

Reprinted under the *Reprints Act 1984* as at 11 February 1988.

WESTERN AUSTRALIA

DOG ACT 1976

ARRANGEMENT

PART I—PRELIMINARY

- Sec.
1. Short title
 2. Commencement
 3. Interpretation
 5. Repeal of the Dog Acts, savings and transitional provisions
 6. Application
 7. Dogs to be registered
 8. Special provisions for guide dogs

PART II—ADMINISTRATION

9. Administrative responsibility
10. Method of administration
- 10A. Payments to veterinary surgeons towards cost of sterilization
11. Staff and services
12. Joint jurisdiction
- 12A. Entry of premises
13. Immunity of person acting in good faith

PART III—REGISTRATION

14. Register to be maintained
15. Registration periods and fees
16. Registration procedure
- 16A. Change of ownership

- Sec.
17. Refusal or cancellation of registration
 18. Registration tags
 19. Refund of fee on cancellation
 20. Offences relating to registration, etc.

PART V—THE KEEPING OF DOGS

26. Limitation as to numbers
27. Licensing of approved kennel establishments

PART VI—CONTROL OF DOGS

29. Power to seize strays, etc.
30. Dogs to wear collars, registration tags, etc.
31. Control of dogs in certain public places
32. Control of dogs in exercise areas and rural areas
33. Special provision for greyhounds
- 33A. Control of dogs in places that are not public
- 33B. Defences applicable to section 30 (1), 31 (1), 32 (1), 33 (1) and 33A (1)
- 33C. Saving
- 33D. Dog attacks, etc.
34. Protection of livestock
35. Destruction of vermin, etc.
36. Diseases and parasite control
38. Nuisance

PART VII—ENFORCEMENT

39. Biting of persons
40. Destruction of dogs, etc.
41. Indemnity as to destruction of dogs
43. Offences relating to enforcement, etc.
- 43A. Name and address to be supplied
44. Enforcement proceedings
45. Evidentiary provisions
- 45A. Modified penalties

PART VIII—CIVIL REMEDIES, ETC.

46. Damages
47. Causing harm to dogs

PART IX—BY-LAWS

48. Uniform by-laws
49. Council by-laws
50. General provisions relating to by-laws
51. By-law making powers
52. Revocation of by-laws

PART X—REGULATIONS

53. Regulations as to certain kinds of dog
54. Regulations generally

NOTES

WESTERN AUSTRALIA

DOG ACT 1976

AN ACT to amend and consolidate the law relating to the control and registration of dogs, the ownership and keeping of dogs and the obligations and rights of persons in relation thereto, and for incidental and other purposes.

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Dog Act 1976*¹.

Commencement

2. (1) Except as provided in subsection (2), this Act, or this Act less such provisions as are specified in any such proclamation, shall come into operation on a date to be fixed by proclamation¹.

(2) The Governor may, by proclamation made pursuant to subsection (1) or by any subsequent proclamation, fix a date for the coming into operation of any provision of this Act on a date other than the date fixed in relation to the provisions of the Act generally¹.

Interpretation

3. (1) In this Act, unless the context otherwise requires—
“authorized person” means a person who is authorized by or under section 29;
“council” means the council of a municipality constituted under the *Local Government Act 1960*;

“district” means an area of the State, the inhabitants of which area are a municipality under the *Local Government Act 1960*, and includes for certain purposes provided for in this Act other areas which although not being within the boundaries of a district are regarded for those purposes as being part of the district;

“guide dog” means a dog trained by a guide dog training institution recognized by the Guide Dogs for the Blind Association of Western Australia Incorporated which is used as a guide by a person who is blind or partially blind, and for certain purposes provided for in this Act includes a dog which is in the course of such training;

“metropolitan region” has the meaning assigned to it for the time being by section 6 of the *Metropolitan Region Town Planning Scheme Act 1959*;

“owner” in relation to a dog means—

- (a) the person by whom the dog is ordinarily kept; or
- (b) a person who is deemed by subsection (2) to be the owner of the dog;

“person liable for the control of the dog” means each of the following—

- (a) the registered owner of the dog;
- (b) the owner of the dog;
- (c) the occupier of any premises where the dog is ordinarily kept or ordinarily permitted to live; or
- (d) a person who has the dog in his possession or under his control,

but does not include—

- (e) a registered veterinary surgeon, or a person acting on his behalf, in the course of his professional practice; or
- (f) a police officer or other person acting under a statutory duty or in the administration of this Act;

“premises” shall, for the purpose of determining who is the occupier, be taken to refer to any land or building, or part of any land or building, that is or is intended to be occupied as a separate residence from any adjacent tenement;

“public place” means any place to which the public has access;

“registered owner” means the person in whose name the dog is registered under this Act;

“registered veterinary surgeon” means a veterinary surgeon registered under the *Veterinary Surgeons Act 1960*;

“registration officer” means a person authorized by the council to effect the registration of dogs pursuant to this Act;

“sterilized” means rendered sterile—

- (a) in the case of a female dog, by ovariectomy or ovariohysterectomy; and
- (b) in the case of a male dog, by castration;

“townsite” means—

- (a) land constituted, defined, or reserved as the site of a town or village under the *Land Act 1933*;
- (b) land subdivided or laid out as the site for a townsite, township, or village, in accordance with the subdivisional plan, registered in the Office of Titles or the Department of Land Administration;
- (c) land, including privately owned subdivided land, declared by Order to be a townsite for the purposes of the *Local Government Act 1960*, or declared to be a townsite under any Act repealed by that Act; and
- (d) land within the district of a town or city under the *Local Government Act 1960* that is outside the metropolitan region.

(2) A person who is shown in the register maintained by a council under this Act as being the last person recorded by the council as the registered owner of a dog is deemed to be the owner of that dog, whether or not the registration in his name continues in force, unless he proves that he is not the owner of the dog.

[Section 3 amended by No. 23 of 1987 s. 4.]

[4. Section 4 repealed by No. 23 of 1987 s. 5.]

Repeal of the Dog Acts, savings and transitional provisions

5. [(1) omitted under Reprints Act 1984 s. 7 (4) (f).]

[(2), (3) and (4) omitted under Reprints Act 1984 s. 7 (4) (g).]

Application

6. (1) The provisions of this Act apply generally to all dogs, whether sterilized or unsterilized, and of whatever age.

(2) Subject to subsection (3), this Act applies subject to the *Highways (Liability for Straying Animals) Act 1983*, so that, where a provision of that Act is inconsistent with a provision of this Act, the provision of that Act prevails and the provision of this Act is inoperative to the extent of the inconsistency.

(3) Subsection (2) does not prevent or in any way affect the liability in tort under this Act of—

- (a) the owner; or
- (b) a person deemed under section 46 (5) to be the owner, of a dog in respect of—
- (c) bodily injury to a person caused by the dog wounding the person; or
- (d) damage to the clothing of a person caused by the dog, in the course of attacking the person referred to in paragraph (c) or (d), as the case requires, on a highway.

[Section 6 amended by No. 64 of 1983 s. 3; No. 23 of 1987 s. 6.]

Dogs to be registered

7. (1) Subject to subsections (1a) and (3), if a dog is not registered under this Act, the owner of the dog and the occupier of the premises where the dog is ordinarily kept or ordinarily permitted to live each commits an offence.

Penalty: \$200.

(1a) It is a defence for an occupier referred to in subsection (1) against whom proceedings are brought for a contravention of that subsection to prove that a person over the age of 18 (whom he shall identify) was the owner of the dog at the time of the contravention.

(2) Where a person is convicted of an offence against subsection (1) the court shall, in addition to any penalty it may impose, order payment by that person of the registration fee which should have been paid and the amount of that fee shall be recoverable in the like manner as that in which the penalty for the offence may be recovered.

(3) The provisions of this section do not apply to—

- (a) a dog under the age of 3 months;
- (aa) a dog kept during any period allowed for the bringing of an appeal under section 17 or until an appeal under that section is determined, discontinued, or dismissed for want of prosecution, or during any period when an order is suspended under section 17 (3a);
- (b) a dog held in the custody of—
 - (i) the Royal Society for the Prevention of Cruelty to Animals (Inc.) of Western Australia;
 - (ii) the Dogs Refuge Home (W.A.) Inc.;
 or

- (iii) any other prescribed body,
in a place maintained for the purpose of finding dogs suitable homes;
- (c) a dog held in the custody of—
 - (i) a registered veterinary surgeon, or a person acting on his behalf, in the course of his professional practice;
or
 - (ii) a member of the Police Force or other person acting in pursuance of a statutory duty or in the administration of this Act;
- (d) a pack of not less than 10 foxhounds *bona fide* kept together in kennel exclusively for the purpose of hunting, and registered as a pack in lieu of the separate registration of each hound; or
- (e) a dog kept in an approved kennel establishment licensed under section 27, where the person by whom that licence is held has paid the prescribed concessional fee applicable to the registration of dogs in that establishment in lieu of a separate registration fee in respect of each such dog.

