

Reprinted under the
Reprints Act 1984 as
at 20 November 1996

WESTERN AUSTRALIA

DOG ACT 1976

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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.

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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 —

“attack”, in relation to the behaviour of a dog, does not include behaviour which was an immediate response to, and was induced by, provocation, but includes —

- (a) aggressively rushing at or harassing any person or animal; or
- (b) biting, or otherwise causing physical injury to, a person or an animal; or
- (c) tearing clothing on, or otherwise causing damage to the property of, the person attacked; or

- (d) attempting to attack, or behaving in such a manner toward a person as would cause a reasonable person to fear physical injury,

unless the owner establishes that the behaviour was justified by a reasonable cause;

“authorized person” means a person who is appointed by a council, to exercise powers on behalf of the council, under section 29 (1);

“dangerous dog” means a dog which is the subject of a declaration under section 33E declaring it to be a dangerous dog;

“district” means an area of the State that has been declared to be a district under the *Local Government Act 1995*, 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;

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“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;

“provocation”, in relation to the behaviour of a dog, includes —

- (a) on the part of a person, other than a person liable for the control of the dog —
 - (i) any teasing, tormenting, or abuse of the dog; or
 - (ii) any assault on, or act of cruelty towards, the dog; or

- (iii) entry without lawful excuse on any land or premises of which the owner of the dog is an occupier or on which the dog is ordinarily kept; or
- (iv) any intrusion into or upon any vehicle in which the dog is present; or
- (v) any threat to, or attack upon, another person or animal towards whom the dog could reasonably be expected to be protective;

or

- (b) on the part of another animal —
 - (i) an attack on the dog made by any other animal; or
 - (ii) the entry of that other animal on any land or premises of which the owner of the dog is an occupier or on which the dog is ordinarily kept; or
 - (iii) any threat to, or attack upon, another person or animal towards whom the dog could reasonably be expected to be protective,

but does not include an intentional provocation of the dog by a person liable for the control of the dog;

“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;

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

“registration officer” means a person authorized by the local government 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 ovari hysterectomy; 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, lodged with the Department within the meaning of the *Transfer of Land Act 1893* or the Department within the meaning of the *Land Act 1933*; and
- [(c) *deleted*]
- (d) land within a town or city under the *Local Government Act 1995* that is outside the metropolitan region.

(2) A person who is shown in the register maintained by a local government under this Act as being the last person recorded by the local government 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; No. 14 of 1996 s.4; No. 24 of 1996 s.4; No. 81 of 1996 s.153 (1).*]

[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) - (4) omitted under the Reprints Act 1984 s.7 (4) (g).]

Application

6. (1) Subject to subsection (4), 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 of —

(a) the owner; or

(b) a person deemed under section 46 (5) to be the owner,

of a dog in respect of —

(c) injury to any person or animal inflicted by the dog; or

(d) damage to the clothing or other property of a person caused by the dog,

in the course of an attack by that dog on a highway.

(4) The provisions of this Act, and of any regulation or by-law which is made under this Act, do not apply to or in relation to a dog when it is working with a member of the Police Force on duty, and despite anything in any written law a

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member of the Police Force on duty is entitled to be accompanied, at all times and in all places, by a dog with which that member is working.

[Section 6 amended by No. 64 of 1983 s.3; No. 23 of 1987 s.6; No. 24 of 1996 s.5.]

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: Where the dog is a dangerous dog, \$1 000; otherwise, \$500.

(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; No. 24 of 1996 s.16.]

Special provisions for guide dogs

8. (1) Notwithstanding anything contained elsewhere in this Act or in any other Act, regulation, local law 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; No. 14 of 1996 s.4.]

PART II — ADMINISTRATION

Administrative responsibility

9. It shall be the duty of a local government 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 local government 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.

[Section 9 amended by No. 14 of 1996 s.4.]

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.

[Section 10 amended by No. 23 of 1987 s.9; No. 14 of 1996 s.4.]

Payments to veterinary surgeons towards cost of sterilization

10A. (1) A local government may —

- (a) make payments to registered veterinary surgeons towards the cost of sterilization of a dog owned by an eligible person;

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- (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 local government 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 local government if he —

- (a) is the registered owner of the dog whether or not the registration is in the district of that local government or in another district;
- (b) resides in the district of that local government; and
- (c) in the opinion of that local government, 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; amended by No. 14 of 1996 s.4.]

Staff and services

11. (1) For the purposes of this Act a local government may establish and maintain one or more public pounds and may appoint, under and subject to the provisions of the *Local Government Act 1995*, 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 local governments desire to establish and maintain pounds or other services required by this Act, or otherwise to cooperate in the administration of this Act, then notwithstanding the provisions of any other law it shall be lawful for an agreement pursuant to section 3.68 of the *Local Government Act 1995*, to be entered into and carried out for that purpose between them.

(3) A person who is authorized by a local government 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.

