



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EPD/RIC:JBgl010525

1 May 2025

Companion Animals Act Review
Office of Local Government
PARRAMATTA NSW 2150

By email: ca.review@olg.nsw.gov.au

Dear Sir/Madam,

REVIEW OF THE NSW COMPANION ANIMALS LAWS

Thank you for the opportunity to provide feedback on the *Review of the NSW Companion Animals Laws Discussion Paper (Discussion Paper)*. The Law Society's Environmental Planning and Development and Rural Issues Committees contributed to this submission.

Our feedback on relevant questions in the Discussion Paper is provided in the attached comments table.

Any questions in relation to this letter should be directed to Gabrielle Lea, Senior Policy Lawyer, at gabrielle.lea@lawsociety.com.au or on (02) 9926 0375.

Yours sincerely,

Jennifer Ball

President

Attachment



No.	Question	Law Society comments
1. Strategic framework for encouraging responsible ownership of companion animals		
a.	Do you support the Companion Animals Act being amended to focus more on encouraging responsible pet ownership outcomes over strict compliance processes?	<p>The Law Society supports the encouragement of responsible pet ownership. In our view there is a role for both the encouragement of responsible pet ownership, and clear responsibilities and obligations of pet owners, supported by compliance and enforcement processes.</p> <p>A departure from a strict compliance regime under the <i>Companion Animals Act 1998</i> (NSW)(Act) may mean that the responsibilities of pet ownership are less clear for pet owners which is undesirable and may cause difficulties with compliance and enforcement.</p> <p>In our view, the Act is generally fit for purpose, but there is a need for increased education and awareness of the responsibilities and obligations of pet owners under the Act in the community. In our members' experience, a lack of knowledge of these responsibilities and obligations is sometimes used by self-represented persons in Court matters to seek to excuse behaviour that the Act seeks to dissuade.</p> <p>We suggest consideration could be given to reframing section 3A, Principal object of the Act, to articulate the role of the Act in encouraging responsible pet ownership. This will also support the role of stakeholders such as pet breeders, the RSPCA and Councils in articulating pet owners' responsibilities.</p>
b.	How can responsible pet ownership education be used to manage menacing or dangerous dogs?	<p>We agree with the commentary on page 11 of the Discussion Paper about the key role education plays, and we support the recommendation from recent coronial inquests into fatal dog attacks (noted on page 11) of a statewide public awareness and education campaign of the risks posed by dogs, including specific breeds and types of dogs.</p>
c.	How could the legislation be improved to motivate better dog owner behaviour and encourage owners to manage their dogs more responsibly? (For example, what does responsible dog control in public look like?).	<p>Consideration could be given to the development of a Code of Practice or Guideline for the responsible ownership of dogs. We note the <i>Code of Practice for the Private Keeping of Dogs</i>¹ that operates in Victoria.</p>

¹ Animal Welfare Victoria, *Code of Practice for the Private Keeping of Dogs* (15 November 2024) <<https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/pocta-act-1986/victorian-codes-of-practice-for-animal-welfare/code-of-practice-for-the-private-keeping-of-dogs>>.



No.	Question	Law Society comments
d.	How could the legislation be improved to motivate better cat owner behaviour and encourage owners to manage their cats more responsibly? (For example, cat containment).	<p>Consideration could be given to the development of a Code of Practice or Guideline for the responsible ownership of cats. We note the <i>Code of Practice for the Private Keeping of Cats</i>² that operates in Victoria.</p> <p>As a practical matter, we suggest consideration be given to free compulsory cat desexing programs, either through councils or animal shelters that operate in NSW.</p> <p>In relation to cat containment, we suggest consideration could be given to providing a power for specified locations to be declared as cat containment areas (reasons for doing so could be proximity to sensitive ecosystems or populations of species, for example), such as that provided by Part 4, Division 4.1B of the <i>Domestic Animals Act 2000</i> (ACT). This would establish a framework for containment, but not impose any requirements at this stage, which would help to future proof the Act, as cat containment is increasingly under discussion in the community.</p>
e.	Are there other matters that should be considered?	<p>We suggest that the current review better clarify the differential treatment under the Act of working dogs and breeding dogs, as compared to other companion dogs. The reasons for keeping a working dog are very different to that of other companion animals and many shire councils highlight this to the community.³</p> <p>The distinction between working dogs and companion animals is key to the appropriate regulation of working dogs, and we support the continuation of exemptions that apply to working dogs, such as:</p> <ul style="list-style-type: none"> the exemption from wearing a collar and tag under section 12 of the Act: and the exemption from registration requirement that applies to some working dogs under subsections 17(i) and (j) of the <i>Companion Animals Regulation 2018</i> (NSW) (Regulation). <p>The distinction should also be borne in mind in the context of any future amendments to the Act or Regulation.</p> <p>We also note and support the current <i>Code of Practice - Care and management of farm (working) dogs</i>⁴ issued by the NSW Department of Primary Industries and Regional Development.</p>