[Section 7 amended by No. 57 of 1977 s. 2; No. 23 of 1987 s. 7.]

Special provisions for guide dogs

8. (1) Notwithstanding anything contained elsewhere in this Act or in any other Act, regulation or by-law a person who is blind or partially blind—

- (a) is entitled to be accompanied by a dog *bona fide* used by him as a guide dog, in any building or place open to or used by the public, for any purpose, or in any public transport; and
- (b) is not guilty of an offence by reason only that he takes that dog into or permits that dog to enter any building or place open to or used by the public or on any public transport.

(2) The provisions of subsection (1) shall also apply to any person who is *bona fide* engaged in the training of a guide dog.

(3) The Minister may in writing authorize a named person accompanied by a specified dog to enter and be in any building or place open to or used by the public for any purpose, or in any public transport, and, notwithstanding anything in this Act or any other written law, a person acting in accordance with that authority is not guilty of an offence by reason only that he takes that dog into or permits that dog to enter any such building, place or transport.

(4) An authority under subsection (3) may be given subject to such conditions and limitations as the Minister thinks fit, and may at any time be amended or revoked by him.

[Section 8 amended by No. 23 of 1987 s. 8.]

PART II—ADMINISTRATION

Administrative responsibility

9. It shall be the duty of a council within its district to administer and enforce the provisions of this Act, and where in the opinion of the Governor the powers conferred by this Act on a council should be extended to an area outside the district the Governor may by Order declare that for the purposes of this Act the area is to be regarded as being within the district and the provisions of this Act shall then apply as if in fact the area were within the district.

Method of administration

10. [(1) repealed]

(2) Where a person ordinarily keeps a dog at a place that is not within the boundaries of a district or an area to which an Order under section 9 applies, that dog shall for the purposes of this Act be deemed to be ordinarily kept within the district the boundary of which is nearest to the place where the dog is kept.

(3) All fees payable, and all fines and penalties recovered in respect of offences committed, within any district shall be paid to the council as part of its ordinary revenue and the expenses of the administration of this Act incident to any district incurred by a council (including payments made under section 10A) shall be paid out of the ordinary revenue of that council, but any further or other expense incurred in the administration of this Act may be paid out of such moneys as are appropriated by Parliament for the purpose.

[Section 10 amended by No. 23 of 1987 s. 9.]

Payments to veterinary surgeons towards cost of sterilization

10A. (1) A council may—

- (a) make payments to registered veterinary surgeons towards the cost of sterilization of a dog owned by an eligible person;
- (b) from time to time issue directions in writing to such veterinary surgeons to be complied with as a condition of the receipt of a payment under paragraph (a).

(2) No payment shall be made under subsection (1) (a) to a veterinary surgeon for the sterilization of a dog unless the council is satisfied that the veterinary surgeon has complied with any direction issued under subsection (1) (b).

(3) For the purposes of subsection (1) a person is an eligible person in relation to a council if he—

- (a) is the registered owner of the dog whether or not the registration is in the district of that council or in another district;

- (b) resides in the district of that council; and
- (c) in the opinion of that council, would suffer hardship in paying the whole of the cost of sterilization of the dog.

[Section 10A inserted by No. 23 of 1987 s. 10.]

Staff and services

11. (1) For the purposes of this Act a council may establish and maintain one or more public pounds and may appoint, under and subject to the provisions of the *Local Government Act 1960*, fit and proper persons to administer those pounds and otherwise to carry out the objects of this Act.

(2) Where each of 2 or more councils desire to establish and maintain pounds or other services required by this Act, or otherwise to co-operate in the administration of this Act, then notwithstanding the provisions of any other law it shall be lawful for an agreement pursuant to section 328 of the *Local Government Act 1960*, to be entered into and carried out for that purpose between them.

(3) A person who is authorized by a council to exercise any power under this Act shall be furnished with a certificate in the prescribed form evidencing his appointment, and shall produce that certificate on being required so to do by a person in respect of whom he exercises, has exercised, or is about to exercise any such power.

Joint jurisdiction

12. (1) Where a person authorized to seize a dog under this Act pursues that dog from the district in respect of which he is authorized into another district of the State, the authorization shall be deemed to apply in relation to that dog notwithstanding that it is at any material time not in the district where the pursuit commenced.

(2) Where 2 or more councils enter into an agreement to co-operate in the administration of this Act, that agreement may provide that an authorization for the purposes of this Act given by any one of those councils shall have effect in the registration area administered by any other of those councils, and effect shall be given to any such agreement.

Entry of premises

12A. (1) A registration officer may, with the consent of the occupier, enter and inspect—

- (a) any premises—
 - (i) at which a dog is registered to be kept; or
 - (ii) described in an application for registration as those at which the dog will be kept,

for the purpose of ascertaining whether there are on the premises means for effectively confining the dog within the premises; or

- (b) any premises, for the purpose of ascertaining whether a dog that is reasonably suspected to be on the premises is registered for the purposes of section 7 (1),

and may make such enquiries as he thinks necessary.

(2) With the authority of a warrant, an authorized person, and any other person named in the warrant, may enter and inspect any premises for any purpose relating to the enforcement of this Act.

(3) If he is satisfied that there are reasonable grounds for doing so, a Justice of the Peace may issue a warrant for the purposes of subsection (2).

[Section 12A inserted by No. 23 of 1987 s. 11.]

Immunity of persons acting in good faith

13. No proceedings, whether civil or penal, shall lie against a council or any person for any act, matter or thing done, or commanded to be done, in the exercise or purported exercise of a power or the performance of a duty under the provisions of this Act, or for any act, matter or thing omitted to be done, unless that act, matter or thing was done, commanded to be done, or omitted to be done, maliciously or without reasonable and probable cause.

PART III—REGISTRATION

Register to be maintained

14. (1) A council shall maintain a register showing, in relation to the district of the council and any other area for which under the provisions of this Act the council is the registration authority,—

- (a) the particulars of each dog which is the subject of an application for registration;
- (b) the particulars of the person by or on behalf of whom an application for the registration of a dog is made as the owner of the dog, and the premises stated as the place at which the dog is intended to be ordinarily kept;
- (c) any notification of an alleged change of ownership;
- (d) the period of any registration effected, the registration number given, and the particulars of the registration tag relevant to each dog;
- (e) particulars of any conviction recorded, or offence in respect of which a modified penalty is paid, under this Act relevant to any dog or person to which an application or registration relates;

- (f) the number of dogs currently registered in the name of each person;
- (g) particulars of the cancellation of any registration pursuant to this Act.

(2) In compiling or maintaining the register the registration officer shall give effect to any direction given to him by the council or a court.

(3) The register shall be kept at the public office of the council and shall, as far as is practicable, be so maintained as to include any alteration or addition since the preparation of the register for the preceding year.

(4) A person who applies to the council is, on payment of the prescribed fee, entitled to inspect and take copies of any entry in the register or, as the case may be, to receive a copy of an entry in the register certified by a registration officer.

[Section 14 amended by No. 23 of 1987 ss. 12 and 44.]

Registration periods and fees

15. (1) Subject to the provisions of this section, the registration fee payable in relation to a dog shall be such amount as is prescribed by regulation.

(2) The registration of a dog under this Act—

- (a) shall, unless sooner cancelled, remain in force from the date specified in the certificate until 31 October either—
 - (i) next ensuing; or
 - (ii) where the regulations permit an extended registration period and the owner has elected to register the dog for that extended period, ensuing in the last registration year of that period; and
- (b) may be renewed to take effect as from 1 November in any year, within the preceding period of 21 days.

(3) Regulations may provide that concessional rates of registration fee shall be payable—

- (a) by persons of a specified class or in specified circumstances;
- (b) by persons who elect to effect registration for such extended period as is prescribed;
- (c) in respect of registration for a period of less than one year;
- (d) in respect of a dog that is proved, in such manner as is prescribed, to have been sterilized; and
- (e) in respect of dogs to which the provisions of section 7 (3) (e) apply, or which are otherwise kept in prescribed circumstances.

(4) No registration fee shall be payable in relation to a guide dog, or any dog that is kept for the purposes of the Crown.

(5) The registration fee payable in relation to a dog that is *bona fide* used in the droving or tending of stock shall be one quarter of the fee that would otherwise be payable.

