

**ANIMAL LAW
COMMITTEE**



**Companion
Animal Law Guide
New South Wales**

2ND EDITION

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THE LAW SOCIETY OF NEW SOUTH WALES
youngLAWYERS

This guide is available at the New South Wales Young Lawyers' Animal Law Committee website which can be found at: www.lawsociety.com.au/about/YoungLawyers/Publications/

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Foreword

THE HON JUSTICE MELISSA PERRY

This Guide is the work of the NSW Young Lawyers' Animal Law Committee. NSW Young Lawyers is a peak professional body with over 15,000 members, making it the largest association of lawyers in this State. The Animal Law Committee is a passionate and committed group of lawyers and law students who generously give their time and expertise to this and many other important projects to educate the community and improve the legal framework for animals.

The significance of the work by this Committee is heightened given that the subjects of animal law are unable to defend themselves. They are utterly reliant upon us to comply with our legal obligations and to look after them responsibly and with compassion.

As the Guide notes, Australia has one of the highest rates of pet ownership in the world. They share our homes, win over our hearts and become members of our families. But what duties do we owe for their welfare and care, or those to whom we entrust our pets when we travel or when they are injured? Can our pets live with us when we rent or if we own a strata title home? What are the laws that apply to dangerous or nuisance animals? How can we make informed and ethical decisions about the pets we choose and avoid inadvertently supporting “puppy mills” and others who breed animals illegally in circumstances of cruelty? And how can we ensure that our pets are provided for when relationships break down or when we are gone?

This booklet is an essential guide to these sorts of practical questions for every pet owner. By educating us better about the legal framework that protects companion animals, not only do such projects help us to look after the interests of our pets better. They also assist us in ensuring that breeders, other pet owners, and those in whose care we entrust our pets, are held to their legal obligations. So, while they can neither read nor speak, this Guide is ultimately written for all of the companion animals who share our lives.

The Hon Justice Melissa Perry
October 2014

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The Animal Law Committee is a volunteer group operating under the umbrella of New South Wales Young Lawyers, which is the State's largest body of newly practising lawyers and law students and exists under the auspices of the New South Wales Law Society. The Animal Law Committee is comprised of law students and practitioners who are under the age of 36 or within their first five years of practice.

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- Ms Celeste Black, Associate Dean (Learning & Teaching), Faculty of Law, University of Sydney
- The Honourable Michael Kirby, AC CMG

Companion Animal Law Guide

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The following organisations have endorsed this publication.



Message from the Lord Mayor of Sydney:

Pets play an important role in people's lives – they're members of the family. They improve our health and get people out-and-about and interacting with each other. Research has repeatedly shown that pets improve the quality of life and health of their owners. They are important companions, especially for older people, people who are isolated or live alone.

I've worked to support pet owners and create greater understanding of the importance of pets in people's lives. The Companion Animal Law Guide is a valuable guide to helping people obtain a pet from a responsible breeder, be responsible pet owners and understand that owning a pet has commitments and obligations.

Clover Moore
Lord Mayor of Sydney

Chapter 1

The Legal Framework in New South Wales

In New South Wales, the *Prevention of Cruelty to Animals Act 1979* (NSW) (**POCTA**) and the *Companion Animals Act 1998* (NSW) (**CAA**) are the two most important and comprehensive regulatory frameworks regulating the management of companion animals and animal welfare.

The POCTA provides for the protection of animals and declares certain acts offences punishable by fines and/or imprisonment. Although the POCTA covers the majority of animals in New South Wales, there are significant exceptions relating to certain procedures carried out on livestock, animals killed for food and animals used in research.¹ On the other hand, the CAA regulates the management and welfare of companion animals such as dogs and cats.

There are also a number of other laws concerning animals which are beyond the scope of this Guide. For example, the *Animal Research Act 1985* (NSW)² governs the use of animals in research and teaching and establishes independent bodies to oversee and regulate the use of animals for such purposes. The *Exhibited Animals Protection Act 1986* (NSW) governs the exhibition of vertebrate animals in establishments such as zoos, aquariums and circuses.

References to animals can also be found in other discrete laws. For example, traffic legislation provides for the safe transportation of animals within vehicles.

A full list of the legislation referenced in this book is found on page 46.

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1. *POCTA* s 24. This section lists a number of defences, including castration of certain livestock at specified ages, ear-marking stock animals and mulesing sheep under 12 months.
 2. *Animal Research Act 1985* (NSW), which incorporates the National Health and Medical Research Council's *Australian Code for the Care and Use of Animals for Scientific Purposes* 8th Edition, 2013.

Chapter 2

Cruelty to Animals

What is cruelty?

One of the key objects of the POCTA is to prevent cruelty to animals.¹ To help achieve this goal, the POCTA makes it a criminal offence (punishable by fine and/or imprisonment) to commit² or authorise³ an act of cruelty upon an animal or commit an act of aggravated cruelty upon an animal.⁴

An “animal” is defined in POCTA as being a member of a vertebrate species (e.g. an amphibian, bird, fish, reptile or non-human mammal) or a crustacean (but only when at a place such as a restaurant, where food is prepared or offered for consumption).⁵

Act of cruelty

An “act of cruelty” includes an act or omission, as a consequence of which, an animal is unreasonably, unnecessarily or unjustifiably:

- (a) beaten, kicked, killed, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified or infuriated;
- (b) over-loaded, over-worked, over-driven, over-ridden or over-used;
- (c) exposed to excessive heat or excessive cold; or
- (d) inflicted with pain.⁶

1. POCTA s 3.
2. POCTA s 5(1).
3. POCTA s 5(2).
4. POCTA s 6(1).
5. POCTA s 4(1).
6. POCTA s 4(2).

It is a criminal offence to commit an act of cruelty. An individual who is found guilty of such an offence may receive a maximum penalty of \$5,500 and/or six months' imprisonment.⁷

Aggravated cruelty

An act of "aggravated cruelty" is defined as an act of cruelty which results in:

- (a) the death, deformity or serious disablement of an animal; or
- (b) the animal being so severely injured, so diseased or in such a poor physical condition that it is cruel to keep the animal alive.⁸

An individual found guilty of committing an act of aggravated cruelty may attract a maximum penalty of \$22,000 and/or two years' imprisonment.⁹

Obligations of "person in charge" of an animal

In addition to preventing cruelty to animals, another key object of the POCTA is to promote the welfare of animals by requiring a person in charge of an animal to:

- (i) provide care for the animal;
- (ii) treat the animal in a humane manner; and
- (iii) ensure the welfare of the animal.¹⁰

Whilst the owner of the animal will often be the "person in charge" of the animal, the definition of "person in charge" also extends to the person who has the animal in his/her possession, custody, control or supervision.¹¹

The obligations on the person in charge of an animal include:

- providing the animal with proper and sufficient food, water and shelter;¹²
- exercising confined animals (with some significant exceptions);¹³ and
- reporting injuries to animals caused when driving a vehicle.¹⁴

A person in charge of an animal must also exercise reasonable care to prevent the commission of an act of cruelty upon the animal and take steps to alleviate pain and provide veterinary treatment when necessary.¹⁵

7. POCTA s 5 and *Crimes Sentencing and Procedure Act 1999* (NSW) s 17.

8. POCTA s 4(3).

9. POCTA s 6 and *Crimes Sentencing and Procedure Act 1999* (NSW) s 17.

10. POCTA s 3.

11. POCTA s 4(1).

12. POCTA s 8.

13. POCTA s 9.

14. POCTA s 14.

15. POCTA s 5(3).

Specific acts prohibited

The POCTA also expressly prohibits certain acts, including:

- abandoning an animal;¹⁶
- poisoning an animal;¹⁷
- animal baiting and fighting;¹⁸
- bull-fighting;¹⁹
- carrying or conveying an animal in a manner which unreasonably, unnecessarily or unjustifiably inflicts pain upon the animal;²⁰
- tethering an animal for an unreasonable length of time or by means of an unreasonably heavy, or short, tether;²¹
- trap-shooting which involves releasing an animal from confinement in order for the animal to be shot at;²² and
- tail docking, ear cropping, de-barking, de-clawing or branding the face of an animal.²³

Commission of any of these acts is a criminal offence and may attract varying fines and/or imprisonment.

Prosecuting authorities

The power to prosecute offences committed under the POCTA is given to the Royal Society for the Prevention of Cruelty to Animals (**RSPCA**), the Animal Welfare League (**AWL**) and New South Wales Police Force. These organisations are charged with the duty of enforcing and investigating alleged breaches of the POCTA and have wide powers to search and enter premises, and examine or seize animals.²⁴

If you think an act of cruelty has been committed, contact the RSPCA, AWL or police immediately.

16. POCTA s 11.

17. POCTA s 15.

18. POCTA s 18.

19. POCTA s 18A.

20. POCTA s 7(1).

21. POCTA s 10(1).

22. POCTA s 19.

23. POCTA s 12(1).

24. POCTA Pt 2A, Div 2.

Chapter 3

General Requirements for Animal Ownership

I would like a pet. What laws should I be aware of?