[Section 11 amended by No. 14 of 1996 s.4.]

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 local governments 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 local governments shall have effect in the registration area administered by any other of those local governments, and effect shall be given to any such agreement.

[Section 12 amended by No. 14 of 1996 s.4.]

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

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- (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 local government 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.

[Section 13 amended by No. 14 of 1996 s.4.]

PART III — REGISTRATION

Register to be maintained

14. (1) A local government shall maintain a register showing, in relation to the district of the local government and any other area for which under the provisions of this Act the local government 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 local government or a court.

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(3) The register shall be kept at the public office of the local government 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 local government 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;
No. 14 of 1996 s.4.]*

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 local government of the district in which —

- (a) the dog is ordinarily kept; or

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- (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 local government or some other place within the district appointed by the local government 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 local government 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 local government pursuant to section 14.

(3) The local government 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 local government to be destructive, unduly mischievous, or to be suffering from a contagious or infectious disease; or
- (c) the local government 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; or
- (d) the dog is a dangerous dog; or
- (e) the council is not satisfied that the terms and conditions of an order as to control requirements in respect of a dangerous dog are being complied with at those premises.

(3a) In respect of a dog that is registered at the commencement of the *Dog Amendment Act 1987*¹ the following provisions apply —

- (a) the local government may by writing served on the registered owner require him, within a specified period, to certify in writing to the local government 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 local government is not satisfied as mentioned in subsection (3) (c) the local government may give a direction to the registration officer under that subsection.

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(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 local government 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 local government 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;
No. 14 of 1996 s.4; No. 24 of 1996 s.6.]*

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 local government 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: Where the dog is a dangerous dog, \$400; otherwise, \$200.

(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 local government 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 local government 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 local government, and the Court may give to the local government such directions as it thinks fit in relation thereto.

[Section 16A inserted by No. 23 of 1987 s.15; amended by No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

Refusal or cancellation of registration

17. (1) Where a local government 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 local government.

(2) Where an appeal is instituted under this section the Local Court may either affirm the decision of the local government or quash it and direct the registration of the dog,

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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 local government 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 local government 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 local government 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; No. 14 of 1996 s.4.]

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 inserted 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 local government, the local government shall refund to the person such proportion of the registration fee as may be prescribed.

[Section 19 inserted by No. 23 of 1987 s.18; amended by No. 14 of 1996 s.4.]

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;

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- (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: Where the dog is a dangerous dog, \$4 000; otherwise, \$1 000.

(2) Where by regulations it is provided that a prescribed tattoo appearing on a dog may be accepted by a local government 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: \$1 000.

[Section 20 amended by No. 23 of 1987 ss.19 and 44; No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

[21. Repealed by No. 23 of 1987 s.20.]

[Part IV (Sections 22-25). 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 local government, pursuant to local 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 local laws apply unless those premises are licensed as an approved kennel establishment or are exempt.

(3) Where by a local law under this Act a local government has placed a limit on the keeping of dogs in any specified area but the local government 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 local government 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 local law made under subsection (2) commits an offence.

Penalty: \$1 000 and a daily penalty of \$100.

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(5) Any person who is aggrieved —

- (a) by the conditions imposed in relation to any exemption from the provisions of a local law placing a limitation on the number of dogs that may be kept on any premises; or
- (b) by the refusal of a local government 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 local government 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; No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

Licensing of approved kennel establishments

27. (1) Where, pursuant to the provisions of section 26, a local government 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: \$1 000 and a daily penalty of \$100.

(3) Local 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 local government 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 local government 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 local government if the local government 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 local government 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 local government and that court may thereupon either affirm the decision of the local government or quash it and direct the

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licensing of the establishment upon such conditions, if any, as the court thinks fit.

[Section 27 amended by No. 23 of 1987 s.23; No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

PART VI — CONTROL OF DOGS

[Heading inserted by No. 23 of 1987 s.24.]

Division 1 — Dogs generally

[Heading inserted by No. 24 of 1996 s.7.]

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

Power to seize strays, etc.

29. (1) A council shall, in writing, appoint persons to exercise on behalf of the council the powers conferred on an authorized person by this Act.

(1a) A police officer may exercise any power conferred by this section on an authorized person.

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

- (a) any person assisting an authorized person or a police officer, 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 Act,

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 Act.

(3) If it appears to an authorized person that —

- (a) an attack by a dog has occurred;

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- (b) a dog is, or is deemed under section 17 (4) to have been found, in a place in apparent contravention of section 31, 32 or 33A; or
- (c) a dog is a dangerous dog —
 - (i) in relation to which moneys are due to the local government in respect of a charge determined under section 33M; or
 - (ii) which is not registered under this Act,
the authorized person may —
- (d) seize and detain the dog; and
- (e) if he is in pursuit of the dog for the purpose of seizing it and he has reasonable grounds to believe that it is necessary to do so for that purpose, enter any premises, other (unless section 33G (1) applies) than a building or part of a building that is used for residential purposes.

