog if the officer is satisfied that any of the requirements of section 51 have not been complied with in relation to the dog.
- (2) If a dog is seized under subsection (1), Part 7 applies in relation to the dog.
- (3) However, a claim for the dog may be made under section 64 only if an authorised officer of the council of the area in which the dog is ordinarily kept is satisfied that each of the requirements of section 51 is capable of being complied with in relation to the dog.

## **52A Prohibition on selling menacing dog or proposed menacing dog**

- (1) A person who sells, or advertises the sale of, a menacing dog or proposed menacing dog is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

**Note.** The term “sell” extends to the transfer of owner by any means, including by gift.

Abandoning an animal is also an offence—see section 11 of the *Prevention of Cruelty to Animals Act 1979*.

- (2) A person does not commit an offence under this section by reason only of surrendering a menacing dog or proposed menacing dog to a council pound or an approved animal welfare organisation.

**Note.** A menacing dog that is surrendered to a council pound or an approved animal welfare organisation cannot be sold.

- (3) In this section and in section 52B, **proposed menacing dog** means a dog that is the subject of a proposed declaration under Division 1.

### **52B Prohibition on accepting ownership of menacing dog or proposed menacing dog**

- (1) A person who accepts ownership of a menacing dog or proposed menacing dog is guilty of an offence.

Maximum penalty: 150 penalty units (\$16,500).

- (2) A person does not commit an offence under this section:
- a) by reason only of taking delivery of, or detaining, a dog under Part 7 or as the consequence of a dog being surrendered to a council pound or an approved animal welfare organisation, or
  - b) if the person does not know, or could not reasonably be expected to know, that the dog was a menacing dog or proposed menacing dog.

### **53 Inconsistency with agreements**

In the event of an inconsistency between this Division and the provisions of any agreement, covenant or instrument, this Division is to prevail, but to the extent only of the inconsistency.

**Note.** For example, the requirement under this Division that the owner of a menacing dog display a warning sign on premises would override a provision in a lease prohibiting the fixing of any sign to a building.

### **54 Civil liability of owner of dangerous or menacing dog**

The mere fact that a dog has at any time been declared to be menacing under this Act does not affect the civil liability of the owner of the dog in any proceedings (other than proceedings under this Act).

### **58G Power to seize and destroy menacing dog in certain circumstances**

#### **(1B) Seizing menacing dog if certain control requirements not complied with**

An authorised officer may seize a menacing dog if the requirements referred to in section 51(1A) (b) or (c) are not complied with in relation to the dog on at least 2 separate occasions over any period of 12 months (whether or not each occasion relates to the same requirement).

- (2) If a dog is seized under this section:
- a) the dog is to be delivered as soon as possible to a council pound, and
  - b) an authorised officer of a council may authorise the destruction of the dog.
- (3) However, if the dog has been seized under subsection (1B), the authorised officer may authorise the destruction of the dog only if the officer is satisfied that it is reasonable to do so after appropriate enquiries have been made into the circumstances that resulted in the dog being seized.
- (4) Part 7 (other than sections 68 and 69) does not apply in relation to a dog that is seized under this section.
- (5) This section does not limit the power of an authorised officer to seize a dangerous or restricted dog under any other provision of this Act.

## **PART 2 - CONTROL REQUIREMENTS FOR MENACING DOGS UNDER THE COMPANION ANIMALS REGULATION 2008**

**Note:** This is an edited excerpt from the legislation setting out the requirements relevant to declared menacing dogs only.

**As the owner of a declared menacing dog you must comply with the following control requirements:**

### **Clause 26 Warning signs for menacing dogs**

For the purposes of sections 51(1)(d) of the Act, a sign to be displayed on the property on which a menacing dog is ordinarily kept must comply with the following requirements:

- a) the sign must be no smaller than 40 cm x 40 cm
- b) the sign must be made of durable materials
- c) the sign must show the words "Warning Dangerous Dog" in letters:
  - (i) that are of sufficient size so as to be clearly visible from the boundaries of the property, and
  - (ii) that are, in any case, at least 50 mm high and 10 mm wide.

### **Clause 27 Distinctive collars for menacing dogs**

For the purposes of sections 51(1)(d1) of the Act, a collar is of the prescribed kind if:

- a) it consists of red stripes alternatively spaced with yellow stripes each being a width of 25 mm and set diagonal to the rim of the collar at an angle of 45 degrees, and
- b) at least one of the 2 colours reflects light in the dark, and
- c) it is made of durable materials, and
- d) it is able to be securely fastened, and
- e) it has a device or other facility that enables it to be attached to a leash, and
- f) it has a minimum width of:
  - (i) 25 mm for a dog weighing less than 20 kg or
  - (ii) 40 mm for a dog weighing between 20 kg and 40 kg or
  - (iii) 50 mm for a dog weighing more than 40 kg.