Australia has one of the highest rates of pet ownership in the world.¹ To ensure the safety and wellbeing of the whole community, the CAA regulates the responsible ownership of companion animals (currently defined to include only dogs and cats) in New South Wales.

Requirements for dog and cat owners

Dogs and cats must be implanted with a microchip from the time they are 12 weeks of age and before they are sold (whichever occurs first)² and must be registered with the Local Council by six months of age.³

General responsibilities of dog owners

As a dog owner, you must ensure that:

- Your dog wears a collar with a name tag containing your dog's name and your address or telephone number.⁴
- When your dog is in a public place, it is under the effective control of some competent person by means of an adequate chain, cord or leash that is

1. According to a 2013 report by Animal Health Alliance of Australia. See Australian Veterinary Association, *Pet Ownership in Australia* <<http://www.ava.com.au/13123>>.
2. CAA s 8, and *Companion Animals Regulation 2008* (NSW) Pt 2.
3. CAA s 9.
4. CAA s 12.

attached to your dog and held by the person.⁵ This requirement does not apply if your dog is in an area declared as “off-leash” or is being exhibited at a show, participating in an obedience trial or is secured in a cage or vehicle.⁶

- You take all reasonable precautions to prevent your dog from escaping from the property on which it is being kept (this obligation extends to a person in charge of your dog).⁷
- You pick up and dispose of your dog’s faeces immediately.⁸
- Do not have more than four dogs under your control at any one time in any public area.⁹
- You keep your dog away from the following areas (unless it is a police, assistance or corrective services dog):¹⁰
 - children’s play areas;¹¹
 - public food preparation/consumption areas,¹² (with the exception of an outdoor dining area, as long as you have the permission of the operator of the food business to bring your dog and you keep your dog restrained, on the ground and do not feed it);¹³
 - recreation areas where dogs are expressly prohibited;¹⁴
 - public bathing areas where dogs are expressly prohibited;¹⁵
 - school grounds and child care centres (unless otherwise permitted);¹⁶
 - shopping areas where dogs are expressly prohibited;¹⁷ and
 - wildlife protection areas where dogs are expressly prohibited.¹⁸

5. CAA s 13(1).

6. CAA s 13(5).

7. CAA s 12A.

8. CAA s 20.

9. CAA ss 13(4) and 13(5)(a).

10. CAA s 14(8).

11. CAA s 14(1)(a).

12. CAA s 14(1)(b).

13. CAA s 14A.

14. CAA s 14(1)(c).

15. CAA s 14(1)(d).

16. CAA s 14(1)(e) and (f).

17. CAA s 14(1)(g).

18. CAA s 14(1)(h).

For greyhound owners, you must ensure a muzzle is securely fixed on the dog's mouth when in a public place.¹⁹ There are also specific requirements regarding dangerous and restricted dogs in public (see Chapter 6).

Failure to fulfill any of these responsibilities may attract varying levels of financial penalties.

General Responsibilities of Cat Owners

Cats are prohibited from public food preparation/consumption areas, and from all wildlife protection areas.²⁰

What happens if my dog or cat ends up at the pound?

Any animal that is seized (e.g. because it is injured or stray) must be returned to the owner, taken to the Council pound or any approved premises as soon as possible.²¹ An approved premises includes any premises (other than a Council pound) operated by an approved animal welfare organisation (e.g. RSPCA or AWL) or veterinarian.²²

If the animal is taken to a Council pound or approved premises, the person in charge of the pound or approved premises must use their best endeavours to identify the owner and notify them that they are in possession of their animal.²³ If a seized animal who is detained at an approved premises is not claimed by the owner within 72 hours, the animal must be surrendered to the Council pound.²⁴

Unclaimed or surrendered animals can be sold or destroyed by the Council after 14 days.²⁵ If there is no owner or the owner cannot be identified, the time period is reduced to 7 days.²⁶ Councils can determine any fees and charges that they wish

19. CAA s 15.

20. CAA s 30(1).

21. CAA s 62.

22. CAA s 62A.

23. CAA ss 62 and 63.

24. CAA s 63A.

25. CAA s 64(1)(a).

26. CAA s 64(1)(b).

to charge in relation to the release or sale of an animal.²⁷ Councils cannot sell dangerous or restricted breed dogs.²⁸

If an owner surrenders an animal, the animal can be sold or destroyed at any time.²⁹ The Council is duty bound to consider whether there is an alternative action to that of destroying the animal and if practicable, to adopt such an alternative in relation to animals that have been surrendered or are unclaimed by owners.³⁰

27. CAA s 65.

28. CAA ss 64(6) and 64A(3).

29. CAA s 64A(1).

30. CAA ss 64(5) and 64A(2).

Chapter 4

Buying Animals

What should I know before buying a pet?

Although there are a number of places to buy a pet, not all who sell them are concerned with animal welfare. Engaging with a seller with a poor reputation carries the risk of inadvertently supporting animal cruelty. The most common disreputable sellers are referred to as “puppy mills” or “backyard breeders”.

Pet shops are the traditional avenues for purchasing animals. Recently however, the source of these animals has been questioned. Pet shops are not required to advertise the origin of the animal for sale,¹ which makes it difficult to determine whether the animal was bought from a reputable supplier or puppy mill. The RSPCA estimates that 95% of puppies in pet shops were bought from puppy mills.²

Similarly, purchasing an animal from interstate or online sellers can increase the risk that the animal is sourced from a backyard breeder or a puppy mill. In these circumstances, a thorough check should be conducted before buying the animal.

An alternative to buying an animal from a pet shop or online is going to a registered breeder. These breeders are members of a breed club or association which often have welfare standards. However, compliance with these standards is usually voluntary so you should always find out as much information about them before buying an animal from them.

-
1. Pets shops are required to keep records, however, for the acquisition/breeding of animals, including the date of birth, date of acquisition and the name and address of the supplier/breeder. See *Animal Welfare Code of Practice: Animals in Pet Shops 2008* (NSW), Standard 7.2.1.1.
 2. RSPCA, *Help Us Close Puppy Mills* <www.rspcansw.org.au/the-issues/help-us-close-puppy-factories>.

What is a backyard breeder?

Backyard breeders are individuals who breed litters of animals for sale and fail to meet minimum welfare standards, including the *NSW Animal Welfare Code of Practice for Breeding Dogs and Cats (BDC Standards)* which imposes a duty of care on dog and cat breeders to ensure the welfare of animals in their facilities. Failure to meet a prescribed standard may result in a fine or prosecution under the POCTA or the Regulations.³

What is a puppy mill?

A puppy mill, also referred to as a “puppy farm” or a “puppy factory”, is generally a large-scale commercial intensive dog breeding facility that operates in conditions that fail to meet the behavioural, social and psychological needs of dogs.⁴ The people in charge of puppy mills may be guilty of acts of animal cruelty or aggravated cruelty under the POCTA.⁵

What happens inside puppy mills and backyard breeding facilities?

Some of the welfare concerns of puppy mills and backyard breeding facilities include the following:

- animals are rarely vaccinated, leaving them susceptible to infectious diseases, parasitic infestations and chronic conditions;⁶
- animals are confined to small and overcrowded cages without the opportunity to exercise, play or socialise;⁷
- inadequate veterinary and general care;⁸
- mothers are kept in a cycle of breeding until they are no longer considered profitable;⁹ and
- puppies or kittens too young to be separated from their mothers are sold.¹⁰

3. *Prevention of Cruelty to Animals Regulation 2012* (NSW) r 26.

4. RSPCA, *What is a puppy farm?* <http://kb.rspca.org.au/What-is-a-puppy-farm_322.html>.

5. POCTA ss 5 and 6.

6. May constitute a breach of BDC Standards 6.1.1.3, 8.1.1.1, 9.1.1.3 and those listed under 8.2.1.

7. May constitute a breach of BDC Standards 6.1.1.6, 7.1.1.4, 7.1.1.7 and 7.1.1.10.

8. RSPCA, *What is a Puppy Farm?* <http://kb.rspca.org.au/What-is-a-puppy-farm_322.html>.

9. May constitute a breach of BDC Standards listed under 10.1.1.

10. May constitute a breach of BDC Standard 10.1.1.13.

Of direct consequence to pet buyers, these animals are more likely to suffer from a range of health and behavioural problems, some of which may not become apparent until later in the animal's life.

How do I find a responsible breeder?

When choosing a breeder, there are a number of questions you can ask to find out whether the facility is breeding responsibly. These questions could include whether they planned ahead for the litter and are able to provide you with a full history of the animal.¹¹ A responsible breeder will allow you to visit the premises where the animal was born and see the standard of care and living environment provided to the animal. The *RSPCA Smart Puppy Buyers Guide* provides a list of questions for potential pet owners to ask breeders.¹² It is a positive sign if a breeder or seller requires information about your own capacity and intention to care for a pet properly, as it means that the breeder or seller considers the animal to constitute more than just a simple commercial transaction.

You may also want to familiarise yourself with the requirements of the *NSW Animal Welfare Code of Practice for Breeding Dogs and Cats*¹³ which contains standards and guidelines for acceptable animal welfare levels. The Code prescribes requirements relating to the provision of shelter, food, water, hygiene, security, exercise and ensuring the health and wellbeing of animals. Although the standards outline the mandatory actions required of breeders and are legally enforceable provisions, the guidelines only provide recommendations for best practice and are not legally enforceable.