(6) In respect of every first registration made after 31 May, in any year, only one half of the registration fee shall be payable.

[Section 15 amended by No. 57 of 1977 s. 3; No. 23 of 1987 s. 13.]

Registration procedure

16. (1) A dog may be registered by the council of the district in which—

- (a) the dog is ordinarily kept; or
- (b) the dog is deemed to be ordinarily kept pursuant to section 9 or section 10 (2),

if the owner of the dog or some person on his behalf delivers an application in the prescribed form, signed by or on behalf of the owner and accompanied by the prescribed fee, to the office of the council or some other place within the district appointed by the council for the purpose.

(1a) The form of application prescribed for the purposes of subsection (1) shall require the applicant—

- (a) to state in the application the premises at which the dog will ordinarily be kept; and
- (b) to certify that the means exist on the premises for effectively confining the dog within the premises.

(1b) Where a dog is ordinarily kept by a person under the age of 18 years, application for registration of that dog shall be made by his parent or guardian or some other person who is over the age of 18 years and any registration shall be in the name of the applicant.

(2) The registration officer on receipt of an application duly made under subsection (1) shall—

- (a) effect the registration in accordance with this Act; or
- (b) where the council so directs, refuse the application and refund the fee,

and in either event shall as soon as is practicable thereafter enter the prescribed particulars in the record maintained by the council pursuant to section 14.

(3) The council may direct the registration officer to refuse to effect or renew the registration of a dog, and may direct that the registration of a dog shall be cancelled, if—

- (a) the applicant, the owner, or the registered owner, as the case may be, has been convicted, or has paid a modified penalty, in respect of an offence under this Act on 2 or more occasions during the preceding 12 months; or

- (b) the dog in question has been shown to the satisfaction of the council to be destructive, dangerous, vicious, unduly mischievous, or to be suffering from a contagious or infectious disease; or
- (c) the council is not satisfied that there are on the premises at which the dog will ordinarily be kept, or the premises shown in the register, as the case may be, means for effectively confining the dog within the premises.

(3a) In respect of a dog that is registered at the commencement of the *Dog Amendment Act 1987* the following provisions apply—

- (a) the council may by writing served on the registered owner require him, within a specified period, to certify in writing to the council that the means exist on the premises recorded in the register as those at which the dog is ordinarily kept for effectively confining the dog within the premises;
- (b) if the registered owner does not comply with a requirement under paragraph (a) within the specified period, or if the council is not satisfied as mentioned in subsection (3) (c) the council may give a direction to the registrar officer under that subsection.

(3b) References in subsections (1a), (3) and (3a) to “means for effectively confining the dog within the premises” do not include the means whereby a dog may be tethered within the premises.

(3c) The registration officer may cancel the registration of a dog if it is proved to his satisfaction that the dog has died or has been removed from the State.

(4) Where the registration of a dog is refused, not renewed or cancelled pursuant to subsection (3) the council shall forthwith notify the applicant or the person in whose name the registration was effected, and that notification shall be accompanied by a statement in writing of the grounds upon which the decision of the council was made.

(5) The registration of a dog under this Act has effect throughout the State notwithstanding that the dog may be removed to another district of the State.

(6) On effecting or renewing any registration, the registration officer shall deliver to the applicant—

- (a) a certificate in the prescribed form acknowledging the fee paid and specifying the registration number allocated to each dog, the term of the relevant registration period, and a description of each dog so registered; and
- (b) in respect of each dog so registered, a registration tag of the prescribed kind.

[Section 16 amended by No. 23 of 1987 ss. 14 and 44.]

Change of ownership

16A. (1) Where the ownership of a dog is transferred to another person, the registered owner shall within 28 days thereafter cause the council in whose register his name appears to be notified in the prescribed manner and form of the name and residential address of the new owner.

Penalty: \$100.

(2) No change shall be made in the record of the ownership of a dog unless—

- (a) the registered owner has notified the change to the council under subsection (1); or
- (b) an application for registration is made by a person who alleges that he is the new owner.

(3) A person aggrieved by a decision of the council relating to the ownership of a dog as recorded in a register may appeal against the decision to the Local Court nearest to the office of the council, and the Court may give to the council such directions as it thinks fit in relation thereto.

[Section 16A inserted by No. 23 of 1987 s. 15.]

Refusal or cancellation of registration

17. (1) Where a council refuses to effect or renew the registration of a dog, or cancels a registration, the applicant or the registered owner as the case may be may, in the prescribed manner and within the prescribed time, appeal against the decision to the Local Court held nearest to the office of the council.

(2) Where an appeal is instituted under this section the Local Court may either affirm the decision of the council or quash it and direct the registration of the dog, and the registration officer shall, on receipt of the prescribed registration fee, give effect to the direction.

(3) Where the Local Court affirms the decision of the council on an appeal, section 40 (1) shall not apply and the Court shall make an order for the seizure of the dog and for its detention and destruction.

(3a) Notwithstanding subsection (3), the Local Court may suspend an order made under that subsection for a specified period and impose conditions relating to the keeping of the dog and may at or before the expiry of that period cancel the order under subsection (3) if it is satisfied that the dog will be kept without the likelihood of any contravention of this Act.

(4) If no appeal under subsection (1) is instituted within the prescribed time the council may apply to a Justice of the Peace for an order authorizing the seizure of the dog and where the Justice is satisfied that the applicant or the registered owner, as the case may be, of the dog has

been given proper notice of the reason for the decision but has not appealed against the decision, the Justice may make an order for the seizure of the dog and thereupon the council may cause the dog to be seized and detained or destroyed or otherwise disposed of as though it had been found in a place in contravention of section 31, 32 or 33A and had not been claimed.

(5) Subsection (4) also applies where—

- (a) the applicant discontinues the appeal; or
- (b) where the Local Court makes an order (which it is hereby authorized to do) dismissing the appeal for want of prosecution,

and for that purpose the words “has not appealed” in that subsection shall be read as “has not prosecuted his appeal”.

[*Section 17 amended by No. 23 of 1987 s. 16.*]

Registration tags

18. (1) A registration tag shall—

- (a) be of a durable material;
- (b) be of a colour specified by the Minister under subsection (2); and
- (c) contain such particulars as are prescribed.

(2) The Minister shall by order published in the *Gazette* in respect of a registration period, or an extended registration period referred to in section 15 (2) (a) (ii), specify the colour of registration tags for that registration period or extended registration period.

(3) The Minister may, in like manner, amend or replace an order under subsection (2).

[*Section 18 substituted by No. 23 of 1987 s. 17.*]

Refund of fee on cancellation

19. Where on the cancellation of the registration of a dog that was registered for an extended period, the person who was the registered owner returns the registration tag to the council, the council shall refund to the person such proportion of the registration fee as may be prescribed.

[*Section 19 substituted by No. 23 of 1987 s. 18.*]

Offences relating to registration, etc.

20. (1) A person who—

- (a) wilfully inserts or omits, or permits to be inserted or omitted, in any application for the grant or renewal of a registration any matter or thing whatsoever contrary to, or for the purpose of concealing, the truth;
- (b) whether on his own behalf or that of another person, for the purpose of obtaining any benefit or avoiding any penalty or obligation under this Act, wilfully makes or causes to be made any representation or statement which is false or misleading in any material particular or which he knows or ought reasonably to know is likely to deceive any person;
- (c) keeps any dog wearing a registration tag—
 - [(i) *deleted*]
 - (ii) issued in respect of another dog; or
 - (iii) in respect of a registration which is cancelled; or
- (d) wrongfully removes or defaces any registration tag issued under this Act, or makes, uses, purchases or has in his possession any counterfeit or false certificate of registration or registration tag or any thing apparently intended to resemble or pass for the same,

commits an offence.

Penalty: \$500.

(2) Where by regulations it is provided that a prescribed tattoo appearing on a dog may be accepted by a council as proof that the dog has been sterilized, a person who applies that tattoo, or causes the same to be applied, to an unsterilized dog commits an offence.

Penalty: \$500.

[Section 20 amended by No. 23 of 1987 ss. 19 and 44.]

[**21.** Section 21 repealed by No. 23 of 1987 s. 20.]

[**Part IV:** Part IV repealed by No. 23 of 1987 s. 21.]

PART V—THE KEEPING OF DOGS

Limitation as to numbers

26. (1) The provisions of this Part shall not operate to prevent the keeping on any premises of 2 dogs over the age of 3 months and the young of those dogs under that age.

(2) Subject to subsection (1), a council, pursuant to by-laws, may limit the number of dogs over the age of 3 months, or the number of such dogs of any specified breed or kind, that may be kept on any premises situate in a specified area to which those by-laws apply unless those premises are licensed as an approved kennel establishment or are exempt.