## ANNEXURE I

### Model Notice of Proposed Nuisance Dog Order

**Note:** Authorised officers should refer to section 13.2 of this Guideline when using this model notice.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

---

Dear <Owner's name>

#### **NOTICE OF PROPOSED NUISANCE DOG ORDER**

Section 32B *Companion Animals Act 1998* (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a dog:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>, kept at <address where animal kept > (the property).

Council advises you as the owner of the dog that it intends to issue you with a Nuisance Dog Order under section 32A of the Act.

The proposed order requires that you prevent your dog from behaving in the following manner:

<insert behaviour(s) required to be controlled – refer to paragraph 13.2.1 for options>

It is proposed that this order be issued because it is alleged that the dog:

<Insert details of alleged incident(s)>

**Can you contest this notice?**

You (or someone on your behalf) may make representations to Council – within 7 days of the date this notice was given to you – about:

- a) why the order should not be made
- b) the terms of the order.

Any representations made by you (or on your behalf) must be made to:  
<Insert Council contact details>

If you choose not to contest this notice, the dog will be declared a nuisance 7 days after the date this notice was given to you.

**What happens if your dog is issued with a nuisance order?**

If your dog is issued with a Nuisance Dog Order, you will be given 7 days to comply with the terms of the order. This includes:

- a) modifying the behaviour(s) of the dog as specified
- b) ensuring the dog is microchipped and registered, if it is not already.

The order will remain in place for 6 months from the date you receive it. You must continue to comply with the order while it is in force.

A Nuisance Dog Order is final and is not subject to any appeal or review.

If you need any further information about this notice, please contact the officer listed below.

Dated: <insert date here>

.....

<Name & title of person signing the notice>  
<Contact phone number>



## ANNEXURE J

### Model Nuisance Dog Order

**Note:** Authorised officers should refer to section 13.2 of this Guideline when using this model order.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

---

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Dear <Owner's name>

#### **NUISANCE DOG ORDER**

Section 32A *Companion Animals Act 1998* (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a dog:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>, kept at <address where animal kept > (the property).

Council is satisfied that the dog is a Nuisance Dog in accordance with the provisions of section 32A of the Act.

This Nuisance Dog Order requires that you prevent your dog from behaving in the following manner:

<insert behavior(s) required to be controlled – refer to paragraph 13.2.1 for options>

This order has been issued because it is alleged that the dog has:

<Insert details of alleged incident(s)>

#### **What are the requirements of this order?**

1. You must ensure that the dog is microchipped and registered within 7 days of receiving this order.
2. This order remains in force for 6 months from <insert date of issue>.
3. As the owner of the dog, you must comply with this order from <insert date of issue> and continue to comply with it while it is force.

**What happens if you do not comply with these requirements?**

There is a maximum penalty for failing to comply with this order of \$880 for the first offence or \$1,650 for the second or any subsequent offences.

This order is final and is not subject to any appeal or review.

If you need any further information about this order, please contact the officer listed below.

Dated: *<insert date here>*

.....

*<Name & title of person signing the order>*  
*<Contact phone number>*

## ANNEXURE K

### Model Notice of Proposed Nuisance Cat Order

**Note:** Authorised officers should refer to section 13.4 of this Guideline when using this model notice.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

---

Dear <Owner's name>

#### **NOTICE OF PROPOSED NUISANCE CAT ORDER**

Section 31A *Companion Animals Act 1998* (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a cat:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>,  
kept at <address where animal kept > (the property).

Council advises you as the owner of the cat that it intends to issue you with a Nuisance Cat Order under section 31A of the Act.

The proposed order requires that you prevent your cat from behaving in the following manner:

<insert behaviour(s) that is required to be controlled – refer to paragraph 13.4.1 for options>

It is proposed that this order be issued because it is alleged that the cat:

<Insert details of alleged incident(s)>

**Can you contest this notice?**

You (or someone on your behalf) may make representations to Council – within 7 days of the date this notice was given to you – about:

- a) why the order should not be made
- b) the terms of the order.

Any representations made by you (or on your behalf) must be made to:  
<Insert Council contact details>

If you choose not to contest this notice, the cat will be declared a nuisance 7 days after the date this notice was given to you.