An example of a mandatory requirement is that puppies or kittens must not be separated from their litter or mother until they are seven weeks old (in order to socialize them) and breeders must not sell puppies or kittens until they are eight weeks old.¹⁴ Puppies and kittens must be vaccinated and micro-chipped before they are sold and any animals suspected of being sick, injured or diseased must not be sold under any circumstances.¹⁵

11. A breeding establishment is required to record information about each animal and litter bred in the facility, such as a description of the animals, microchip numbers and vaccination statuses, see *BDC Standards* 5.1.1 and 5.1.2.

12. RSPCA, *Smart Puppy and Dog Buyer's Guide home page* <<http://www.rspcapuppyguide.com.au>>.

13. Department of Primary Industries, *Animal Welfare Code of Practice – Breeding dogs and cats* <<http://www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/codes/breeding-dogs-and-cats>>.

14. *BDC Standards* 10.1.1.13 and 9.1.1.1.

15. *BDC Standards* 9.1.1.3 to 9.1.1.5.

If you are not satisfied with an animal you have bought from a breeder for any reason within three days, the breeder is required to take the dog or cat back and refund 50% of the purchase price of the animal. The breeder must provide this guarantee in writing to you at the time the animal is purchased.¹⁶

If you are concerned about the practices of a breeder, you can contact the RSPCA or AWL who may investigate your complaint. A copy of the Code can be found on the Department of Primary Industries' website listed at the end of this Guide.

What about adoption?

Each year, hundreds of thousands of healthy dogs and cats are abandoned in Australian pounds and shelters. This is a result of excessive breeding by puppy mills and backyard breeders as well as frequent impulse purchases of pets followed by abandonment. As a result, it is estimated that approximately 250,000 dogs and cats are killed every year.¹⁷

It is highly recommended you consider adopting a pet from your local shelter or rescue organisation. Such organisations include the RSPCA, AWL, Sydney Dogs and Cats Home, the Cat Protection Society, Doggie Rescue and numerous breed specific groups. Not only will you save a life, but you will avoid supporting puppy mills and backyard breeders.

16. BDC Standard 9.1.1.7.

17. Rachel Browne, 'Truth about cats and dogs: 250,000 killed every year' <<http://www.smh.com.au/environment/animals/truth-about-cats-and-dogs-250000-killed-every-year-20100605-xlr4.html>>.

Chapter 5

Nuisance Animals

Nuisance dog orders

Under the CAA, a dog who exhibits certain anti-social behaviours may become the subject of a nuisance order issued by a Council Officer. Such behaviour includes:

- (a) being habitually at large;¹
- (b) persistently barking or making a noise to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of neighbours;²
- (c) repeatedly defecating on private property other than that on which the dog is kept;³
- (d) repeatedly running at or chasing any person, animal (other than vermin) or vehicle;⁴
- (e) endangering the health of any person or animal (other than vermin);⁵ or
- (f) repeatedly causing substantial damage to anything outside the property on which the dog is kept.⁶

Before issuing a nuisance dog order, the Council Officer must give a notice to the owner of the dog informing the owner of the Officer's intention to issue the

1. CAA s 32A(1)(a).

2. CAA s 32A(1)(b).

3. CAA s 32A(1)(c).

4. CAA s 32A(1)(d). This section exempts working dogs when droving, tending, working or protecting stock.

5. CAA s 32A(1)(e). This section exempts working dogs when droving, tending, working or protecting stock.

6. CAA s 32A(1)(f).

order, the requirements of the proposed order and the owner's right to object to the proposed order in writing within seven days after the notice is given.⁷

Once issued, a nuisance dog order remains in force for six months. The order cannot be appealed.⁸ The order will specify the behaviour of the dog that is to be prevented and the owner must continue to comply with the terms of the order or risk a maximum penalty of \$880 for a first offence or \$1,650 for any further offences.⁹

Nuisance cat orders

A cat can be declared a nuisance under the CAA if it:

- (a) persistently makes a noise to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of neighbours;¹⁰ or
- (b) repeatedly damages anything outside the owner's property.¹¹

In these circumstances, Council Officers may issue an order to the owner to prevent the nuisance behaviour, following the same protocol of giving notice as outlined for nuisance dogs above.¹² Such orders are in force for six months and cannot be appealed or reviewed.¹³ Owners must comply with an order or face a maximum penalty of \$330 for a first offence and \$880 for any subsequent offence.¹⁴

7. CAA s 32B.

8. CAA s 32A(7).

9. CAA s 32A(5). *The Crimes (Sentencing Procedure) Act 1999* (NSW) s 17 currently sets the rate at \$110 per penalty unit.

10. CAA s 31(1)(a).

11. CAA s 31(1)(b).

12. CAA s 31A.

13. CAA ss 31(4) and 31(7).

14. CAA s 31(5).

Chapter 6

Dangerous, Menacing and Restricted Dogs

The Council or Local Court wants to declare my dog “dangerous”. What does this mean?

Under the CAA, a Council Officer¹ or the Local Court² can make a declaration that a dog is “dangerous” if the dog:

- has attacked or killed a person or animal (other than vermin) without provocation;
- has repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin) without provocation; or
- is kept or used for the purposes of hunting.³

These declarations impose certain control requirements on owners to take the following measures:⁴

- de-sex the dog within 28 days of the declaration;
- ensure only adults are in charge of the dog;
- build an enclosure with specified requirements in which the dog must be contained at all times unless it is muzzled and on a leash. A certificate confirming that the enclosure complies with the relevant Regulations must

1. CAA s 34.

2. CAA s 44.

3. CAA s 33. Note the ‘purposes of hunting’ do not include dogs used to locate, flush, point or retrieve birds or vermin.

4. CAA s 51.

be obtained. The Regulations provide that, amongst other requirements, the enclosure must:

- be fully enclosed;
 - be constructed so a person under 18 cannot access it;
 - not be less than 10 square metres in area (per dog);
 - have walls fixed to the floor;
 - be built of brick, timber, iron or specified types of mesh; and
 - have a floor constructed of sealed concrete;⁵
- clearly display a “*Warning Dangerous Dog*” sign on the property where the dog is kept;⁶
 - ensure the dog always wears a prescribed collar marked with red and yellow stripes;⁷ and
 - ensure the dog is kept on a lead and muzzled whenever outside of the enclosure. A dog will not be considered under control if more than two dogs are being walked simultaneously, despite the dangerous dog being muzzled and on a lead.

Hefty penalties apply for breaches of the CAA and the associated Regulations. An authorised Council Officer may also seize the dog for detention at approved premises⁸ until the owner can demonstrate an ability to comply with all of the above requirements.

If the Council intends to proceed with the declaration, it must provide the owners with a notice which clearly sets out the requirements that will be imposed if the final declaration is eventually made⁹ and the requirements that must be complied with in the interim (e.g. ensuring the dog is on a lead and muzzled when in public and registering the dog within seven days of receiving the notice).¹⁰

5. See also, *Companion Animals Regulation 2008* (NSW) r 24. Herein referred to as **CAR**.

6. See also, *CAR* r 26. The sign must be at least 40 cm x 40 cm in size, with letters that are at least 50 mm high and 10 mm wide.

7. For further details regarding what constitutes a prescribed collar, see *CAR* r 27(1).

8. *CAA* s 36(3).

9. *CAA* s 35.

10. *CAA* s 36.

Can I challenge a dangerous dog declaration?

Objections to a proposed declaration must be made to the Council in writing within seven days of the notice being issued.¹¹ The Council must consider any such objections in deciding whether or not to make the final declaration.¹² Once a decision is made about whether or not to make a dangerous dog declaration, the Council Officer must notify you within seven days after the declaration or decision is made.¹³

The notice must set out the requirements imposed on you, your right to appeal to the Local Court against the decision and the fact that your dog may be seized and destroyed if the dog attacks or bites a person or animal without provocation or if you fail to comply with the terms of the order on more than one occasion over a 12 month period.¹⁴

Appeal to Local Court

You may also appeal to the Local Court against a dangerous dog declaration or the Council's failure to revoke the declaration. An appeal can only be made 28 days after you have received the dangerous dog declaration or the notice from the Council that it has refused to revoke the declaration.¹⁵ Until the appeal is heard, you must continue to comply with the terms of the dangerous dog declaration.¹⁶

Appeal to Local Council

If your dog has been declared a dangerous dog, you can apply to your Local Council to have the declaration revoked. However, an application cannot be made until after 12 months from the date of the declaration.¹⁷ The Council may revoke the declaration only if it is satisfied that it is appropriate to do so and the dog has undergone appropriate behavioural training (if considered necessary).¹⁸

11. CAA s 35(2)(b).

12. CAA s 37.

13. CAA s 38(1).

14. CAA s 38(2).

15. CAA s 41(2).

16. CAA s 41(3).

17. CAA s 39(1A)

18. CAA s 39(2).

What is a “menacing” dog?