(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 to the council detaining the dog, if so required by the council and whether or not payable to the council, before the dog is returned to the owner 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, including any penalties imposed on, or costs or expenses

payable by, the owner in respect of an offence, whether or not the dog is returned to the owner.

(5) Any moneys due under this Act in relation to a dog for which the owner is liable may be recovered in any court of competent jurisdiction —

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

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

(5a) If he is satisfied on the balance of probabilities that an attack by a dog has or may have caused injury or damage, a Justice of the Peace may issue a warrant authorizing any authorized person to seize the dog and —

- (a) if the dog is a dangerous dog, detain and deal with it in accordance with section 33G; or
- (b) otherwise, detain it pending the determination of an application under section 39.

(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 if section 33G (2) applies shall give the notice required by that subsection; 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 local government 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 local government 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, to the prior payment of any moneys required in accordance with subsection (4), to be paid to the council detaining the dog, and to section 33G, or unless the dog is required to be detained as evidence of an offence, 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

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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 has been seized and detained, whether or not under this section, and —

- (a) the dog is not claimed; or
- (b) the person in whose name the dog is registered declines to resume possession of the dog; or
- (c) any moneys due in relation to the dog are not paid; or
- (d) section 33G (6) applies,

an authorized person may cause the dog to be destroyed.

(11) A dog which is liable to be destroyed pursuant to subsection (10) may be disposed of by the local government or prescribed body or sold and the proceeds of the sale shall be the property of the local government or prescribed body detaining the dog and are not required to be accounted for to the owner.

(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 local government 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.

(15) Where a dog is destroyed under this section, the owner is liable for the cost of both the destruction and the disposal of the dog.

[Section 29 amended by No. 23 of 1987 s.26; No. 14 of 1996 s.4; No. 24 of 1996 s.8.]

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

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- (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: Where the dog is a dangerous dog, \$1 000; otherwise, \$500.

(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 local government 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 inserted by No. 23 of 1987 s.27; amended by No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

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 local government 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 local government in whose district the obedience trial or classes are conducted;

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- (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: Where the dog is a dangerous dog, \$4 000; otherwise, \$1 000.

[Section 31 inserted by No. 23 of 1987 s.27; amended by No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

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 local government 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: Where the dog is a dangerous dog, \$4 000; otherwise, \$1 000.

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

[Section 32 inserted by No. 23 of 1987 s.27; amended by No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

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;

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- (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: \$2 000.

[Section 33 inserted by No. 23 of 1987 s.27; amended by No. 24 of 1996 s.16.]

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: Where the dog is a dangerous dog, \$4 000; otherwise, \$1 000.

[Section 33A inserted by No. 23 of 1987 s.27; amended by No. 24 of 1996 s.16.]

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;

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(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 inserted by No. 23 of 1987 s.27.]

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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 inserted by No. 23 of 1987 s.27.]

Dog attacks, etc.

33D. (1) If a dog attacks or chases any person, or any animal 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 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 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 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: \$10 000.

(2) A person shall not set on or urge a dog to attack or chase any person or any animal 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: \$10 000, or 12 months imprisonment, or both.

[Section 33D inserted by No. 23 of 1987 s.27; amended by No. 24 of 1996 ss.9 and 16.]

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Division 2 — Dangerous dogs

[Heading inserted by No. 24 of 1996 s.10.]

A dog may be declared to be a dangerous dog

33E. (1) A council, or on behalf of the council an authorized person or person specifically authorized by the council for the purposes of this section either generally or in a particular case, may, by a notice in writing given in accordance with section 33F, declare a dog to be a dangerous dog if, in the opinion of the council or that person —

- (a) the dog has caused injury or damage by an attack on, or chasing, a person, animal or vehicle;
 - (b) the dog has, repeatedly, shown a tendency —
 - (i) to attack, or chase, a person, animal or vehicle even though no injury has been caused by that behaviour; or
 - (ii) to threaten to attack;
- or
- (c) the behaviour of the dog meets other criteria prescribed for the purpose of this section.

(2) For the purpose of subsection (1) (b), a dog to which section 30 (3) applies shall not be taken to show a tendency to attack, or chase, in carrying out the activities referred to in section 30 (3) in relation to a dog of that kind.

(3) The owner of a dog declared to be a dangerous dog, or detained under this Division, shall have the rights of objection and appeal referred to in this Division.

[Section 33E inserted by No. 24 of 1996 s.10.]

Owner to be notified of making of declaration, and as to control requirements

33F. (1) The council, or the person by whom the declaration was made on behalf of the council, must give written notice declaring a dog to be a dangerous dog to the owner of that dog, and may by that notice impose an order as to control requirements in respect of the dog.