(3) Where by a by-law under this Act a council has placed a limit on the keeping of dogs in any specified area but the council is satisfied in relation to any particular premises that the provisions of this Act relating to approved kennel establishments need not be applied in the circumstances, the council may grant an exemption in respect of those premises but any such exemption—

- (a) may be made subject to conditions, including a condition that it applies only to the dogs specified therein;
- (b) shall not operate to authorize the keeping of more than 6 dogs on those premises; and
- (c) may be revoked or varied at any time.

(4) Subject to the provisions of subsection (3), a person who keeps on any premises, not being premises licensed as an approved kennel establishment, dogs over the age of 3 months in numbers exceeding any limit imposed in relation to those dogs by a by-law made under subsection (2) commits an offence.

Penalty: \$200 and a daily penalty of \$20.

(5) Any person who is aggrieved—

- (a) by the conditions imposed in relation to any exemption from the provisions of a by-law placing a limitation on the number of dogs that may be kept on any premises; or
- (b) by the refusal of a council to grant such an exemption, or by the revocation of an exemption,

may appeal in writing to the Minister who may, after such inquiry as he thinks fit, give directions to the council concerned and effect shall be given to any such direction.

(6) An appeal under subsection (5) shall be lodged with the Minister not later than 28 days after the day on which a notice of the decision that is appealable is served on the person affected by that decision.

[Section 26 amended by No. 23 of 1987 s. 22.]

Licensing of approved kennel establishments

27. (1) Where, pursuant to the provisions of section 26, a council imposes a limit on the number of dogs over the age of 3 months, or the number of such dogs of any specified breed or kind that may be kept on any premises situate in a specified area, and a person proposes to keep

dogs to which such a limit applies in numbers exceeding that limit on premises that are not exempt from the limitation he shall apply for the premises in question to be licensed as an approved kennel establishment.

(2) A person who keeps, or permits or suffers to be kept, any dog over the age of 3 months of a breed or kind to which that licence applies at an approved kennel establishment otherwise than in accordance with the licence relating to that establishment commits an offence.

Penalty: \$200 and a daily penalty of \$20.

(3) By-laws made under this Act may require that dogs in an approved kennel establishment shall be kept in kennels and yards appropriate to the breed or kind in question and having specifications of a standard not less than that prescribed, sited and maintained in accordance with the requirements of public health, and sufficiently secured.

(4) A licence to keep an approved kennel establishment may be granted by a council on an application made in the prescribed manner and form, which may be required to be supported by evidence that due notice of the proposed use of the land has been given to persons in the locality, and where notice is required to be given the council shall have regard to any objections raised.

(5) A licence under this section has effect for a period of 12 months, and is renewable upon payment of the prescribed fee, but may be cancelled at any time by the council if the council is dissatisfied with the conduct of the establishment.

(6) The cancellation of a licence under this section shall be effected by the service of a notice on the licensee to expire at the end of the period specified in the notice, which shall be a period of not less than 3 months.

(7) Where—

- (a) the council refuses the grant of a licence under this section; or
- (b) notice of the intention to cancel a licence under this section is given,

the applicant or the licensee as the case may be may, in the prescribed manner and in the prescribed time, appeal against the decision to the Local Court held nearest to the office of the council and that court may thereupon either affirm the decision of the council or quash it and direct the licensing of the establishment upon such conditions, if any, as the court thinks fit.

[Section 27 amended by No. 23 of 1987 s. 23.]

PART VI—CONTROL OF DOGS

[*Heading to Part VI substituted by No. 23 of 1987 s. 24.*]

[28. *Section 28 repealed by No. 23 of 1987 s. 25.*]

Power to seize strays, etc.

29. (1) A police officer, or a person authorized for the purpose by the council, may exercise any power conferred on an authorized person by this section.

(2) No proceedings, whether civil or penal, shall lie against—

- (a) any person assisting an authorized person, at his request and in accordance with his directions; or
- (b) the owner or occupier of any premises for the time being used to detain a dog pursuant to this section,

in respect of any act, matter or thing done or omitted to be done in good faith for the purposes of carrying out the provisions of this section.

(3) Where it appears to an authorized person that a dog is in a place in apparent contravention of section 31, 32 or 33A—

- (a) he may seize and detain it; and
- (b) if he is in pursuit of the dog for the purpose of seizing it, he may enter any premises, other than a building or part of a building that is used for residential purposes if he has reasonable grounds to believe that it is necessary to do so for that purpose.

(4) Where a dog is seized pursuant to subsection (3) the authorized person may—

- (a) cause it to be returned to the owner; or
- (b) detain it,

and the owner shall be liable to pay the reasonable cost of returning the dog or of maintaining it during the period of detention, or both where that is appropriate, together with any charges levied in relation to the seizure and impounding of the dog and any other fees or charges relating to that dog which ought to have been, but had not been, paid under this Act.

(5) Any moneys referred to in subsection (4) may be recovered in any court of competent jurisdiction—

- (a) by the person to whom they are due; or
- (b) by the council detaining the dog, (whether or not payable to that council),

as though they were a debt, and where any such moneys are so recovered by a council they shall be disbursed by that council to the persons or authorities entitled thereto.

(5a) If he is satisfied that a dog has or may have bitten a person without provocation or reasonable cause, a Justice of the Peace may issue a warrant authorizing any authorized person to seize the dog and detain it pending the determination of an application for an order for the destruction of the dog.

(5b) Where a warrant under subsection (5a) is issued in respect of a dog an authorized person—

- (a) may seize and detain the dog; and
- (b) may enter any premises if he has reasonable grounds to believe that it is necessary to do so for the purpose of seizing the dog.

(6) Where a dog is seized under this section and is not forthwith returned to the owner it shall be detained in a pound maintained by a council or at premises maintained by a prescribed body, or in any other suitable premises.

(7) An officer of a prescribed body who is authorized by that body for the purpose may receive and keep dogs in any premises maintained by that body for the care of dogs and in respect to any such dog that officer has and may exercise all or any of the powers of an authorized person or a council under this section including the powers of disposal and sale.

(8) Where a dog is detained under subsection (3)—

- (a) if the dog is wearing a registration tag or the owner is otherwise readily identifiable, the authorized person causing it to be detained shall also cause notice to be given to the owner in the prescribed manner and form as soon as is practicable; and
- (b) the dog shall be kept and maintained for a period of at least 72 hours next following—
 - (i) where notice is given under paragraph (a) the giving of that notice; or
 - (ii) where no such notice is required to be given, the time the detention commenced,

but, subject to this section, shall be delivered up to a person who produces satisfactory evidence of ownership or of his authority to take delivery of it.

(8a) Where a dog is detained under subsection (5b) and, at the expiration of 7 days after the detention commenced no application has been made for an order for the destruction of the dog—

- (a) if the dog is wearing a registration tag or the owner is otherwise readily identifiable, an authorized person shall cause notice to be given to the owner in the prescribed manner and form as soon as is practicable after the expiration of that period of 7 days;
- (b) the dog shall be kept and maintained for a period of at least 72 hours next following—
 - (i) where notice is given under paragraph (a), the giving of that notice; or

(ii) where no such notice is required to be given, the expiration of that period of 7 days,

but, subject to this section, shall be delivered up to a person who produces satisfactory evidence of ownership or of his authority to take delivery of it;

and

(c) the owner of the dog shall be liable to pay the reasonable cost of maintaining the dog during any period after the expiration of the period of 72 hours mentioned in paragraph (b) but otherwise the owner shall not be liable for any cost or charge in relation to the seizure, impounding, maintaining or return of the dog.

(8b) Notwithstanding section 40 (1) (ea), where a dog is detained under subsection (5b) and, upon the determination of an application for an order for the destruction of the dog, the court does not make an order under section 40 (1), subsection (8a) (a), (b) and (c) apply in relation to the dog as if the determination of the application were the expiration of the period of 7 days referred to in subsection (8a).

(8c) Subsection (5) applies in relation to any moneys that the owner of a dog is liable to pay under subsection (8a) (c), or under subsection (8a) (c) as applied by subsection (8b)

(9) In all cases where a dog seized under this section is returned to or claimed by the owner or a person on his behalf, the registration certificate for that dog may be required to be produced or, where the dog is not registered, that person may be required to register it before the dog is released.

(10) Where a dog is not claimed, or where a person in the name of whom that dog is registered declines to resume possession of a dog, or any moneys due in relation to that dog are not paid, an authorized person may cause a dog seized and detained under this section to be destroyed.