Under the CAA, a dog may be the subject of a menacing dog order if it is has:

- displayed unreasonable aggression towards a person or animal (other than vermin);
- attacked a person or animal (other than vermin) without provocation, but without causing serious injury or death; or
- been declared a menacing breed by the relevant State Minister.¹⁹

The control requirements placed upon a menacing dog are the same as that of a dangerous dog, with the exception of enclosure requirements that are less severe. At any time when the dog is not under the effective control of an adult, the dog must be enclosed in a manner that is sufficient to restrain the dog and prevent a child from having access to the dog.²⁰

An application to revoke a declaration may be made to the Council in the same manner as a dangerous dog application. However, if the Council rejects the application, there is no avenue to appeal to the Local Court in the case of a menacing dog declaration.²¹ The Council may take into consideration any behavioural training that the dog has undergone in the period since the declaration.²²

Other orders

In addition to the ability to declare your dog dangerous or menacing, if the Local Court thinks that it is necessary to prevent or reduce the likelihood of your dog attacking or causing injury to persons or animals, it may issue a control order requiring you to take specific action.²³ Such action can include de-sexing your dog, taking your dog to behavioural or socialisation training or completing responsible pet ownership training.²⁴

In extreme circumstances, if your dog attacks a person or animal or you fail to comply with a control order, the Local Court may issue a destruction order which

19. CAA s 33A.

20. CAA s 51(1A)(b).

21. CAA s 41.

22. CAA s 39(2A).

23. CAA s 47(1).

24. CAA s 47(3).

involves killing the dog.²⁵ However the destruction order must not be made unless the Local Court is satisfied that permanently taking your dog away from you will not be sufficient to protect the public from any threat posed by your dog.

What is a “restricted” dog?

The CAA provides that the following breeds of dog are “restricted” by virtue of their breed:

- (a) American pit bull terrier or pit bull terrier;
- (b) Japanese tosa;
- (c) dogo Argentino; and
- (d) fila Brasileiro.²⁶

A dog that is a cross-breed of the above breeds can also be declared restricted.²⁷

The requirements imposed upon owners of restricted dogs are very similar to those of dangerous dogs, including the control requirements such as de-sexing, muzzling, enclosures, warning signs, distinctive collars and registration.²⁸ It is a serious offence not to comply with these requirements. Dogs can be seized where the requirements of de-sexing, collaring and registration are not met,²⁹ or where lead, muzzle and enclosure requirements are not complied with on two occasions within 12 months.³⁰ As a result, the dog can be destroyed.³¹ Animals may be reclaimed if the Council can be satisfied that all of the control requirements can be met.³²

A restricted dog that has attacked any person or animal (other than vermin) without provocation can also be seized and destroyed by Council Officers.³³

Restricted breed dogs cannot be bred or sold³⁴ and the mere acceptance of one as a pet is in itself an offence.³⁵ Abandoning restricted breeds is also an offence,

25. CAA s 48.

26. CAA s 55(1). This section also extends to any dog breed prohibited from importation under Commonwealth law, and allows Council Officers to deem dogs to be restricted.

27. CAA s 58A(1)(b).

28. CAA s 56.

29. CAA s 57(4).

30. CAA s 58G(1B).

31. CAA s 58G(2)(b).

32. CAA s 57(3) and s 64.

33. CAA s 58G(1).

34. CAA s 57C.

35. CAA s 57B.

although such dogs can be surrendered to the local pound or an approved welfare organisation such as the RSPCA or the AWL.³⁶

Similar to the procedures outlined for dangerous and menacing dogs, a Council must issue a notice to the owner before declaring a dog to be restricted.³⁷ Interim control measures will apply, such as keeping the dog on a lead and muzzled in public, and registering the dog within seven days of receiving a notice.³⁸

Importantly, an owner has 28 days from the date of a notice declaring the dog to be restricted, to obtain a written statement from an approved breed assessor certifying the breed and temperament of the dog. If a Council Officer receives such a certificate stating that the dog is not a restricted breed, or that it is a cross-breed of a restricted breed that has passed a temperament assessment, the Council must not declare the dog to be restricted and must withdraw the notice.³⁹

The Council must inform the owner of its decision and the consequences of its decision to declare or not declare a dog as restricted within seven days of making its decision.⁴⁰

36. CAA ss 57A to 57C.

37. CAA s 58A.

38. CAA s 58B.

39. CAA s 58C(2).

40. CAA s 58D.

Chapter 7

Injured Animals

I think my vet has been negligent. What can I do?

Under the *Veterinary Practice Act 2003 (NSW) (VPA)*, veterinarians must meet specific standards and exercise a certain level of care in relation to the medical treatment of animals.

If a veterinarian fails to meet the standards, complaints can be made to the Veterinary Practitioners Board.¹ The Board will investigate the claim and if it believes that the veterinarian was guilty of either unsatisfactory professional conduct or professional misconduct, it can seek a disciplinary finding from the New South Wales Civil and Administrative Tribunal (NCAT).

A finding of unsatisfactory professional conduct can be based on actions that would, if repeated or continued, be likely to cause unnecessary suffering to an animal, cause the inappropriate death of an animal, or actions that demonstrate incompetence, a lack of knowledge, skill, judgment or care in treating the animal.

A finding of professional misconduct can be based on unsatisfactory professional conduct of a sufficiently serious nature to justify the suspension or cancellation of a veterinarian's registration or any other conduct that is declared by the regulations to be professional misconduct.²

If the complaint is referred to the NCAT, the NCAT is able to take action against the veterinarian. Actions include reprimanding the veterinarian, imposing fines or cancelling his or her registration.³

1. VPA s 38.

2. VPA s 35.

3. VPA s 51.

In addition, veterinarians must maintain professional indemnity insurance. If loss or damage is suffered as a result of the veterinarian's negligence, compensation can be sought by commencing proceedings against the veterinarian or veterinary practice for negligence and/or breach of contract. In such cases specific legal advice should be obtained.

What responsibilities does my pet's boarding house owe to my pet?

Under the POCTA, all persons in charge of animals including dog walkers, pet day care centres, dog groomers and those who run boarding houses are under a duty to ensure the animals are provided with adequate food, water and shelter.⁴ In addition, a person in charge of an animal must exercise reasonable care, control or supervision to prevent acts of cruelty.⁵ If confined, the animal must also be adequately exercised, at least once every 24 hours.⁶ Penalties will apply if a boarding house is discovered to tie up animals for an unreasonable period of time.⁷

RSPCA and AWL Officers have powers under the POCTA to enter and inspect the boarding house premises and any animal on the premises, to ensure that these obligations are being met. If a RSPCA or AWL Officer is concerned that the requirements are not being met, he or she can issue notices in relation to the care of the animal. If it appears that the boarding house has committed an offence, the RSPCA or AWL Officer can issue a penalty notice. In serious cases, criminal proceedings can be brought before the Local or Supreme Courts.⁸

My pet has been injured by another animal. What can I do?

Under the CAA, compensation can be sought if an animal is injured by a dog.⁹ This could include compensation for any veterinary bills and medications that

4. POCTA s 8. In addition, boarding houses must comply with the NSW Animal Welfare Code of Practice No 5 – Dogs and Cats in Animal Boarding Establishments. A copy of the code can be found at <www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/general/aw-code-5>.

5. POCTA s 5.

6. POCTA s 9.

7. POCTA s 10.

8. See generally, POCTA Pt 2A, Div 1.

9. CAA s 27.

have been required because of the injury. Specific legal advice on such matters should be obtained.

My dog has injured or killed another person or animal. What are my rights and responsibilities?

If a dog has attacked or injured a person or animal, the owner of the dog may be liable to pay damages for veterinary bills, medical bills, costs to personal property and possibly the replacement of the animal.¹⁰ This liability may, however, be affected if the dog was provoked or not solely responsible for the injury.¹¹ If a person dies as a result of the injury caused by a dog, the ability to make a claim for damages will be extended to the deceased's family members.¹²

In some circumstances, home and contents insurance policies may cover damages associated with injury or death caused to a person or animal, even if the injuries occurred away from the insured premises.

If the attack or injury is caused by a reckless act or omission of the owner, the owner may also be open to criminal prosecution under the CAA and can be disqualified from owning a dog for up to five years if found guilty.¹³ A person in control of a dog who causes the dog to inflict grievous or actual bodily harm on another person can also be open to prosecution under the *Crimes Act 1900* (NSW).¹⁴

Dogs may be seized if it is reasonable and necessary to protect any person or animal from injury.¹⁵ Dogs responsible for attacking or injuring can be seized by any person if the dog is on a property owned or occupied by that person,¹⁶ or provided that the animal is on public property and it is safe to do so.

Similar provisions exist to seize cats in order to protect other animals from injury.¹⁷

Where a dog has injured or killed a person or animal, it is possible for the Council to make an order declaring the dog dangerous (see Chapter 6).

10. CAA ss 25 and 27.

11. CAA ss 27(2) and 28.

12. CAA s 26.

13. CAA ss 16 and 23.

14. *Crimes Act 1900* (NSW) s 35A.