**What happens if your cat is issued with a nuisance order?**

If your cat is issued with a Nuisance Cat Order, you will be given 7 days to comply with the terms of the order. This includes:

- a) modifying the behaviour(s) of the cat as specified
- b) ensuring the cat is microchipped and registered, if it is not already.

The order will remain in place for 6 months from the date you receive it. You must continue to comply with the order while it is in force.

A Nuisance Cat Order is final and is not subject to any appeal or review.

If you need any further information about this notice, please contact the officer listed below.

Dated: <insert date here>

.....

<Name & title of person signing the notice>

<Contact phone number>

## ANNEXURE L

### Model Nuisance Cat Order

**Note:** Authorised officers should refer to [section 13.4](#) of this Guideline when using this model order.

<Council Letterhead>

<Owner's name>

<Owner's Address>

<Suburb> <State> <Postcode>

---

Dear <Owner's name>

#### **NUISANCE CAT ORDER**

Section 31 *Companion Animals Act 1998* (the Act)

This document contains important information about your obligations under the Act. Please read it carefully. Contact the council officer on the number below as soon as possible if you are unsure of your obligations or need further information.

It has come to Council's attention that you are the owner of a cat:

Name (if known): <animal's name>

Microchip Number (if known): <microchip number>

Description (identifying marks etc, if known): <description>, kept at <address where animal kept > (the property).

Council is satisfied that the cat is a Nuisance Cat in accordance with the provisions of section 31 of the Act.

This Nuisance Cat Order requires that you prevent your cat from behaving in the following manner:

<insert behavior(s) required to be controlled – refer to [paragraph 13.4.1](#) for options>

This order has been issued because it is alleged that the cat has:

<Insert details of alleged incident(s)>

**What are the requirements of this order?**

1. You must ensure that the cat is microchipped and registered within 7 days of receiving this order.
2. This order remains in force for 6 months from *<insert date of issue>*.
3. As the owner of the cat you must comply with this order from *<insert date of issue>* and continue to comply with it while it is force.

**What happens if you do not comply with these requirements?**

There is a maximum penalty for failing to comply with this order of \$330 for the first offence and \$880 for the second or any subsequent offences.

This order is final and is not subject to any appeal or review.

If you need any further information about this order, please contact the officer listed below.

Dated: *<insert date here>*

.....  
*<Name & title of person signing the order>*  
*<Contact phone number>*

# ANNEXURE M - DOG CONTROL CATEGORIES UNDER COMPANION ANIMALS ACT 1998

*Less serious level of control*

*More serious level of control*

Nuisance Dog

Menacing Dog

Dangerous Dog

Restricted Dog

## CRITERIA

Habitually at large,  
Runs at or chases people or animals,  
Endangers health of any person or animal  
**Note:** A nuisance dog order may also be issued for: persistent barking, defecation on private property, causing substantial damage to private property

a) **has** displayed unreasonable aggression towards a person or animal (other than vermin), or  
b) **has**, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death, or  
c) **is** of a menacing breed (or cross) or kind of dog (**none currently prescribed**), or  
d) declared menacing in other state/territory

a) **has**, without provocation, attacked or killed a person or animal (other than vermin) or  
b) **has**, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin), or  
c) **is** kept or used for hunting, or  
d) declared dangerous in other state/territory

A dog of a breed, kind or description listed in section 55:  
Pitbull/American Pitbull Terriers, Japanese tosas, Argentinian and Brazilian fighting dogs, Presa Canarios (ie: dogs which are prohibited imports).

## CONTROLS

Nuisance dog order requiring owner to prevent specified behaviour for 6 months  
Any person may seize dog if necessary to prevent damaging property

(When at home & not under effective control of person over 18yo) enclosed sufficiently to restrain the dog and prevent access by a child  
Leashed and muzzled in public  
Microchipped and Registered (council may seize dog to ensure this occurs)  
Desexed  
Wear distinctive collar  
Dangerous dog sign at property  
Sale and advertising prohibited

Kept in prescribed enclosure at all times when at home  
Leashed and muzzled in public  
Desexed  
Microchipped and Registered (council may seize dog to ensure this occurs)  
Wear distinctive collar  
Dangerous dog sign at property  
Sale and advertising prohibited

Same controls as for dangerous dogs but breeding also prohibited

## KEY PENALTIES

\$880 fine for first offence; \$1650 for subsequent offence; \$275 penalty notice.

Up to \$16,500 fine for selling/acquiring; up to \$77,000 fine and up to 5 years imprisonment if dog attacks; \$1320 penalty notice; permanent disqualification of owner; seizure

Same key penalties as for menacing dogs

Same key penalties as for menacing and dangerous dogs and \$16,500 fine for breeding