(2) A notice to be given under subsection (1) —

- (a) shall give reasons for the making of the declaration;
- (b) shall specify that the owner has a right under this Division, to be exercised within not more than 7 days after the giving of the notice, either —
 - (i) to lodge a written objection with the council, with a subsequent right of appeal to a Local Court in the manner prescribed by regulations against any decision made by the council; or
 - (ii) to appeal, directly to a Local Court, in the manner prescribed by regulations,

as to the declaration or as to any control requirement imposed, or as to both; and

- (c) if an order as to any control requirements is to be imposed on the owner, shall set out —
 - (i) the terms and conditions of that order; and
 - (ii) the date, or respective dates, by which the owner must comply with any such requirement.

(3) Whether or not any objection is lodged or appeal made, the declaration of a dog as a dangerous dog has, subject to subsection (4) and to the terms and conditions of the order as to

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control requirements imposed by that notice, effect upon the giving of a notice under subsection (1) and thereafter —

- (a) the owner is required, in accordance with section 33K (1), to ensure that any other person liable for the control of the dog is made aware of the declaration;
- (b) any person liable for the control of the dog shall cause the dog to be muzzled, in such a manner as will prevent it from biting a person or animal, at all times —
 - (i) in any public place; and
 - (ii) in such other circumstances as may be specified in the order as to control requirements;

and

- (c) if so required by the order, a person liable for the control of the dog shall ensure that the dog is kept —
 - (i) on a leash or chain, by a person physically able to control the dog, when in a dog exercise area and in such other circumstances as may be specified; and
 - (ii) under continuous supervision, by a person physically able to control the dog, in such circumstances as may be specified.

(4) The terms and conditions of an order as to control requirements, other than such as have effect under subsection (3), shall have effect on such date, or respective dates, as are specified in the notice given under subsection (1) imposing the order unless an objection is lodged or an appeal is made, in which case any such term or condition of the order to which the objection or appeal relates shall not have effect until the objection, and any relevant appeal, has been determined.

(5) In making any order imposing control requirements in respect of a dog the council or the person giving the notice on behalf of the council may set out any term or condition, of any kind, which is considered necessary to prevent, or reduce the likelihood of, that dog attacking, including any requirement referred to in subsection (3) (b) (ii) or (3) (c) or a requirement —

- (a) that the dog be confined in, or excluded from, any area specified;
- (b) that any enclosure within which the dog is kept be constructed —
 - (i) so as to restrict access by young children;
 - (ii) so that the dog can not escape from it; and
 - (iii) so that it complies with any prescribed requirement;
- (c) that the owner ensure that at all times, or at such times as may be specified in the order, the dog wears a distinctive collar or device, of a kind prescribed or as approved by the council, to warn people that the dog is dangerous; or
- (d) that the owner ensure that at any entrance to premises where the dog is kept signs, of a kind prescribed or as approved by the council, are displayed to warn people that a dangerous dog is kept there.

(6) Where an objection is lodged with a council in accordance with subsection (2) (b) (i) the council shall consider it and —

- (a) if the council dismisses the objection, the owner may appeal to a Local Court in the manner prescribed by regulations within 7 days after the giving of a notice by the council as to the dismissal of the objection; or

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s. 33F

- (b) if the council has not given notice to the owner that the objection has been considered, and either upheld, varied or dismissed, within 35 days after the giving under subsection (1) of the notice of the making of the declaration the owner may appeal to a Local Court in the manner prescribed by regulations, within not more than 42 days after the giving of the notice under subsection (1).

(7) Where a council gives notice of the dismissal of an objection under this section, that notice must set out the reason for the dismissal of the objection.

(8) The council of a district in which the dog is at that time ordinarily kept may, by written notice to the owner of the dog, vary the terms and conditions of any order as to control requirements which has been imposed, and any such notice of variation shall be dealt with as though it were, and is subject to the same provisions as to objection and appeal as, a notice given under subsection (1).

(9) Where a dog is declared to be a dangerous dog an authorized person may, at any reasonable time, enter any premises other than a building or part of a building that is used for residential purposes, being premises —

- (a) where the dog is ordinarily kept; or
- (b) which he has reasonable grounds to believe that it is necessary to enter for the purpose of this section,

to ascertain whether or not the owner has complied with the requirements imposed by or under this section.

[Section 33F inserted by No. 24 of 1996 s.10.]

Seizure and destruction

33G. (1) Where an authorized person or a police officer has reasonable grounds to believe that an attack by a dangerous dog has occurred, whether or not a warrant has been applied for under section 29 (5a), that authorized person or police officer may, if he has reasonable grounds to believe it is necessary to do so, enter onto or into any premises and there seize the dog and thereafter the dog may be detained under section 29 (3).