15. CAA s 22.

16. CAA s 18(2).

17. CAA s 32.

Chapter 8

Pets and Apartments

In many Australian homes, family pets are important members of the household. If you live in a residential tenancy or a strata scheme, however, there may be requirements or restrictions relating to pets. A strata scheme might be a building of units or a development comprising two or more townhouses. You may also need to check if a Community Scheme operates in conjunction with the Strata Scheme as they have separate by-laws that may affect dog ownership.

If you live in a building of units that is under a company title scheme, the information below will not apply to your situation. In the case of company title property, you will need to check the constitution of the company and if the company was registered before 1998, it may be necessary to check the memorandum and articles of association of the company.

STRATA SCHEMES

I want to bring a pet into my strata title property. What should I do?

The by-laws of each strata scheme usually contain provisions regarding the keeping of animals, but can vary widely in effect. It is therefore very important to obtain a copy of the full by-laws, including any changes to the by-laws specific to your strata scheme to determine whether you can keep a pet. The by-laws can be obtained from the property strata manager.

In most cases, prior written approval from the Owners' Corporation is required before keeping any animal (other than a fish in a secure aquarium). Prior written approval from the Owners' Corporation is advisable even when by-laws are silent on the subject. A letter providing accurate descriptions of the animal, including breed, size, age, appearance and temperament should be provided together with details of any obedience training the pet has undergone, as well as confirmation that

the pet is registered, micro-chipped, de-sexed, vaccinated, and treated for fleas and worms. It is advisable that strata records are searched to determine whether there are any other lot owners or occupiers (past or present) who have kept pets in the property.

A notification of the decision made by the Owners' Corporation should be received within a reasonable period of time. Once approval has been granted, a copy of the resolution passed in favour of keeping the pet should be obtained together with a letter from the Owners' Corporation confirming the approval.

If you believe that an Owners' Corporation has unreasonably withheld its consent to the keeping of your pet, and you have been unable to talk through the issue with members of the Owners Corporation on an informal basis, the *Strata Schemes Management Act 1996* (NSW) sets out avenues of mediation, adjudication and appeal to the NCAT. For detailed information on each of these avenues, see the New South Wales Young Lawyers' Animal Law Committee website.¹

What if I rent?

If you plan to rent in a strata scheme, your landlord should provide you with a copy of the lease and the by-laws. Depending on the provisions within these documents, your landlord may have to obtain consent from the Owners' Corporation (as above). It is important to note, however, that your landlord has the right to refuse the keeping of pets on their property regardless of what the by-laws may state. Therefore, you will need to seek the consent of both your landlord and the Owners' Corporation, and if granted, ensure your lease contains a written condition allowing pets.

What are the responsibilities of pet owners in strata properties?

Some strata schemes prohibit pets altogether, however this does not prevent you from proposing alterations to the by-laws. If this proposal is unreasonably refused then you may follow a similar process of mediation, adjudication and appeal to the NCAT as set out earlier. Specific legal advice on such matters should be obtained.

1. <<http://www.lawsociety.com.au/about/YoungLawyers/Committees/AnimalLaw/index.htm>>.

Pet owners or prospective owners must therefore, at first instance, find out whether they are permitted to keep pets at all, and if so, ensure they have correctly obtained such approval. Assistance animals, however, are permitted to be kept at all times² (see Chapter 10). The Courts and tribunals have taken a broad approach to the interpretation of assistance animals.³

Owners must ensure pets do not become a nuisance to other residents in the strata scheme. Owners should ensure pets are:

- adequately house trained;
- socialised around people and other animals; and
- restrained appropriately when on common property.

Some strata schemes may require pet owners to carry their pets while they are on common property.

If pets become a nuisance, any lot owner/occupier within the strata scheme can apply for an order to have the pet removed. Issues which must be immediately addressed include:

- excessive barking;
- defecating on common property; and
- other anti-social behaviours (see Chapter 5).

If it is considered that your pet is either causing a nuisance or causing injury to persons or damage to common property, then the Owners' Corporation, the Strata Managing Agent or your landlord (if applicable), may apply to a Strata Schemes Adjudicator for an order that you address the problem or that your pet be removed from the strata scheme.

What if I keep a pet in a strata building without consent?

If the Owners' Corporation thinks that you are keeping a pet in your lot without consent, it may serve a notice on you, requiring you to comply with the relevant by-law regarding the keeping of pets. If you fail to comply with the notice, the Owners Corporation can apply for an order from the NCAT for a fine of up to \$550.⁴

2. *Anti-Discrimination Act 1977* (NSW) ss 49B(3) and 49N, herein referred to as *ADA*.

3. *The Owners of Strata Plan 56117 v Drexler* [2013] NSWDC 67.

4. *Strata Schemes Management Act 1996* (NSW) s 203.

If you do not comply with an order made by an Adjudicator or the NCAT, a penalty of up to \$5,500 may be imposed. The matter may be referred to the NCAT to impose the penalty and award costs to the applicant.⁵

RESIDENTIAL TENANCIES

I signed a lease agreement allowing pets. My landlord has now changed his or her mind. What do I do?

The *Residential Tenancies Act 2010* (NSW) (RTA) sets out the legal rights and responsibilities of landlords and tenants, but is silent on keeping pets in rental properties. It is therefore important to check that pets are permitted before entering into a lease. Under a Standard Form Agreement,⁶ a tenant must obtain the landlord's consent before keeping a pet. However, the relevant clause may also provide a list of pets that the landlord pre-agrees the tenant can keep. Alternatively, the clause allowing pets may be struck out completely. It is therefore important to carefully review the terms of your own residential tenancy agreement. Landlords cannot, however, prevent tenants from keeping assistance animals such as guide dogs⁷ (see Chapter 10).

If the keeping of pets is included in the residential tenancy agreement, the NCAT may order a remedy if the landlord attempts to breach the agreement or claim that the tenant is in breach of the agreement.⁸

What can my landlord do if my pet becomes a nuisance?

Serious consequences can arise if pets become a nuisance or damage the rental property. Tenants must not damage or allow damage to be caused to the rental property.⁹ They are further prohibited from causing a nuisance,¹⁰ which is an unlawful interference with another persons' use or enjoyment of their property.

-
5. *Strata Schemes Management Act 1996* (NSW) ss 202 and 204.
 6. Prescribed by the *Residential Tenancies Regulation 2010* (NSW) Sch 1.
 7. *ADA* ss 49B(3) and 49N.
 8. *RTA* ss 187 and 190.
 9. *RTA* s 51(1)(d).
 10. *RTA* s 51(1)(b).

For example, tenants must ensure the pet is not excessively barking or emitting unpleasant smells. In such instances, the tenant may be in breach of the residential tenancy agreement and the landlord can issue a termination notice to end the agreement in 14 days.¹¹

The NCAT may refuse the termination order if satisfied that the tenant resolved the issues associated with the animal.¹² If steps have not been taken to rectify the issues, however, the NCAT can order the tenant to pay damages and/or compensation, take steps to remedy the breach, or order the tenant's eviction.¹³

LIVESTOCK AND SUBURBAN PROPERTIES

I would like to keep livestock in my backyard. Do I need the Council's approval?

The most common livestock held in suburban yards are chickens. Council approval is usually not required to keep chickens, however, certain standard requirements are often imposed including that:

- animals are not kept under circumstances which will create a nuisance or be a health hazard;
- poultry yards are kept clean and free of offensive odours at all times;
- chickens are kept at least 4.5 metres away from any dwelling;
- chickens are kept at least 30 metres away from any dwelling if they are a species other than *gallus gallus* or guinea fowls;
- the floor of a poultry house is paved with concrete or mineral asphalt underneath the roosts or perches (unless the poultry house is situated on clean sand or is more than 15.2 metres from any dwelling, public hall or school); and
- the poultry yard is enclosed so as to prevent chickens from escaping.¹⁴

Most Councils recommend that you do not keep more than six chickens at any one time, unless you have the facilities to cater for them – namely, a roofed poultry house with a concrete floor that is properly drained to the public sewerage system and is regularly cleaned.

11. RTA s 87.

12. RTA s 87(6).

13. RTA s 187.

14. *Local Government (General) Regulation 2005* (NSW) Sch 2, Pt 5, Div 2.

Other common suburban livestock animals such as ducks, geese, ponies and goats can also be kept depending upon policies of the Council. It must be remembered that Councils vary in their livestock policies and have the power to enact their own by-laws regarding the keeping of livestock. It is imperative, therefore, that the Council be specifically consulted before any livestock animals are brought into the yard. The keeping of certain species or sexes may also be restricted or at least discouraged in residential areas due to noise and pest management concerns.¹⁵

Further information is available in the New South Wales Young Lawyers' Animal Law Committee website.¹⁶

15. See generally the information contained on the Department of Industry and Investment website, *Welfare of livestock* <<http://www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/general/livestock>>.

16. <<http://www.lawsociety.com.au/about/YoungLawyers/Committees/AnimalLaw/index.htm>>.

Chapter 9

Transporting Pets in Vehicles

The way an animal is transported may raise significant welfare concerns. It should be noted that the regulation of animals during transport differs between States and Territories, and relevant laws should be checked before driving interstate.

Do I need to restrain my pet while driving?