(11) A dog which is liable to be destroyed pursuant to subsection (10) may be disposed of by the council or prescribed body or sold and the proceeds of the sale shall be the property of the council or prescribed body detaining the dog.

(12) Where it is the opinion of an authorized person that a dog seized pursuant to this section is suffering from injury, disease or sickness to such an extent that it is impracticable to maintain the dog, or that any such disease is of a contagious or infectious kind, he may cause it to be destroyed upon the written authority of a registered veterinary surgeon, medical practitioner or health surveyor.

(13) Where an authorized person may seize a dog under subsection (3) but by reason of—

- (a) the savagery of the dog; or
- (b) repeated evasion of attempts at seizure; or
- (c) other sufficient cause,

it is, in the opinion of the authorized person, dangerous or impracticable to seize the dog, the dog may, subject to subsection (13a), be destroyed without being seized if—

- (d) the assistance of the owner, or some other person likely to be able to control the dog is not reasonably available; and
- (e) there is no other practicable way to enforce the provisions of this Act.

(13a) A dog may be destroyed under subsection (13) only—

- (a) in a public place; or
- (b) on premises that are not a public place if the occupier of those premises consents to the destruction.

(14) A council or an authorized person may cause a dog to be destroyed at the request of the owner of that dog, whether or not the dog has been seized or detained.

[Section 29 amended by No. 23 of 1987 s. 26.]

Dogs to wear collars, registration tags, etc.

30. (1) A dog shall not be in a public place unless—

- (a) it is wearing a collar to which a valid registration tag under section 18 relating thereto is securely attached; and
- (b) the name and residential address of the owner of the dog are legibly endorsed or inscribed on, or on an attachment to, the collar worn by the dog.

(2) If a dog is at any time in a public place in contravention of subsection (1), every person liable for the control of the dog at that time commits an offence against that subsection unless he establishes a defence under section 33B.

Penalty: \$100.

(3) A dog is exempt from the requirements of subsection (1) (a) if it is—

- (a) a greyhound participating in a greyhound race or trial under the control of the Western Australian Greyhound Racing Association established by the *Western Australian Greyhound Racing Association Act 1981*;
- (b) a foxhound exempted from separate registration under section 7 (3) (d);
- (c) a dog exempted from separate registration under section 7 (3) (e);
- (d) a dog being exhibited for show purposes;

- (e) a dog which, under the control of a responsible person, is being trained for or is participating in retrieving, duck hunting or some other customary sporting purpose; or
- (f) a dog that is participating in an obedience trial or classes conducted under the auspices of the body known as the Canine Association of Western Australia (Inc.) or a body approved by the council of the municipality in whose district the obedience trial or classes are conducted.

(4) A dog is exempt from the requirements of subsection (1) (b) if it is a dog to which subsection (3)(a), (b), (d), (e) or (f) applies.

[Section 30: Sections 30, 31, 32 and 33 repealed and sections 30, 31, 32, 33, 33A, 33B, 33C and 33D substituted by No. 23 of 1987 s. 27.]

Control of dogs in certain public places

31. (1) A dog shall not be in a public place unless it is—

- (a) held by a person who is capable of controlling the dog; or
- (b) securely tethered for a temporary purpose,

by means of a chain, cord, leash or harness of sufficient strength and not exceeding the prescribed length.

(2) A dog is exempt from the requirements of subsection (1) if—

- (a) it is in an area specified by a council under section 51 as a dog exercise area;
- (b) it is in a public place in an area of the State that is outside the metropolitan region or a townsite;
- (c) it is in or on a vehicle or boat;
- (d) it is being exhibited for show purposes;
- (e) it is participating in an obedience trial or classes conducted under the auspices of the body known as the Canine Association of Western Australia (Inc.) or a body approved by the council of the municipality in whose district the obedience trial or classes are conducted;
- (f) it is registered as being *bona fide* used in the droving or tending of stock and is being so used or is going to or returning from a place where it will be, or has been, so used;
- (g) it is a foxhound in a registered pack *bona fide* engaged in hunting or hound exercise or in going to or returning from hunting or hound exercise; or
- (h) it is being used for retrieving, duck hunting or other customary sporting purposes.

(3) If a dog is at any time in any public place in contravention of subsection (1) every person liable for the control of the dog at that time commits an offence against that subsection unless he establishes a defence under section 33B.

Penalty: \$200.

[Section 31: Sections 30, 31, 32 and 33 repealed and sections 30, 31, 32, 33, 33A, 33B, 33C and 33D substituted by No. 23 of 1987 s. 27.]

Control of dogs in exercise areas and rural areas

32. (1) A dog, not being a greyhound, shall not be in—

- (a) an area specified by a council under section 51 as a dog exercise area; or
- (b) a public place in an area of the State that is outside the metropolitan region or outside a townsite,

unless section 31 (1) is complied with or a competent person is in reasonable proximity to the dog.

(2) A person is a competent person for the purposes of subsection (1) only if—

- (a) he is a person who is liable for the control of the dog;
- (b) he is capable of controlling it; and
- (c) he is carrying and capable of attaching to the dog for the purpose of controlling it, a chain, cord, leash or harness of sufficient strength and not exceeding the prescribed length.

(3) The exemptions in section 31 (2) (other than paragraphs (a) and (b)) also apply for the purposes of subsection (1).

(4) If a dog is at any time in any place in contravention of subsection (1) every person liable for the control of the dog at that time commits an offence against that subsection unless he establishes a defence under section 33B.

Penalty: \$200.

(5) A council must specify under section 51 (bb) such dog exercise areas as are, in the opinion of the council, sufficient in number, and suitable, for the exercising of dogs in the district.

[Section 32: Sections 30, 31, 32 and 33 repealed and sections 30, 31, 32, 33, 33A, 33B, 33C and 33D substituted by No. 23 of 1987 s. 27.]

Special provision for greyhounds

33. (1) A greyhound shall, except while it is on premises occupied by its owner, be muzzled in such a manner as will prevent it from biting a person or animal.

(2) Section 31 applies to a greyhound subject to the following modifications—

- (a) the exemptions in subsection (2) (a) and (b) of that section shall not apply;
- (b) a greyhound is exempt from subsection (1) of that section while it is participating in a race or trial under the control of the Western Australian Greyhound Racing Association established by the *Western Australian Greyhound Racing Association Act 1981*; and
- (c) for the purposes of subsection (1) (a) of that section, a person shall be conclusively deemed to be incapable of controlling a greyhound if it is one of more than 2 greyhounds held by him at one time.

(3) If a greyhound is at any time not muzzled as required by subsection (1) every person liable for the control of the dog at that time commits an offence against that subsection unless he establishes a defence under section 33B.

Penalty: \$200.

[Section 33: Sections 30, 31, 32 and 33 repealed and sections 30, 31, 32, 33, 33A, 33B, 33C and 33D substituted by No. 23 of 1987 s. 27.]

Control of dogs in places that are not public

33A. (1) A dog shall not be in any place that is not a public place unless—

- (a) consent to its being there has been given—
 - (i) by the occupier or a person apparently authorized to consent on behalf of the occupier;
 - or
 - (ii) if the place is unoccupied, by the owner or a person apparently authorized to consent on behalf of the owner;
 - or
 - (iii) if the place is an enclosed field, paddock, yard or other place in which animals or birds are confined, by the owner of all such animals or birds; or
- (b) it is held or tethered as required by section 31 (1).

(2) A dog is exempt from the requirements of subsection (1) if it is—

- (a) in a pet shop or premises used for the practice of a registered veterinary surgeon; or
- (b) in or on a vehicle or boat.

(3) If a dog is at any time in any place in contravention of subsection (1) every person liable for the control of the dog at that time commits an offence against that subsection unless he establishes a defence under section 33B.

Penalty: \$200.

[Section 33A: Sections 30, 31, 32 and 33 repealed and sections 30, 31, 32, 33, 33A, 33B, 33C and 33D substituted by No. 23 of 1987 s. 27.]

Defences applicable to sections 30 (1), 31 (1), 32 (1), 33 (1) and 33A (1)

33B. It is a defence to a charge of an offence of contravening section 30 (1), 31 (1), 32 (1), 33 (1) or 33A (1) if the person charged satisfies the court—

- (a) in the case of any person, that he took all reasonable precautions and exercised all due diligence to avoid the contravention;
- (b) in the case of the occupier of premises where the dog is ordinarily kept or ordinarily permitted to live, that—
 - (i) he has fulfilled the requirements of paragraph (a); or
 - (ii) that at the material time the dog was in fact owned by some other person (whom he shall identify) over the age of 18 years; or
- (c) in the case of the owner or the registered owner, that—
 - (i) he fulfilled the requirements of paragraph (a); or
 - (ii) that at the material time the dog was in the possession or control of some other person without his consent, express or implied.