² Animal Welfare Victoria, *Code of Practice for the Private Keeping of Cats* (4 December 2024) <<https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/pocta-act-1986/victorian-codes-of-practice-for-animal-welfare/code-of-practice-for-the-private-keeping-of-cats>>.

³ See Narrabri Shire Council, *Working Dogs in Rural NSW* <<https://www.narrabri.nsw.gov.au/Resident-Services/Animals-Pets/Working-Dogs-in-Rural-NSW>> and Eurobodalla Shire Council, *Working Dogs in Rural NSW* <<https://www.esc.nsw.gov.au/residents/pets/working-dogs>>.

⁴ NSW Department of Primary Industries and Regional Development, *Code of Practice - Care and management of farm (working) dogs* <<https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-care-and-welfare/other/companion-animal-files/code-of-practice-care-and-management-of-farm-working-dogs>>.



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2. Compliance and enforcement role of councils		
a.	What changes to NSW laws, regulations, codes or guidelines could be provided to councils and other enforcement authorities to better support responsible pet ownership?	In addition to our earlier suggestions, consideration could be given to the development of a Companion Animal Starter Pack, to be provided to a pet owner at the initial registration stage.
b.	How could NSW laws, regulations, codes or guidelines be improved to support councils to better manage dangerous and restricted dogs?	<p>In our view, mandatory training, in relation to both the owner and dog, should be part of the requirements when a dog is declared menacing and/or dangerous. Training is regularly indicated as a requirement of control orders when an appeal is lodged in relation to a dangerous dog declaration.</p> <p>Consideration could also be given to the development of factsheets or guidelines for the responsible ownership of dangerous and restricted dogs. The Office of Local Government website currently contains a useful summary of the <i>Control requirements for dangerous and menacing dogs</i>⁵ and other information about the keeping of dangerous and restricted dogs. This could form the basis for the development of factsheets, which could be provided at initial registration, and when obtaining the annual permit required for the keeping of a dangerous or restricted dog.</p> <p>We suggest that consideration be given to amending section 51 of the Act relating to dangerous dog requirements, to ensure that an existing house, or ancillary buildings such as a garage, are not permitted to be used as an enclosure for the purposes of that section.</p>
c.	Are the current enforcement provisions under the Act (including penalties for offences - see Appendix B of the discussion paper) appropriate? If not, what enforcement provisions should be changed?	<p>Subject to the specific matters raised below, generally, yes. In our members' experience, the Magistrates who deal with the matters in Court exercise compassion and restraint with most cases, recognising the problems faced by pet owners, especially those on lower incomes.</p> <p><u>Liability of owner/person in charge</u></p> <p>In our members' experience, including those that act for councils, we are aware of difficulties in relation to the interpretation of section 13 of the Act, Responsibilities while dog in public place. Following the Court of Appeal decision in <i>Ryde City Council v Pedras</i> [2009] NSWCCA 248, it is ambiguous whether an owner who is not present can be liable for an offence relating to the effective control of a dog in a public place under subsection 13(2) of the Act. The issue arises largely from the</p>

⁵ NSW Office of Local Government, *Control requirements for dangerous and menacing dogs* (1 July 2024) <<https://www.petregistry.olg.nsw.gov.au/pet-control/dangerous-and-menacing-dogs/control-requirements-for-dangerous-and-menacing-dogs>>.