It is an offence under the POCTA to transport an animal in a manner which unreasonably, unnecessarily or unjustifiably inflicts pain upon the animal.¹ If an animal is unrestrained during transport and the lack of restraint results in injury to the animal, such an act may constitute an offence punishable by up to 50 penalty units (a maximum fine of \$5,500) and/or six months' imprisonment.² Even if no injury is caused, the NSW Police may still issue a penalty in the form of fines and demerit points.

Due to concerns for both animal and human safety, it is a traffic offence to drive with an animal on your lap, as the driver will not be considered to have proper control of the vehicle. The maximum penalty for such an act is \$2,200.³

Can my dog ride in the back of my ute?

There are some instances where it is permitted to transport a dog on an open backed vehicle, such as when a dog is being used to work livestock. If driving on

1. *POCTA s 7.*

2. *The Crimes (Sentencing Procedure) Act 1999* (NSW) s 17 currently sets the rate at \$110 per penalty unit.

3. *Road Rules 2008* (NSW) rule 297(1A), herein referred to as **RR**.

a public street, however, the dog must be restrained or enclosed in such a way so as to prevent the dog from falling or jumping. Otherwise, the driver may be penalised with a maximum fine of \$5,500 and/or 6 months' imprisonment.⁴

What about on a motorbike?

It is an offence to ride a motorbike with an animal on your lap or with an animal between the rider and the handlebars,⁵ except for short distance farming activities.⁶ These offences are punishable by hefty fines and carry a three or four demerit point penalty, depending on whether the offence occurs in a school zone.⁷

Can I lead an animal from a vehicle?

It is an offence for a driver or passenger to lead an animal from a vehicle, including tethering an animal to the vehicle. Such an act is punishable as a traffic infringement incurring a fine of up to \$2,200 and includes leading an animal whilst riding a bicycle.⁸ The penalty may be more severe if injury is caused to the animal.

4. *POCTA* s 7(2A).

5. *RR* rules 297(1A) and (3).

6. This exception only applies to riders of a motorbike who ride with an animal between the rider and the handle bars for a distance of not more than 500 metres on a road for the purpose of a farming activity, *RR* rule 297(4).

7. *Road Transport (Driver Licensing) Regulation 2008* (NSW) Sch 2, rules 297(1A) and 297(3).

8. *RR* rule 301.

Chapter 10

Assistance Animals

What are my rights if I have an assistance animal?

Assistance animals are exempt from many of the limitations placed on other kinds of pets. The relevant State and Commonwealth legislation consists of the *Anti-Discrimination Act 1977 (NSW)* (ADA) and the *Disability Discrimination Act 1992* (Cth) (DDA).

Under the DDA, an “assistance animal” is defined as a dog or other animal:

- a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability;
- b) accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph; or
- c) trained to:
 - i) assist a person with a disability to alleviate the effect of the disability; and
 - ii) meet the standards of hygiene and behaviour that are appropriate for an animal in a public place.¹

“Disability” in relation to a person is defined to mean:

- a) total or partial loss of the person’s bodily or mental functions;
- b) total or partial loss of a part of the body;
- c) the presence in the body of organisms causing disease or illness;
- d) the presence in the body of organisms capable of causing disease or illness;
- e) the malfunction, malformation or disfigurement of a part of the person’s body;

1. DDA s 9(2).

- f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement, or that results in disturbed behaviour;

and includes a disability that:

- h) presently exists;
- i) previously existed but no longer exists;
- j) may exist in the future (including because of a genetic predisposition to that disability); or
- k) is imputed to a person.²

Any person with a disability has the right to be accompanied by an assistance animal into any public building or public place and onto any form of public transport.³ In doing so, the person cannot be charged with an offence and a person who refuses entry without reasonable cause can be prosecuted.⁴ An entry fee must not be charged for an animal that is an assistance animal.⁵ Further, people with a disability always have the right to keep assistance animals in their residence.⁶

When asked, however, the owner must produce evidence that the animal is in fact an assistance animal, or that the animal is trained to meet public standards of hygiene and behaviour.⁷ Further, the owner may be liable for damage to property caused by their assistance animal.⁸

There are other provisions under the respective State and Commonwealth anti-discrimination laws which may also be of use for persons with assistance animals.⁹

2. *DDA* s 4. Note, similar definitions are provided in *ADA* ss 4 and 49A.

3. *CAA* s 59.

4. *CAA* s 60.

5. *CAA* s 61. However, a fee may be appropriate where additional accommodation is required for the animal or the animal incurs additional expenses.

6. *ADA* ss 49B(3) and 49N.

7. *DDA* ss 54A(5) and 54A(6).

8. *DDA* s 54A(7) and *ADA* s 49B(3).

9. See generally the *ADA* for NSW jurisdiction and *DDA* for Commonwealth jurisdiction.

Chapter 11

Pets in Wills

What is the legal status of pets and can they be included in my will?

Pets are considered the legal property of their owners and can therefore be given as a gift or provided for under a person's will and testament in the same way as any other property. Including a pet in your will is a good way of ensuring adequate provision is made for your pet's care and maintenance following your death. If pets are not specifically mentioned in a will, such as by gifting it to a relative, friend or animal charity, then technically it could be said that the pet forms part of the "residuary estate." That is, along with all that is left of the deceased's estate after legacies and other specific gifts are dealt with, the pet will go to the residuary. Generally, your will and testament will indicate who will receive your residuary estate.

If you wish to include your pet in your will, it is important that specific language is used and that it is drafted correctly. It is advisable to seek legal advice.

What provision can be made for my pet in my will?

Pets do not have the same status under the law as humans. In the eyes of the law, animals are themselves considered to be property so are incapable of legally owning property or being gifted property. This means that making a provision for a pet requires thought and planning ahead. There are several ways of ensuring your pet is provided for after your passing, so it is recommended you obtain legal advice.

Informal arrangements made outside a testator's will

Informal arrangements for the care of pets, such as arranging for family or friends to care for the animals, are often made and may work if the person nominated is

dependable and outlives the pet owner. However one way to avoid the uncertainty associated with informal arrangements is to give clear directions in your will for how your pet is to be cared for.

Formal arrangements made within your will

Gift of pet and legacy to a friend or family

This arrangement involves leaving the pet together with a sum of money for its care and maintenance to a friend or family member. It may work well where there is a trusted family member or friend who outlives the you (the testator).

There is a risk, however, that the nominated person either may not be able to care for the pet due to some unforeseen circumstance or has died. For this reason, an alternative carer could be appointed in your will. A gift of money to help care for and maintain the pet usually accompanies such a gift.

Legacy to an animal charity

The AWL and RSPCA have “legacy programs” so that if a person leaves them a legacy (a specific gift, usually of money) they will place the pet in the legacy accommodation facilities or seek to re-home the animal.

There are a number of other animal charities that may also be able to re-home animals. The charities should be contacted before including a provision in your will, as some charities, such as the RSPCA, have strict guidelines for their pet legacy programs.

Testamentary trust

Trusts established for the care and maintenance of the pet are becoming more popular. However it is strongly advised to obtain legal advice before setting one up.

If people wish to use the mechanism of a trust there are a few rules to follow and basic measures to consider:

a) Appointment of a Trustee

One of the requirements of a trust is that a trustee is appointed and named in your will. It is the responsibility of the trustee to manage the trust assets and transfer the income/capital of the trust to the carer who is to provide the pet with daily care and treatment.

b) Duration of the trust

The trust must be finalised within 80 years of the date of the death of the person who makes the will (that is, the pet owner).

While most mammals, amphibians, insects and fish live for less than 80 years, there are some birds and reptiles that live for over 100 years and therefore a trust for 80 years may not meet their lifelong needs.

c) Appointment of a carer/guardian

A carer or guardian, whether an individual or organisation, must be appointed in the will to provide the physical day-to-day care and maintenance of the pet. The trustee will manage the trust assets and transfer the income/capital of the trust to the carer who meets the daily care needs of the pet.

To avoid a conflict of interest between the trustee and the carer, it is advisable that the trustee and carer are two different people, because the trustee has the duty to administer the trust assets, ensure they are properly invested and not benefit from the trust. It may also help to make provision for a substitute carer if the person nominated dies before the pet owner or dies during the lifetime of the pet.

The terms of the will should specify how the pet is to be cared for and provide guidance on the use of the trust funds. For example, the will may direct that the pet be taken to a veterinarian on a regular basis for check-ups. This might be once a year or more frequently depending on need and circumstances. The will may also direct that the veterinarian write a report to the trustee confirming the pet is the pet named in the will and is being properly cared for.

Before making the will, the consent of the person or persons to be appointed as carer should be obtained.

d) Provide information about the pet

The executor (the person who makes sure the terms of the will are carried out) will require all the necessary information about the pet and its special needs. It is therefore advisable to leave written details about the pet and veterinary documents with your will.

e) How much money should go into the trust?