[Section 33B: Sections 30, 31, 32 and 33 repealed and sections 30, 31, 32, 33, 33A, 33B, 33C and 33D substituted by No. 23 of 1987 s. 27.]

Saving

33C. Nothing in this Part shall be read as limiting any other written law whereby the entry or presence of dogs in any place is prohibited, controlled or restricted.

[Section 33C: Sections 30, 31, 32 and 33 repealed and sections 30, 31, 32, 33, 33A, 33B, 33C and 33D substituted by No. 23 of 1987 s. 27.]

Dog attacks, etc.

33D. (1) If a dog attacks or chases any person, or any animal or bird owned by or in the charge of another person, whether or not any injury is caused, every person liable for the control of the dog commits an offence—

- (a) in the case of any person, unless he satisfies the court that—
 - (i) he took all reasonable precautions and exercised all due diligence to avoid the contravention; or

- (ii) the dog was being used in good faith in the reasonable defence of any person or property or for the droving or removal of any animal found trespassing;
- (b) in the case of the occupier of premises where the dog is ordinarily kept or ordinarily permitted to live, unless he fulfils the requirements of paragraph (a) or satisfies the court that at the material time the dog was in fact owned by some other person (whom he shall identify) over the age of 18 years; or
- (c) in the case of the owner or the registered owner, unless he fulfils the requirements of paragraph (a) or satisfies the court that at the material time the dog was in the possession or control of some other person without his consent, express or implied.

Penalty: \$1 000.

- (2) A person shall not set on or urge a dog to attack or chase any person or any animal or bird owned by or in the charge of another person, whether or not any injury is caused, except in good faith—
- (a) in the reasonable defence of any person or property; or
 - (b) for the droving or removal of any animal if—
 - (i) the owner or person in charge of the animal consents to the droving or removal; or
 - (ii) the animal is found trespassing.

Penalty: \$2 000.

[Section 33D: Sections 30, 31, 32 and 33 repealed and sections 30, 31, 32, 33, 33A, 33B, 33C and 33D substituted by No. 23 of 1987 s. 27.]

Protection of livestock

34. (1) A person who owns, or who is for the time being lawfully in charge of, any animal or bird may lawfully shoot or otherwise destroy a dog which he finds attacking that animal or bird if there is no other way of stopping the attack and provided that notice is given to a police officer as soon as is practicable thereafter.

(2) The owner or occupier of any enclosed paddock, field, yard or other place in which any horse, cattle, sheep, swine, goats or poultry (in this section referred to as “livestock”) are confined, or any person acting under the authority of that owner or occupier, may lawfully shoot or otherwise destroy any dog found therein, whether the owner of the dog is or is not known, if that dog is not accompanied by some person.

(3) In any proceedings, whether civil or penal, arising out of an attack by a dog upon any animal or bird or the worrying or chasing of livestock, whether in a confined area or otherwise, the fact that the dog was immediately prior thereto in company with or had been seen continuously and closely following a person is *prima facie* evidence that the person had the dog in his possession or under his control for the purposes of the definition of “person liable for the control of the dog” in section 3.

(4) Where it is reasonably necessary for the protection of livestock confined or depasturing on any land the owner or occupier of that land or a person acting under his authority may lay poison on that land in baits likely to be taken by dogs wandering at large if—

- (a) the poison is not laid within 20 metres of any road, reserve or public place;
- (b) the laying of that poison is authorized in the material circumstances by or under any Act relating to the prevention, destruction or eradication of specific kinds of animal or of animals in specified circumstances; and
- (c) the poison is not so laid as to endanger children or indigenous birds or animals,

but where the laying of poison is not found to have been reasonably necessary, or does not otherwise comply with the requirements of this subsection, a person who lays poison in baits commits an offence.

Penalty: \$500.

[Section 34 amended by No. 23 of 1987 s. 28.]

Destruction of vermin, etc.

35. Where a person, reasonably and in good faith, lawfully takes measures for the purpose of destroying vermin or dogs wandering at large, whether by means of traps, poison or otherwise, in conformity with the provisions of any Act or the regulations made thereunder, and as a consequence of a dog wandering at large those measures result in that dog suffering death, injury or harm, that person shall not be liable therefor in any proceedings, whether civil or penal.

Diseases and parasite control

36. (1) The owner of a dog shall take all reasonable precautions against that dog becoming infested by tapeworms or other parasites, and if the dog appears to be suffering from any infectious or contagious disease shall cause the dog to be examined by a registered veterinary surgeon, or in the absence of a veterinary surgeon, by a medical practitioner or health surveyor and shall take all practicable steps to enable that condition to be controlled or eradicated.

Penalty: \$200.

(2) Where he has reasonable grounds for believing that the provisions of subsection (1) have not been complied with any police officer or person authorized by the council for the purpose of this section, may by notice in writing require the owner of a dog to have that dog available at a specified place for veterinary examination at the cost of the owner by a registered veterinary surgeon, or in the absence of a veterinary surgeon by a medical practitioner or health surveyor, within the period specified in that notice

(not being a period of less than 3 days) and a person who without reasonable excuse fails to comply with that requirement commits an offence.

(3) Where pursuant to an examination made by him under this section any registered veterinary surgeon, medical practitioner or health surveyor considers that a dog is a danger to health the council may cause the dog to be seized and detained for isolation or destruction, but where the council proposes to destroy the dog the owner shall be given notice in the prescribed manner and may, in the prescribed manner and within the prescribed time, appeal against the decision to the nearest Local Court and the dog shall be detained until that Local Court either affirms the decision or quashes the decision.

[Section 36 amended by No. 23 of 1987 s. 29.]

[37. Section 37 repealed by No. 23 of 1987 s. 30.]

Nuisance

38. (1) A dog shall not be a nuisance either of itself or together with other dogs whether or not in the same ownership.

(1a) Where it is shown that a dog is a nuisance in contravention of subsection (1) the occupier of the premises where the dog is ordinarily kept or ordinarily permitted to live commits an offence against that subsection unless he proves that he took all reasonable precautions and exercised all due diligence to avoid the contravention.

Penalty: \$200.

(2) A dog shall be taken to be a nuisance for the purposes of this section if—

- (a) it is injurious or dangerous to the health of any person;
- (b) it creates a noise, by barking or otherwise, which persistently occurs or continues to a degree or extent not normally habitual in dogs and has a disturbing effect on the state of reasonable physical, mental, or social well-being of a person; or
- (c) it is shown to be allowed to behave consistently in a manner contrary to the general interest of the community,

but not otherwise.

(3) Where 3 persons, of whom at least 2 occupy different premises, are prepared to sign and do sign a complaint in the prescribed form alleging the existence of a nuisance created by a dog the council may serve on the occupier of the premises in which that dog is kept a notice requiring him to abate the nuisance within 14 days, and if the nuisance is not so abated the council may institute proceedings for an offence against subsection (1).

[Section 38 amended by No. 23 of 1987 s. 31.]

PART VII—ENFORCEMENT

Biting of persons

39. Where a dog is shown to have bitten a person without provocation or reasonable cause a court may order that the dog be destroyed.

Destruction of dogs, etc.

40. (1) In relation to any application made for an order for the destruction of a dog or where in any proceedings the destruction of a dog may be ordered, the court may—

- (a) order the destruction;
 - (b) provide that the order shall be remitted in specified circumstances;
 - (c) order the seizure and detention of the dog, whether or not an order is made for the destruction of the dog;
 - (d) make an order requiring that the dog be controlled, or be controlled in a specified manner;
 - (e) make an order requiring that the dog be disposed of, or be disposed of in a specified manner;
 - (ea) where the dog has been detained under section 29 (5b) or an order is made under paragraph (c), make any order it thinks fit as to the payment of any cost, charge or fee of a kind referred to in section 29 (4);
 - (f) authorize a police officer or a person appointed by the council to give effect to the order; and
 - (g) give all necessary directions to make the order effective.
- (2) An order for the destruction of a dog shall state—
- (a) to whom it is directed;
 - (b) whether or not it may be remitted, and, if so, in what circumstances; and
 - (c) within what period it is to be put into effect.

(3) Where the destruction of a dog is ordered or authorized by this Act it shall be effected so far as is practicable without cruelty and by some speedy means.

(4) An order of the kind referred to in subsection (1) shall be implemented notwithstanding that the ownership of the dog has changed or is not known, or that the dog is no longer kept in the area for which the council is the registration authority, unless on an application made to the court making the original order the court is satisfied that the changed circumstances are such that the order may be varied.