(2) On the dog being so detained pursuant to subsection (1) the council or an authorized person must give notice in writing, in addition to any notice required by section 29, to the owner of the dog —

- (a) informing the owner of the seizure and of the place where the dog is detained;
- (b) giving reasons for the seizure;
- (c) stating that, whether or not the dog is claimed, the council proposes to cause the dog to be destroyed, at a time specified not earlier, unless the owner otherwise consents, than 10 days after the giving of the notice; and
- (d) specifying that the owner has a right under this Division, to be exercised within not more than 7 days after the giving of the notice, either —
 - (i) to lodge a written objection with the council, with a subsequent right of appeal to a Local Court in the manner prescribed by regulations against any decision made by the council; or
 - (ii) to appeal, directly to a Local Court, in the manner prescribed by regulations,

where, and as soon as, that is practicable.

Dog Act 1976

s. 33G

(3) The council shall cause a dog seized under this section to be detained until any objection which is received has been considered, the time for any appeal to a Local Court has passed, and if an appeal is made that appeal has been determined.

(4) Where an objection is lodged with a council in accordance with subsection (2) (d) (i) the council shall consider it and —

- (a) if the council dismisses the objection, the owner may appeal to a Local Court in the manner prescribed by regulations within 7 days after the giving of a notice by the council as to the dismissal of the objection; or
- (b) if the council has not given notice to the owner that the objection has been considered, and either upheld, varied or dismissed, within 35 days after the giving under subsection (2) of the notice of the seizure of the dog the owner may appeal to a Local Court in the manner prescribed by regulations, within 42 days after the giving of that notice under subsection (2).

(5) Where a council gives notice of the dismissal of an objection under this section, that notice must set out the reason for the dismissal of the objection.

(6) Where —

- (a) an objection lodged with a council in accordance with subsection (2) (d) (i) is dismissed and —
 - (i) no appeal is made to the Local Court;
 - (ii) the applicant discontinues the appeal; or
 - (iii) the Local Court makes an order dismissing the appeal for want of prosecution;

or

- (b) an appeal is made under this section to the Local Court and the proposal to cause the dog to be destroyed is affirmed by an order of that court,

an authorized person, or a person specifically authorized by the court, may destroy the dog concerned.

[Section 33G inserted by No. 24 of 1996 s.10.]

Council may revoke a declaration, control requirements, or proposal to destroy

33H. (1) The council of the district in which the dog is at that time ordinarily kept may, of its own motion or, subject to subsection (4), on the application of the owner of the dog, revoke —

- (a) a notice under section 33F —
 - (i) declaring a dog to be a dangerous dog; or
 - (ii) imposing control requirements;
- or
- (b) a notice under section 33G proposing to cause a dog to be destroyed,

if the council is satisfied that the dog can be kept without the likelihood of any contravention of this Act.

(2) The council may, before dealing with any application under subsection (1), require the owner of the dog to which the relevant notice relates, or a person to whom ownership, possession or control of the dog has passed, to attend with the dog a course in behaviour and training approved by the council, or otherwise to demonstrate a change in the behaviour of the dog.

Dog Act 1976

s. 33H

(3) The council must, as soon as is practicable, give notice in writing to the owner of the dog —

- (a) of the revoking of a notice, declaration or proposal under subsection (1); or
- (b) if the owner has sought such a revocation, of any refusal so to revoke and of the reasons for the making of the decision.

(4) A person who was the owner of a dog at the time the relevant notice was given shall not be entitled to make an application under subsection (1) (a) until —

- (a) any objection or appeal in respect of the notice sought to be revoked has been determined; or
- (b) one year has elapsed since the giving of that notice, or since any preceding application under this section was determined.

(5) Where an application is lodged with a council under subsection (1) the council shall consider it and —

- (a) if the council dismisses the application, the owner may appeal to a Local Court in the manner prescribed by regulations within 7 days after the giving of a notice by the council as to the dismissal of the application; or
- (b) if the council has not given notice to the owner that the application has been considered, and either upheld, varied or dismissed, within 35 days after the lodging of the application under subsection (1) the owner may appeal to a Local Court in the manner prescribed by regulations, within not more than 42 days after the lodging of the application under subsection (1).

[Section 33H inserted by No. 24 of 1996 s.10.]

Jurisdiction of the Local Court

33I. (1) An appeal lies to a Local Court under this Division —

- (a) against the decision made by a council —
 - (i) where an objection as to the declaration or control requirements is lodged with the council under section 33F (2) (b) (i), or an objection is lodged under section 33G (2) (d) (i) to a proposal to destroy a dog, is dismissed; or
 - (ii) where an application lodged under section 33H (1) to revoke any notice is dismissed;
- (b) against the declaration under section 33E of a dog as a dangerous dog, where no objection is lodged with the council, where the owner elects to proceed under section 33F (2) (b) (ii) directly;
- (c) against a proposal to destroy a dog, where the owner elects to proceed under section 33G (2) (d) (ii) directly; or
- (d) where an objection or application is lodged with the council but section 33F (6) (b), section 33G (4) (b) or section 33H (5) (b) applies.