It is important to ensure the trust is left with sufficient funds that will last the pet's lifetime. Care costs should provide for:

- food or special dietary needs;
- veterinary expenses, including special veterinary care if the pet develops an illness or age-related disorder;

- grooming;
- toys;
- travel expenses, including boarding costs; and
- any other items normally provided for the pet.

f) *Provision for carer of pet*

Some people have been known to establish testamentary trusts that provide the carer of the pet with an interest in their home for the life of the pet as well as a fund for the pet's care and maintenance. The carer may be given a right of residence in the property or a life interest on the condition that they care for the pet. A fund may be also established that may be used for the maintenance of the pet.

Pet owners should also consider what would happen to their pets if they were to die suddenly or be in an accident and absent from home for any length of time. Arrangements for the care of pets should be made in advance.

Chapter 12

Pets and Family Law

I am getting divorced – who gets the dog?

Unlike the growing field of “pet custody” cases in North America,¹ Australian family law does not expressly acknowledge the existence and role of pets in family breakdowns. There is no reference to animals in the *Family Law Act 1975* (Cth) (FLA) and pets are therefore treated as part of the property pool that can be allocated between ex-spouses.² In effect, this means that parties can transfer the ownership (and registration) of a pet to one another in much the same manner that a car might be transferred to a party upon the breakdown of a relationship.

If there has been a breakdown in a relationship and the parties are in dispute over the ownership of the pet or who should receive the pet as part of the property settlement, the Courts are empowered to consider the merits of each party’s application in much the same way as the distribution of property or the family business. This can involve the Court looking at factors such as who the pet is registered to and who cared for the pet, which party spent more time with the pet and took on responsibilities such as feeding, walking and training the pet. It must be stressed, however, that this examination is based purely on an assessment of which party should receive ownership of an item of “property” in dispute rather

1. See, for example, the *Family Code Section 6320 (2008)* (California), which permits Courts to grant orders to parties in family law cases for the care, possession or control of an animal owned by either party to the dispute; to expressly permit orders that a party stay away from an animal; and, forbidding a party to take, conceal, strike, threaten or dispose of an animal. In 2007, a Connecticut judge ordered for an ex-spouse to stay away from her golden retriever after she was proved to have kicked it. For an example of a case where the Court ordered a contact visitation schedule between the parties to see the pet, see the case of *Perkins v Perkins (“Gigi”) 1998* (San Diego case number D442128).

2. *FLA* s 79.

than on the concept of what is in the “best interests” of the pet or who should obtain custody of the pet, as is the case with children.

As pets are property under Australian law, the Courts can order injunctions under the FLA forcing a person to do something or refrain from doing something in relation to a pet. For example, if one spouse took away a pet from another spouse upon separation, an application could be made to the Court for an injunction forcing the return of the pet to the other spouse as it is an item of matrimonial property.

Despite these theoretical possibilities, the reality under Australian family law is that the welfare of the pet upon relationship breakdown is not an issue that has been thoroughly or conclusively investigated within the Courts. Rather, it is an issue which tends to be resolved by way of an informal agreement between parties or, less often, by way of consent orders filed with the Courts upon conclusion of the matter. The enforceability of such arrangements, however, can present serious difficulty as Australian Courts have very little precedent to follow in relation to arrangements for the care of pets, particularly an arrangement for shared care between the parties.

What services are available to pet owners who are victims of domestic violence?

Studies have revealed that a large number of victims delay or avoid leaving an abusive relationship because they are unable to find accommodation for their pets and fear that their pets may be harmed.³

A number of programs around Australia have been introduced to address this issue. In New South Wales, for example, the RSPCA “Safe Beds for Pets” program⁴ provides a safe haven for pets (for as long as necessary) so as to allow victims to leave abusive relationships more easily. Referrals to such programs can be made via domestic violence counselling services.

3. NSW Department of Family and Community Services, *I am worried about my pets* <http://www.domesticviolence.nsw.gov.au/what_are_my_options/what_are_my_options/i_am_worried_about_my_pets>.

4. RSPCA, *Safe Beds for Pets* <<http://www.rspcansw.org.au/our-work/programs-community-services/safe-beds-for-pets>>.

Chapter 13

Exotic and Native Animals

What is an exotic animal?

An “exotic animal” is generally considered to be an animal that is not native or indigenous to Australia. However, exotic animals can also include species of animals that are less commonly kept as pets, such as snakes and lizards.

Can I keep an exotic animal in New South Wales?

In New South Wales, a large number of non-native animals can be kept, provided they are kept in compliance with the *Non-Indigenous Animals Act 1987* (NSW) (NIAA). Schedule 1 of the *Non-Indigenous Animals Regulation 2012* (NSW) (NIAR) lists the species of non-native animals that may be kept.

The NIAA categorises animals as either “lower-risk” or “higher-risk” based on a range of factors including their potential to become pests, the danger they pose to humans and the security requirements in keeping or transporting the animal.¹ Examples of non-indigenous animals include hamsters, springboks, European rabbits, domestic goats, snakes, lizards and alligators.

What do I need to do before I get a non-indigenous animal?

If you wish to keep a non-indigenous animal, you must first consider whether a licence is required to obtain the animal.

If a person fails to hold a licence when required for a high-risk animal, it is possible that a fine of \$11,000 and/or six months’ imprisonment may be imposed

1. NIAA s 6.

or a \$2,200 fine for low-risk animals.² There are also significant penalties for the importation of such animals without a permit.³ The unlawful keeping of controlled animals can result in their seizure⁴ and immediate destruction if the animal is “at large and poses an immediate threat to life or property”.⁵

Licences are generally issued for three-year periods⁶ and contain both general and specific conditions.⁷ Failure to comply with these conditions carries the same penalty as not holding a licence. You should first ensure that you are able to comply with these conditions before making an application, as licences can be cancelled if the conditions have not been complied with.

Some of the general conditions may include a requirement for locks and gates, and the requirement to develop contingency plans should some or all of the licensed animals no longer be wanted or no longer be cared for appropriately. This must be provided to the licensing body within three months of a licence being obtained.⁸

There are also standards and requirements for accommodation, identification and husbandry of the animals which must be complied with. These are set out in detail in the NIAR.⁹

The Department of Primary Industries website also contains more details.¹⁰

Can I keep a native animal?

In New South Wales, some species of native animals such as snakes, lizards and frogs, can also be kept as pets. The *Native Animal Keepers Species List 2014*¹¹ (**Native Animal List**) published by the Office of Environment and Heritage contains the

2. NIAA s 11.

3. NIAA s 10.

4. NIAA s 25(1).

5. NIAA s 25(3).

6. NIAA s 16.

7. NIAA s 17.

8. Department of Primary Industries, *General Licence Conditions for Keeping Non-Indigenous Animals in NSW* <http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0009/390258/May-2011-Licence-conditions.pdf>.

9. NIAR, see Part 3 Standards for Housing of Non-Indigenous Animals, Part 4 Standards for Identification of Non-Indigenous Animals and Part 5 Standards for Husbandry for Non-Indigenous Animals.

10. NSW Department of Primary Industries, *Non-indigenous animals* <<http://www.dpi.nsw.gov.au/agriculture/livestock/nia#Licence-and-Permit-Conditions>>.

11. The full list (2014 edition) can be obtained at the Office of Environment and Heritage website <<http://www.environment.nsw.gov.au/resources/nature/CurrentSpeciesList.pdf>>.

names of all native animal species that may be kept, provided that they are kept under a licence.¹² If the animal is not on the list, you must make a special request to the Office of Environment and Heritage for a licence.

Under the *National Parks and Wildlife Act 1974* (NSW) (NPWA) all native animals are deemed “protected fauna” and those animals that are born into the wild are deemed to be the property of the Crown (the Commonwealth government).¹³ Buying, selling, possessing, or controlling protected fauna is prohibited without a licence.¹⁴ Licences are only available for the animal species named on the Native Animal List but some species of bird,¹⁵ and the dingo,¹⁶ do not require a licence to keep.

If you want to obtain a licence for an animal on the Native Animal List, you need to consider the class of animal you wish to purchase. Native Animals are classified into various species groups, as well as into licence classes. For example, some of the reptiles which can be kept under the same class of licence are the eastern snake-necked turtle, the eastern water dragon, and the children’s python even though these animals are classified into different species groups.

Native animal licences must be endorsed with the class for the species, which contains particular requirements and conditions based on that class (e.g. minimum age requirements of licence holder, previous experience in caring for and handling the relevant species). There are also many other requirements depending on the type of animal.¹⁷ Licences for some species of animal have a Code of Practice, which must be complied with regardless of the licence class.¹⁸ The licence is available for a two-year or five-year period.

All licensed native animal keepers are required to maintain a fauna record book and lodge it with the Wildlife Licensing and Management Unit each year.¹⁹

12. This list is compiled pursuant to NPWA, s 120.

13. NPWA s 97.

14. NPWA s 101.

15. Office of Environment and Heritage, *Birds you don’t need a licence to keep* <<http://www.environment.nsw.gov.au/wildlifelicences/BirdsYouDontNeedALicenceToKeep.htm>>

16. Office of Environment and Heritage, *Mammal Keepers Licence* <<http://www.environment.nsw.gov.au/wildlifelicences/MammalKeepersLicence.htm>>.