(5) A person who is ordered or authorized to destroy a dog is required to make provision for the disposal of the carcass.

[*Section 40 amended by No. 23 of 1987 s. 32.*]

Indemnity as to destruction of dogs

41. No action, claim or demand lies, or shall be allowed, by or in favour of any person against another, and no person shall be deemed guilty of an offence, by reason only of measures lawfully taken for the destruction of a dog under the provisions of this Act.

[~~42. Section 42 repealed by No. 23 of 1987 s. 33.~~]

Offences relating to enforcement, etc.

43. (1) A person who—

- (a) being the owner or occupier of any premises in relation to which a person authorized under this Act has exercised or is about to exercise any of his powers under this Act, fails to facilitate the carrying out by that person, or any assistant or interpreter acting on his behalf, of his duties under this Act;
- (b) impedes, delays or in any way obstructs a person authorized under this Act in the exercise of his powers or the carrying out of his duties under this Act;
- (c) fails without lawful excuse to produce any dog in his possession or control when required to do so by a person exercising a power under this Act, or fails to allow that person, on his producing the same, to make an examination thereof; or
- (d) interferes with, releases, or removes from lawful custody any dog seized or detained under this Act, or damages or destroys any structure in which a dog is lawfully detained, or attempts to do any such act,

commits an offence.

Penalty: \$500.

(2) A person who fails without lawful excuse to produce any certificate or other document issued to him pursuant to this Act when required to do so by a person exercising a power under this Act, or fails to allow that person, on his producing the same, to make an examination thereof, commits an offence.

Penalty: \$200.

[*Section 43 amended by No. 23 of 1987 s. 34.*]

Name and address to be supplied

43A. A person who is alleged by an authorized person to be concerned in the commission of an offence against this Act shall furnish to that authorized person on demand his full name and the address of his place of residence.

Penalty: \$200.

[Section 43A inserted by No. 23 of 1987 s. 35.]

Enforcement proceedings

44. (1) All proceedings in respect of offences against this Act shall be heard by a court of petty sessions, and the provisions of the *Justices Act 1902*, apply to any such proceedings.

(2) Any proceedings under this Act, whether civil or penal, may be taken—

- (a) by any police officer, in the name of the Crown;
- (b) by any officer of a council authorized in that behalf by the council, in the name of the council; or
- (c) by any person aggrieved.

(3) Where proceedings under this Act are taken by an officer of a council no proof shall be required of the appointment of that officer as an officer of the council or of his authority to take the proceedings, but the averment on the process that the person is so authorized shall be deemed to be sufficient proof of the fact.

Evidentiary provisions

45. (1) In any proceeding for an offence against this Act in relation to a dog—

- (a) an averment on the process that at a particular time a person was a person liable for the control of the dog or was the owner or the registered owner of the dog, or that a person was the occupier of any premises where the dog was ordinarily kept or ordinarily permitted to live, or that the dog was not registered or that the dog was of a particular breed is evidence of that fact;

and

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

(2) In any proceedings, whether civil or penal, a registration certificate under section 16 (6), or a copy of an entry in a register certified by a registration officer, shall, without proof of the signature of the person

appearing to have signed the same or that he is a registration officer, be evidence of the matters relevant to the proceedings set out in that registration certificate or certified copy.

[Section 45 substituted by No. 23 of 1987 s. 36.]

Modified penalties

45A. (1) Regulations may provide for a modified penalty for an offence against this Act or the regulations for which the maximum penalty for a conviction does not exceed \$200.

(2) Uniform general by-laws or other by-laws made under this Act may provide for a modified penalty for an offence against the by-laws.

(3) A modified penalty for an offence shall not exceed 20 per cent of the maximum penalty for that offence.

(4) Where a person does not contest an allegation that he committed an offence to which a modified penalty applies, the production of an acknowledgement from the council by whom that person was notified of the commission of the offence that the modified penalty has been paid to that council shall be a defence to a charge of the offence in respect of which the modified penalty was paid.

(5) The payment of a modified penalty shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the occurrence to which the modified penalty relates.

[Section 45A inserted by No. 23 of 1987 s. 37.]

PART VIII—CIVIL REMEDIES, ETC.

Damages

46. (1) The conviction of a person under this Act does not affect any right or remedy by civil process of any party arising in relation to the same matter, and the provisions of this Act do not limit or affect any right, remedy or proceeding under any other Act or at law.

(2) The owner of any dog, or a person deemed under subsection (5) to be the owner of a dog, may be liable in damages for injury done by that dog.

(3) It shall not be necessary in any proceedings for a party seeking damages in respect of an injury caused by a dog to show a previous mischievous propensity in the dog or the knowledge of that propensity on the part of the owner or a person deemed to be the owner, or that the injury was attributable to neglect on the part of the owner or a person deemed to be the owner of the dog.

(4) It shall not be a defence in any civil proceedings in relation to injury, damage, nuisance or annoyance caused by a dog for a person who would otherwise be liable therefor to show that at the material time the dog was not in his possession or control unless he also satisfies the court that the dog was in the actual possession or control of some other person without his consent, express or implied.

(5) A person who—

(a) has a dog in his possession or under his control; or

(b) is the occupier of any premises where a dog is ordinarily kept or ordinarily permitted to live,

shall for the purposes of subsection (2) be deemed to be the owner of the dog whilst those circumstances subsist.

(6) In addition to any other defence he may have, a person referred to in subsection 5 (b) is not liable as owner of a dog if he satisfies the court that at the material time the dog was in fact owned by some other person over the age of 18 years, whom he shall identify.

[Section 46 amended by No. 23 of 1987 s. 38.]

Causing harm to dogs

47. A person who wilfully and without lawful excuse kills, poisons, injures or causes unnecessary pain or suffering to any dog commits an offence.

Penalty: \$1 000 and imprisonment for a term not exceeding 6 months.

[Section 47 amended by No. 23 of 1987 s. 39.]

PART IX—BY-LAWS

Uniform by-laws

48. (1) The Governor may make and publish in the *Gazette* uniform general by-laws for all or any of the purposes for which by-laws may be made under this Act.

(2) Subject to subsection (3), any uniform general by-law published under subsection (1) shall apply in the whole of each district within the State, and shall have the same force and effect in each district and may be enforced by the council as if it were a by-law made under this Act by the council of the district.

(3) The Governor may from time to time by Order declare that any uniform general by-law published under subsection (1) shall not apply to a district specified in the Order, or to any specified part of the district, and thereafter that by-law (and any amendment or substitution of that by-law effected pursuant to subsection (1)) shall not apply thereto unless the Order is varied so as to allow such application or is revoked.

(4) An Order made under subsection (3) may be varied or revoked by a subsequent Order.

(5) Where and to the extent that there is inconsistency between the provisions of a uniform general by-law having force and effect under this section and a by-law made by a council under this Act, the provisions of the uniform general by-law prevail.

Council by-laws

49. (1) A council may make by-laws for any of the purposes permitted by section 51 and any such by-law shall have effect in the area for which that council is the registering authority, whether within the district of the council or deemed to be within that district for the purposes of this Act.

(2) The Governor may cause to be prepared and published in the *Gazette* draft model by-laws which a council may adopt, with or without alterations, for the purposes of this Act.

(3) Where a draft model by-law is adopted, with or without alterations, by a council that by-law shall for all purposes have effect as if it were in fact made by the Council.

(4) By-laws made under this section are required to be confirmed by the Governor before being published in the *Gazette* and laid before each House of Parliament.

[*(5) repealed*]

(6) Where a council intends to make a by-law, whether by adoption of a model by-law or otherwise, the council shall—

- (a) cause a draft of the proposed by-law to be prepared, or specify the draft model by-law to be adopted setting out any alterations proposed;
- (b) resolve that the by-law be made, specifying in the resolution any alterations proposed to a draft model by-law;
- (c) record the resolution in, or substantially in, the form required under the *Local Government Act 1960*, for the making or adoption of a by-law, as the case may require, and cause the seal of the municipality to be affixed to that form;
- (d) cause notice of the intention to submit the by-law for confirmation by the Governor to be published once in a newspaper circulating in the district of the municipality, and cause to be stated in the notice the purport of the by-law and of the alterations, if any, where a draft model by-law is adopted and notification that the full text of the by-law may be inspected by members of the public free of charge at the office of the council;

- (e) for a period of 21 days commencing on the day of the publication of the notice in a newspaper pursuant to the requirements of paragraph (d), cause—
- (i) a copy of that notice to be kept posted on the official notice board of the council; and
 - (ii) a copy of the full text of the by-law to be available free of charge for public inspection during office hours at the office of the council.