(2) Where, under this Division, an appeal lies to a Local Court —

- (a) the appeal shall be instituted in the Local Court held nearest to the office of the council concerned in that appeal; and
- (b) that Local Court may —
 - (i) affirm the decision appealed against, or quash it;

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- (ii) dismiss any appeal for want of prosecution;
- (iii) where the dog is detained, order the release of the dog to the owner;
- (iv) suspend, or vary, the operation of any decision or order appealed against, with or without imposing conditions on the keeping of the dog; or
- (v) on being satisfied that the dog will be kept without the likelihood of any contravention of this Act, cancel any previous order made in respect of that dog by a Local Court,

and the provisions of section 40 apply in respect to any such matter.

(3) An appeal to a Local Court under this Division shall proceed by way of a re-hearing of the matter to which the appeal relates, and the decision of the Local Court is final and not subject to further appeal.

(4) Regulations made under section 54 may make provision in relation to appeals under this Division.

[Section 33I inserted by No. 24 of 1996 s.10.]

Duration of an order as to control requirements

33J. An order imposing control requirements in relation to a dog has effect until —

- (a) the dog dies;
- (b) the notice imposing the order is revoked, or the relevant requirement is varied, by the council;

- (c) the decision pursuant to which the order was imposed is quashed, or varied in a relevant manner, by the Local Court; or
- (d) if a period for which the order is to have effect was specified in the notice by which it was imposed, that period expires,

even though the ownership of the dog may change.

[Section 33J inserted by No. 24 of 1996 s.10.]

Duty to notify persons

33K. (1) Following the making of a declaration that a dog is a dangerous dog, and the service of a notice under section 33F (1) or (8) imposing or varying control requirements, the owner of that dog shall ensure that any person who is, or subsequently becomes, a person liable for the control of the dog is made aware of the declaration and of the terms and conditions of the control requirements imposed in relation to that dog.

(2) A person liable for the control of a dog which is a dangerous dog shall, within 24 hours, notify the council of the district in which the dog is ordinarily kept —

- (a) if an attack by the dog occurs, giving particulars of that attack;
- (b) if the dog is missing, giving particulars of where it was last known to be located;
- (c) if the ownership of the dog changes, giving particulars as to that change; or
- (d) if the dog is to be ordinarily kept in the district of that council at a different location to the place in which the dog was previously ordinarily kept, giving particulars as to the new location.

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(3) Where a person liable for the control of a dangerous dog intends ordinarily to keep the dog in the district of a council that is not the council by which the dog was declared to be a dangerous dog, the person must notify the council of the district in which the dog is to be kept within 24 hours of the dog commencing to be kept there.

(4) On or before the change of ownership of a dangerous dog, the person transferring ownership must give written notice to the person to whom ownership is to be transferred —

- (a) that the dog has been declared to be a dangerous dog;
- (b) of the terms and conditions of any order imposed as to control requirements; and
- (c) that this Act requires that the new owner comply with the terms and conditions of that order.

(5) The owner of a dangerous dog must notify the council of the district in which the dog is ordinarily kept if —

- (a) the dog is to be ordinarily kept in a location not in the district of that council, giving particulars as to the new location; or
- (b) the dog dies.

[Section 33K inserted by No. 24 of 1996 s.10.]

Offences by a person liable for the control of a dangerous dog

33L. (1) Subject to subsection (2), any person who is liable for the control of a dog which is a dangerous dog and who does not comply with any requirements of —

- (a) section 33F or an order imposed under section 33F;

- (b) where the terms or conditions of any order under section 33F are from time to time varied, whether by the council or a Local Court, in respect of that dog, the terms and conditions of the order as so varied;
- (c) an order under section 40; or
- (d) section 33K (1), (2), (3) or (4),

commits an offence.

Penalty: \$4 000 and a daily penalty of \$400.

(2) A person who becomes a person liable for the control of a dangerous dog shall be taken not to have committed an offence under this Division if the person establishes that —

- (a) before or when the person became so liable, the person was not informed that the dog was a dangerous dog, and did not have any reasonable cause to believe that the dog was a dangerous dog; and
- (b) the person was not subsequently, prior to the alleged offence, informed by a person previously liable for the control of the dog, a council or an authorized person that the dog was a dangerous dog.

[Section 33L inserted by No. 24 of 1996 s.10.]

Council expenses to be recoverable

33M. (1) Where a dog is declared to be a dangerous dog, the council may require the owner to pay, in addition to and at the time of payment of the registration fee under section 15, either —

- (a) a reasonable charge, up to such maximum amount as may be prescribed, as determined by the council having regard to the expense incurred by the council

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in making inquiries, investigations and inspections concerning the behaviour of that particular dog, the manner and place in which it is from time to time kept, and whether or not the terms and conditions of any order as to control requirements are being complied with at any premises; or

- (b) a fixed charge of such amount as is —
 - (i) determined by the council for the purposes of this paragraph, but not exceeding the maximum amount prescribed for the purposes of paragraph (a); or
 - (ii) prescribed,as the council may require.