17. For caging of bird, for example, see *National Parks and Wildlife Regulation 2009* (NSW), Sch 1.

18. For example, all reptile licences must comply with the *Code of Practice for the Private Keeping of Reptiles* <<http://www.environment.nsw.gov.au/resources/wildlifelicences/20130185ReptileCode.pdf>>.

19. Office of Environment and Heritage, *Electronic Fauna Record Book* <<http://www.environment.nsw.gov.au/wildlifelicences/electronicFaunaRecordBook.htm>>.

There is also the simpler and easier to obtain ‘companion animal’ licence which applies to some animals on the Native Animal List, if only one animal is being obtained.²⁰ This licence is less expensive and does not require the maintenance of a fauna record book.

For a full list of the classes and conditions associated with each class, visit the Office of Environment and Heritage website.²¹

Can I import an exotic or native animal?

Commonwealth regulation of the import and export of non-native animals

Certain species of non-native animals can be brought into Australia. However, there are strict guidelines that must be adhered to. The importation and exportation of such animals is regulated by the Commonwealth government pursuant to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBCA).

The EPBCA aims to stamp out the illegal trade in animals, particularly animals that may be the subject of endangered species legislation. It also aims to ensure that the importation of animals does not affect Australia’s native fauna and that animals are treated humanely. The importation of such animals into Australia is controlled by the EPBCA as well as the *Quarantine Act 1908* (Cth). These laws apply to anyone who intends to bring a live exotic animal into Australia.

In order to be eligible for import, a species must be listed on the *List of Specimens Taken to be Suitable for Live Import*.²² This list contains two parts, one containing a list of animals which do not require a permit and another with those that do. If an animal is not on the list, it is not permitted to be imported. However, the Department of Agriculture maintains a policy that with the exception of cats, dogs, birds, horses and rabbits, no other live pet animal can be imported into

20. See *Native Animal Keepers Species List 2014*; Office of Environment and Heritage, *Companion Native Animals Licence*

<<http://www.environment.nsw.gov.au/wildlifelicences/companionnativeanimalslicence.htm>>.

21. Office of Environment and Heritage, *Keeping Native Animals*

<<http://www.environment.nsw.gov.au/wildlifelicences/KeepingNativeAnimals.htm>>.

22. Department of Education, Australian Government, *Live import list*

<<http://www.environment.gov.au/biodiversity/wildlife-trade/lists/import/index.html>>.

Australia as a pet.²³ The penalty for importing a live animal without a permit can be as high as 10 years' imprisonment or hefty fines.²⁴

Further information can be sought from the Director of the Wildlife Trade Regulation section of the Commonwealth Department of the Environment.²⁵

Importation of exotic and native animals into New South Wales

Non-indigenous animals cannot be imported into New South Wales from another State, Territory or overseas without a permit from the Department of Primary Industries.²⁶

The importation of native animals from another State, Territory or jurisdiction, as well as the export of native animals outside New South Wales is prohibited.²⁷ For all protected native animals (other than some protected birds) you require an import/export licence from the Office of Environment and Heritage. The grounds for refusing a licence to import or export are contained in the *National Parks and Wildlife Regulation* and relate mainly to the threat of that animal to the wildlife in the State.²⁸

What should I do if I think someone has imported an exotic animal illegally or is selling it improperly?

If you are concerned, contact the Department of Primary Industries or the Office of Environment and Heritage. You can also contact the Wildlife Trade Regulation Section of the Commonwealth Department of the Environment.

23. Department of Agriculture, Australian Government, *Live Animals and Reproductive Material* <<http://www.daff.gov.au/biosecurity/import/live-animals>>.

24. *EPBCA* s 303EK(1). However, in one case (see <<http://www.cdpp.gov.au/case-reports/rosa-carruthers/>>) the importation of a Mexican Red-Knee tarantula and Emperor Scorpion without a permit was prosecuted under 303EK(1) and the defendant was only fined \$2,500 plus costs.

25. See Department of the Environment, *Wildlife trade and the law* <<http://www.environment.gov.au/biodiversity/wildlife-trade/law>>.

26. *NIAA* s 10.

27. *NPWA* s 106. However, this does not apply to the animals in Schedule 11 of the Act which are deemed to be "unprotected fauna".

28. *National Parks and Wildlife Regulation 2009* (NSW) r 54.

Can I release an exotic or native animal?

There are strict rules for releasing exotic animals. If the exotic animal is a native animal, the “liberation” of any animal is prohibited unless you have a licence to do so.²⁹ If the animal is a non-indigenous animal, the NIAA contains a prohibition on liberation of those animals, with the penalty depending on the type of animal released.³⁰

If the animal was imported into Australia under a permit, then release of the animal without prior authorisation is a breach of the permit conditions.

29. *NPWA* s 109.

30. *NIAA* s 13.

Legislation and Legislative Instruments

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| ARA | <i>Animal Research Act 1985 (NSW)</i> |
| ADA | <i>Anti-Discrimination Act 1977 (NSW)</i> |
| CAA | <i>Companion Animals Act 1998 (NSW)</i> |
| CAR | <i>Companion Animals Regulation 2008 (NSW)</i> <i>Crimes Act 1900 (NSW)</i> <i>Crimes (Sentencing Procedure) Act 1999 (NSW)</i> |
| DDA | <i>Disability Discrimination Act 1992 (Cth)</i> |
| FLA | <i>Family Law Act 1975 (Cth)</i> <i>Local Government (General) Regulation 2005 (NSW)</i> |
| NIAA | <i>Non-Indigenous Animals Act 1987 (NSW)</i> |
| NIAR | <i>Non-Indigenous Animals Regulation 2012 (NSW)</i> |
| NPWA | <i>National Parks and Wildlife Act 1974 (NSW)</i> |
| POCTA | <i>Prevention of Cruelty to Animals Act 1979 (NSW)</i> |
| RTA | <i>Residential Tenancies Act 2010 (NSW)</i> <i>Residential Tenancies Regulation 2010 (NSW)</i> |
| RR | <i>Road Rules 2008 (NSW)</i> <i>Road Transport (Driver Licensing) Regulation 2008 (NSW)</i> <i>Strata Schemes Management Act 1996 (NSW)</i> |
| VPA | <i>Veterinary Practice Act 2003 (NSW)</i> <i>Animal Welfare Code of Practice – Animals in Pet Shops (NSW) 2008</i> <i>Animal Welfare Code of Practice – Breeding Dogs and Cats (NSW) 2009</i> <i>Australian Code for the Care and Use of Animals for Scientific Purposes</i> |
| BDC | <i>NSW Animal Welfare Code of Practice No 5 – Dogs and Cats in Animal Boarding Establishments 1996</i> |

Contacts and Resources

Animal Welfare League (NSW) (AWL)

(02 8899 3333; www.awlnsw.com.au)

Australian Centre for Disability Law

(02 8014 700 or 1800 800 708; www.disabilitylaw.org.au)

Department of Primary Industries (Animal Welfare Branch)

(02 6391 3149; www.dpi.nsw.gov.au)

NSW Civil and Administrative Tribunal

(Phone 1300 006 228 ; www.ncat.nsw.gov.au)

NSW Law Society Pro Bono Referral Service

(www.lawsociety.com.au/community/findingalawyer/probono)

NSW Young Lawyers

(02 9926 0182; www.younglawyers.com.au)

RSPCA NSW

(02 9770 7555 (general enquiries); 1300 278 3589 (to report cruelty;
www.rspca.org.au)

Tenants NSW

(www.tenants.org.au)

For translation and interpreting services:

The Community Relations Commission for a Multicultural NSW
(1300 651 500; www.crc.nsw.gov.au/services/language_services)

Glossary

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| <i>Approved breed assessor</i> | A person or body approved for the time being by the Director-General to carry out breed identification assessments for the purposes of declaring a dog as restricted (CAA s 5). |
| <i>By-laws</i> | The rules that govern the general maintenance of a strata scheme, the interrelations of its occupants and the use of common property. Every lot owner and occupier must comply with the by-laws. Also refers to the regulations established by Local Councils in relation to the management of specific issues within the Council. |
| <i>Damages</i> | A monetary amount paid by one person/corporation to another by way of compensation for an injury, breach of contract or other civil wrong. |
| <i>Executor</i> | Person named in a will whom the testator wishes to administer the estate. The executor may bring actions against persons who are indebted to the testator, or are in possession of property belonging to the estate. |
| <i>Liability</i> | Legal responsibility for a civil or criminal wrong-doing. |
| <i>Negligence</i> | As a tort, negligence is the breach of a legal duty to take care, which results in damages to the claimant. Negligence may also signify a state of mind, such as a person's inadvertences to the consequence of their conduct or deliberate taking of a risk without intending the consequences attendant upon that risk. |
| <i>Owners Corporation</i> | The collective term for all the lot owners in a strata scheme (previously called 'Body Corporate'). The Owners Corporation is a legal entity and is responsible for maintenance and management of the strata scheme as a whole. |
| <i>Testator</i> | The person who writes a will. |

Glossary

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| <i>Trust</i> | A trust exists when a person (trustee) has a duty to administer property for the benefit of another (beneficiary). |
| <i>Trustee</i> | A person who has a duty to administer property for the benefit of others, or for a purpose recognised as creating a valid trust. |

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