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		<p>wording of the subsection in relation to dogs which are in the care of a person other than the owner. The subsection uses the phrase:</p> <p style="padding-left: 40px;">if the owner is not present at the time of the offence and another person who is of or above the age of 16 years is in charge of the dog at that time.</p> <p>The same wording is repeated in sections 14(2), 15(2), 16(1), 20(1) and 30(1), to create offences for the owner, or the person in charge of the dog (or cat, in subsection 30(1)) at the relevant time. As we understand it, the intent of these subsections was to create liability for the person in charge of the dog or cat, but in practice, in our members' experience, the provision is sometimes used as a defence by owners who are not present with their pet. We suggest the operation of these subsections should be reviewed and clarified. Consideration could also be given to amending the subsections such that the owner, and any person in charge of the dog or cat at the time, are both liable for the offence.</p> <p><u>Escaping dog and a subsequent attack</u></p> <p>We also suggest it would be helpful to clarify the relationship between offences under section 12A of the Act (Preventing dog from escaping) and section 16 offences (Offences where dog attacks person or animal). This is particularly so in cases where a dog escapes and an attack occurs when the owner (or other person in control) is not present.</p> <p><u>Provocation</u></p> <p>In relation to section 16 of the Act, Offences where dog attacks person or animal, we suggest the practical operation of subsection 16(2)(a), the defence of provocation, should be reviewed. In our members' experience, a defence of provocation is regularly raised in proceedings under section 16, which can be difficult to disprove in proceedings. We suggest consideration could be given to amending subsection 16(2)(a) to narrow the scope of the defence, for example deleting the reference to 'teased'; or shifting the onus of proof to the proponent of the defence of provocation.</p> <p><u>Double jeopardy</u></p> <p>We suggest consideration be given to the appropriateness of retaining section 94 of the Act relating to double jeopardy, particularly given attacks can occur when a dog has escaped, and the dog is subject to an existing declaration as a dangerous dog.</p> <p><u>Sanctions</u></p> <p>Consideration could also be given to amending the Act to provide for a wider range of sanctions, such as enforceable undertakings, reporting on a regular basis to councils; and compulsory training and rehabilitation. In our view, the ability for councils and owners of dogs to enter into enforceable</p>



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		<p>undertakings as an alternative to other orders or enforcement options under the Act may obviate the need for control orders in suitable cases.</p>
d.	Are there other compliance and enforcement matters that should be considered?	<p><u>Investigative powers</u></p> <p>We suggest that consideration be given to expanding the powers available to council officers to investigate offences under the Act. Such powers could replicate the investigation powers available to council officers under Part 9, Division 9.2 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) (EPAA).</p> <p><u>On-leash and off-leash dog parks</u></p> <p>In our view, consideration in relation to the interplay between the provisions of the Act with the requirements of the EPAA and the <i>Crown Lands Management Act 2016</i> (NSW), in respect of the establishment of on-leash and off-leash dog parks is needed, particularly in light of <i>Palm Beach Protection Group Incorporated v Northern Beaches Council</i> [2020] NSWLEC 156. The interplay between these three pieces of legislation is difficult to navigate, and it is expensive for councils to amend, adopt or remove on-leash and off-leash dog parks. We suggest there would be merit in streamlining and clarifying the process for the establishment of on-leash and off-leash dog parks, although we note that this is something probably best addressed in the EPAA rather than the Act.</p> <p><u>Service provisions</u></p> <p>We suggest it would be appropriate to update the service provisions contained within section 95A of the Act, including the use of the contact details contained within the Companion Animal Register.</p> <p><u>Transfer of records</u></p> <p>We suggest that when a pet owner moves from one Local Government Area to another, there should be an automatic transfer of files and records of the pet owner. As we understand it, all the materials are in electronic form, which should assist with implementing this change.</p>
3. Companion animal population and rehoming		
a.	What more could be done to reduce stray and homeless cats and dogs in NSW?	<p>We agree that more should be done to reduce stray and homeless cats and dogs in NSW, given the significant adverse impacts that can be caused by wild dogs and feral cats in respect of loss of livestock, vegetation and native animals. We have no further suggestions, other than the suggestions made elsewhere in this response.</p>



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b.	What changes can be made to NSW laws, regulations, codes or guidelines to reduce the number of companion animals entering the pound and rehoming system in the first place?	Consideration could be given to requiring an annual permit for dogs that are not desexed, similar to the requirement for an annual permit for cats that are not desexed under section 11B of the Act. We suggest that if this proposal is adopted, there should be an exemption for working dogs that are not desexed as this additional regulatory burden on farmers is unnecessary in our view.
c.	For companion animals needing to enter the 'pound' system, what could be done to increase rehoming?	We suggest offering desexed companion animals for free to appropriate potential pet owners, with suitable resources provided at the rehoming stage to encourage responsible pet ownership.