(2) Where the amount of any charge due under subsection (1) in relation to a dog is not paid —

- (a) the dog is liable to be seized, detained and disposed of under section 29; and
- (b) whether or not the dog is seized, section 29 (5) applies in respect to such money.

[Section 33M inserted by No. 24 of 1996 s.10.]

***Division 3 — Protection of stock;
vermin disease and parasite control***

[Heading inserted by No. 24 of 1996 s.11.]

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,

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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: \$1 000.

[Section 34 amended by No. 23 of 1987 s.28; No. 24 of 1996 s.16.]

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: \$500.

(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 local government 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 local government may cause the dog to be seized and detained for isolation or destruction, but where the local government 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; No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

[37. Repealed by No. 23 of 1987 s.30.]

Division 4 — Control of nuisance

[Heading inserted by No. 24 of 1996 s.11.]

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

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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: Where the dog is a dangerous dog, \$4 000 and a daily penalty of \$400; otherwise, \$2 000 and a daily penalty of \$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 local government 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 local government may institute proceedings for an offence against subsection (1).

[Section 38 amended by No. 23 of 1987 s.31; No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

PART VII — ENFORCEMENT

Dogs causing injury or damage may be destroyed

39. (1) Where an attack by a dog is shown on the balance of probabilities to have caused injury or damage a court before which any offence arising out of that attack is heard, or a Local Court on the application of a council, an authorized person or a person specifically authorized by a council for the purposes of section 33E, may —

- (a) order the owner to destroy that dog or cause that dog to be destroyed; or
- (b) order that dog to be destroyed by —
 - (i) the council by which, or authorized person by whom, it was seized or it is detained under section 29; or
 - (ii) a person specifically authorized by the court,

and the provisions of section 40 apply.

(2) A person specifically authorized by a court under subsection (1) (b) (ii) to destroy a dog may give effect to the order for destruction.

(3) In addition to the matters provided for in section 40, a court may, if it makes an order that a dog is to be destroyed, require the owner of the dog —

- (a) to take, during or within such period as is specified in the order, such action as the court considers likely to be necessary to —
 - (i) prevent, or reduce the likelihood of, that dog causing injury; or

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(ii) enable effect to be given to the order for destruction;

and

(b) to pay any costs or expense incurred in relation to the detention or destruction of the dog,

and an owner of a dog who does not comply with such a requirement commits an offence.

Penalty: \$4 000 and a daily penalty of \$400.

(4) If an attack by 2 or more dogs is shown on the balance of probabilities to have caused injury or damage, both or all of those dogs are to be treated for the purposes of subsection (1) as having caused that injury or damage even if it is not possible to show which of those dogs actually caused that injury or damage.

[*Section 39 inserted by No. 24 of 1996 s.12.*]

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 local government 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 local government 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; No. 14 of 1996 s.4.]

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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. *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: Where the dog is a dangerous dog, \$4 000; otherwise, \$2 000.

(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: Where the dog is a dangerous dog, \$1 000; otherwise, \$500.

(3) If a body corporate may be charged with an offence against this Act, any person who is concerned in or takes part in the management of that body corporate and who was, in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence may also be charged with that offence.

[Section 43 amended by No. 23 of 1987 s.34; No. 24 of 1996 ss.13 and 16.]

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: \$500.

[Section 43A inserted by No. 23 of 1987 s.35; amended by No. 24 of 1996 s.16.]

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.

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(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 employee of a local government authorized in that behalf by the local government, in the name of the local government; or
- (c) by any person aggrieved.

(3) Where proceedings under this Act are taken by an employee of a local government no proof shall be required of the appointment of that employee as an employee of the local government 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.

[Section 44 amended by No. 14 of 1996 s.4.]

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 inserted 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 \$2 000.

(2) Regulations made under section 48 or local laws may provide for a modified penalty for an offence against those regulations or local laws.

(3) A modified penalty for an offence shall not exceed 20% 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 local government by whom that person was notified of the commission of the offence that the modified penalty has been paid to that local government 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.

(6) For the purposes of section 16 (3) (a) and section 33E, the payment of a modified penalty in relation to any occurrence may be taken to be evidence of the behaviour of the dog by reason of which that modified penalty was imposed.

[Section 45A inserted by No. 23 of 1987 s.37; amended by No. 14 of 1996 s.4; No. 24 of 1996 ss.14 and 16.]

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, shall be liable, subject to any contributory negligence, in damages for —

- (a) injury to any person or animal inflicted; or
- (b) damage to the property of a person caused,

in the course of an attack 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.