(7) The notice of the intention to submit the by-law for confirmation by the Governor published in a newspaper in accordance with subsection (6) (d) and the notice posted on the official notice board of the council in accordance with paragraph (e) of that subsection shall in each case include a provision making known to the public that objections to and representations in respect of the proposed by-law may be made to the council during the period of 21 days commencing on the date of the publication and in the manner specified in the notice.

(8) Within the period of 21 days commencing on the date of the publication and in the manner so specified, any person or body that wishes to make an objection or representation to the council in respect of the proposed by-law may submit that objection or representation with all relevant accompanying documents or information to the council.

(9) The council shall consider any objection or representation made under subsection (8) and, if the council thereafter still desires to make the by-law in the form published, cause the sealed record of the resolution mentioned in subsection (6) (c) to be delivered to the Minister together with a report on the objections and representations made in respect of the proposal.

(10) If the Governor confirms the by-law the Minister shall cause the full text of the by-law to be published in the *Gazette* and to be laid before both Houses of Parliament as required by section 36 of the *Interpretation Act 1918*².

[Section 49 amended by No. 23 of 1987 s. 40.]

General provisions relating to by-laws

- 50.** (1) Any uniform general by-law or other by-law may be made—
- (a) so as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or specified times, throughout the district or in a specified part or specified parts of the district and in areas which although not within the district are by the operation of the provisions of this Act nevertheless to be regarded for the purpose of the by-law making power of a council as being within the district;

- (b) so as to require a matter affected by it to be in accordance with a specified standard or specified requirement, or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to delegate to or confer upon a specified body a discretionary authority;
- (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from its provisions either wholly or to such extent as is specified; and

[(d) *deleted*]

(2) Any uniform by-law or other by-law may make provision for the imposition of penalties not exceeding \$200 in respect of any contravention, and may prescribe the fees and charges that shall be payable in relation to matters under this Act, the persons liable and the method of recovery of amounts not duly paid.

(3) Where in relation to a by-law made under this Act the expression “specified” is used, the expression, unless the context requires otherwise, means specified in that by-law.

(4) The provisions of section 260 to section 264, inclusive, of the *Local Government Act 1960*, apply to a by-law made under this Act as if it were in fact made under that Act.

(5) A council shall cause—

- (a) copies of the by-laws which are made under this Act and which are in force in the district to be available for sale at a price not exceeding the cost price for each copy, as determined by the council, to persons applying for them at the office of the council; and
- (b) copies of those by-laws in force to be available for inspection, free of charge, during office hours, at the office of the council.

[Section 50 amended by No. 23 of 1987 s. 41.]

By-law making powers

51. A council may so make by-laws—

- (a) providing for the registration of dogs;
- (b) specifying places where dogs are prohibited absolutely;
- (ba) extending the operation of section 31, with all necessary modifications, to specified public places or classes of public places that are outside the metropolitan region or a townsite;
- (bb) specifying any public place or class of public place, being a place that is under the care, control and management of the council, as a dog exercise area for the purposes of sections 31 and 32;

- (c) specifying areas within which it shall be an offence (unless the excreta are removed) for any person liable for the control of a dog to permit that dog to excrete on any street or public place or on any land without the consent of the occupier;
- (d) requiring that in specified areas a portion of the premises on which a dog is kept must be fenced in a manner capable of confining the dog;
- (e) providing for the establishment and maintenance of pounds and other services and facilities necessary or expedient for the purposes of this Act;
- (f) providing for the detention, maintenance, care and release or disposal of dogs seized;
- (g) as to the destruction of dogs pursuant to the powers hereinbefore conferred;
- (h) as to the number of dogs that may be kept pursuant to section 26 or section 27; and
- (i) providing for the licensing, regulating, construction, use, and inspection of approved kennel establishments.

[Section 51 amended by No. 23 of 1987 s. 42.]

Revocation of by-laws

52. (1) Where any by-law has been or is made by a council, whether under the authority or purported authority of this Act, the repealed Acts, the *Local Government Act 1960*, the *Health Act 1911*, the *Town Planning and Development Act 1928*, or any other Act, and in relation to any matter affecting dogs or the keeping of dogs that by-law, or the manner in which that by-law is administered, is in the opinion of the Governor unduly oppressive, repugnant to or inconsistent with the provisions of this Act the Governor may by notice published in the *Gazette* revoke that by-law or any part thereof in relation to any such matter and effect shall be given to any such revocation but without affecting the validity, or curing the invalidity, of any thing done, or of the omission of any thing, in the mean-time.

(2) The Minister shall cause a copy of any notice published under this section to be laid before each House of Parliament within 6 sitting days of that House next following the publication, and if either House of Parliament passes a resolution of which notice has been given within the first 14 sitting days of that House after the copy of a notice under this section has been laid before that House that the notice be disallowed, the notice thereupon ceases to have effect, but the disallowance of the notice does not affect or invalidate anything done in good faith before the passing of the resolution.

PART X—REGULATIONS

Regulations as to certain kinds of dog

53. (1) Where in the opinion of the Minister any kind of dog, whether of a specific breed or of mixed breeds, is a potential danger the Governor may, on the recommendation of the Minister, make regulations for the purposes of this section.

(2) The provisions of regulations made under this section shall apply to dogs only in the circumstances, and at the time and place, specified therein.

(3) Regulations made under this section in relation to a specified kind of dog may—

- (a) require the sterilization of any such dog;
- (b) provide that dogs found in contravention of the regulations may be destroyed;
- (c) require that such dogs be kept chained or otherwise under restraint or in effective confinement;
- (d) require that any such dog be marked for identification by the method known as tattooing or in some other prescribed manner; or
- (e) impose conditions, restrictions or limitations upon the keeping of, or relating to the custody and control of, any such dog.

(4) A person who contravenes or fails to comply with any of the provisions of a regulation made under this section, or the requirement of a council made pursuant to subsection (3) (e), commits an offence.

Penalty: \$500.

(5) In any proceedings under this Act any question as to whether or not the provisions of this section apply to any dog by virtue of it being a dog of a specified kind shall be determined by the person holding the office of Chief Veterinary Surgeon in the Department of Agriculture but the examination of the dog may be made by a person acting under his direction.

(6) The production of a certificate purporting to be signed by the Chief Veterinary Surgeon with respect to a determination made for the purposes of this Act shall, without proof of the signature of the person appearing to have signed that certificate or that he is the Chief Veterinary Surgeon, be sufficient evidence of the breed or characteristics of the dog identified in that certificate and of the matters relevant to those proceedings stated in the certificate unless the defendant, by not less than 3 days' notice in writing delivered to the complainant and by a like 3 days' notice delivered to the Chief Veterinary Surgeon requires the attendance of the Chief Veterinary Surgeon as a witness.

[Section 53 amended by No. 23 of 1987 s. 43.]

Regulations generally

54. (1) The Governor may make regulations for and in relation to any matter which the Governor thinks necessary or expedient for carrying this Act into effect, including such transitional, incidental and supplementary provisions as may be necessary in relation to the Acts repealed by this Act or any application of the provisions of this Act.

(2) Where and to the extent that there is inconsistency between regulations made under this Act and any by-law in force in any district made or purporting to have been made under or pursuant to this Act, the Acts repealed by this Act, the *Local Government Act 1960*, or any other Act the provisions of the regulations prevail.

(3) The provisions of section 50 (1), (2) and (3) have effect in relation to regulations made under this Act in like manner *mutatis mutandis* as they apply to a by-law.

NOTES

¹. This reprint is a compilation as at 11 February 1988 of the *Dog Act 1976* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

| Act | Number and Year | Assent | Commencement | Miscellaneous |
|-----------------------------------|-----------------|-------------------|---|---------------|
| <i>Dog Act 1976</i> | 58 of 1976 | 16 September 1976 | Act other than section 21: 24 December 1976 (see <i>Gazette</i> 24 December 1976 p. 5029); section 21: 1 July 1977 (see <i>Gazette</i> 3 June 1977 p. 1635) | |
| <i>Dog Act Amendment Act 1977</i> | 57 of 1977 | 23 November 1977 | 23 November 1977 | |
| <i>Dog Amendment Act 1983</i> | 64 of 1983 | 13 December 1983 | 17 November 1983 (see section 2) | |
| <i>Dog Amendment Act 1987</i> | 23 of 1987 | 25 June 1987 | 1 November 1987 (see <i>Gazette</i> 18 September 1987 p. 3587) | |

². Repealed by the *Interpretation Act 1984* (No. 12 of 1984).