(7) Where the death of a person is caused by the attack of a dog and that person would, if death had not ensued, have been entitled to maintain an action against, and recover damages from, the owner of the dog in respect of injury caused by the attack the death may, for the purposes of the *Fatal Accidents Act 1959*, be taken to have been caused by a wrongful act, neglect or default on the part of the owner of the dog.

[Section 46 amended by No. 23 of 1987 s.38; No. 24 of 1996 s.15.]

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: \$10 000, or 12 months imprisonment, or both.

[Section 47 amended by No. 23 of 1987 s.39; No. 24 of 1996 s.16.]

PART IX — LOCAL LAWS

[Heading amended by No. 14 of 1996 s.4.]

Regulations to operate as local laws

48. (1) The Governor may make regulations that are to operate as if they were local laws for each district to which they apply.

(2) Regulations made under this section may deal with any matter in respect of which local laws may be made under this Act.

(3) Regulations under this section, other than those that only repeal or amend other regulations, are to contain a statement to the effect that they apply as if they were local laws.

(4) A local government is to administer any regulation made under this section to the extent that it relates to any place where the local government may perform functions, as if the regulation was a local law.

(5) Unless a contrary intention appears, a reference to an offence against a local law includes a reference to an offence against a regulation made under this section.

(6) If there is any inconsistency between a regulation made under this section and a local law, the regulation prevails to the extent of the inconsistency.

[Section 48 inserted by No. 14 of 1996 s.4.]

Local laws

49. A local government may make local laws —

- (a) for its district and any other area that is to be regarded, for the purposes of this Act, as being within that district;

- (b) in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995*; and
- (c) for the purposes permitted by section 51.

[*Section 49 inserted by No. 14 of 1996 s.4.*]

Model local laws

49A. (1) The Governor may cause to be prepared and published in the *Gazette* model local laws the provisions of which a local law made under this Act may adopt by reference, with or without modification.

(2) Model local laws have no effect except to the extent that they are adopted.

(3) The Governor may, by notice published in the *Gazette*, amend a model local law published under this section.

(4) An amendment to a model local law does not affect any local law that adopted the model local law before the amendment but the amendment may be adopted by a further local law.

[*Section 49A inserted by No. 14 of 1996 s.4.*]

Governor may amend or repeal local laws

49B. (1) The Governor may make a local law to amend the text of, or repeal, a local law.

(2) Subsection (1) does not include the power to amend a local law to include in it a provision that bears no reasonable relationship to the local law as in force before the amendment.

(3) The Minister is to give a local government notice in writing of any local law that the Governor makes to amend the text of, or repeal, any of the local government's local laws.

s. 50

(4) A local law made under this section is to be taken, for all purposes, to be a local law made by the local government which made the local law that is amended or repealed.

(5) Section 3.17 of the *Local Government Act 1995* does not apply in relation to local laws made under this Act.

[Section 49B inserted by No. 14 of 1996 s.4.]

General provisions relating to local laws

50. (1) Any regulation made under section 48 or local 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 local law making power of a local government 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.

(2) Any regulation made under section 48 or local law may make provision for the imposition of penalties not exceeding \$2 000 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 regulation made under section 48 or local law made under this Act the expression “**specified**” is used, the expression, unless the context requires otherwise, means specified in that regulation or local law.

[Section 50 amended by No. 23 of 1987 s.41; No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

Local law making powers

51. A local government may so make local 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 local government, 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; No. 14 of 1996 s.4.]

Revocation of local laws

52. (1) Where any local law has been or is made by a local government, whether under the authority or purported authority of this Act, the repealed Acts, the *Local Government Act 1995*, 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 local law, or the manner in which that local 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 local 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.

[Section 52 amended by No. 14 of 1996 s.4.]

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 local government made pursuant to subsection (3) (e), commits an offence.

Penalty: \$5 000.

(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; No. 14 of 1996 s.4; No. 24 of 1996 s.16.]

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 local 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 1995*, or any other Act the provisions of the regulations prevail.

Dog Act 1976

s. 54

(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 local law.

[*Section 54 amended by No. 14 of 1996 s.4.*]



Dog Act 1976

NOTES

¹ This reprint is a compilation as at 20 November 1996 of the *Dog Act 1976* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number	Assent	Commencement	Miscellaneous
	and Year			
<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)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	

Dog Act 1976

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Dog Amendment Act 1996</i>	24 of 1996	27 August 1996	14 September 1996 (see section 2 and <i>Gazette</i> 13 September 1996 p.4675)	
<i>Transfer of Land Amendment Act 1996, section 153 (1)</i>	81 of 1996	14 November 1996	14 November 1996 (see section 3 (1))	

N.B. Some provisions of this Act refer to the "council" (of a local government). Other provisions refer to the "local government". The latter is the appropriate term since the *Local Government Act 1995* came into force. The variation arose from the timing of the commencement of the *Local Government (Consequential Amendments) Act 1996* and the *Dog Amendment Act 1996*.