Mareeba Shire Council

Local Law No. 2
(Animal Management) 2018

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Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 2 (Animal Management) 2018.*

2 Purpose and how it is to be achieved

(1) The purpose of this local law is to regulate and manage the keeping and control of animals in the local government's area in a way that—

(a) balances community expectations with the rights of individuals; and

(b) protects the community against risks to health and safety; and

(c) prevents pollution and other environmental damage; and

(d) protects the amenity of the local community and environment.

(2) The purpose is to be achieved by providing for—

(a) the regulation of the keeping of animals in terms of how many, what type, how, and where animals can be kept; and

(b) the prescription of minimum standards for keeping animals; and

(c) the proper control of animals in public places and koala conservation areas; and

(d) the management of dangerous or aggressive animals other than dogs;[1] and

(e) the seizure and destruction of animals in certain circumstances; and

(f) the establishment and administration of animal pounds.

3 Definitions—the dictionary

The dictionary in the schedule defines particular words used in this local law.

4 Relationship with other laws[2]

This local law is—

(a) in addition to, and does not derogate from—

(i) laws regulating the use or development of land; and

(ii) other laws about the keeping or control or welfare of animals; and

(b) to be read with *Local Law No. 1 (Administration) 2018*.

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[1] The *Animal Management (Cats and Dogs) Act 2008* provides for the management of ***regulated dogs***, comprising declared dangerous dogs, declared menacing dogs and restricted dogs.

[2] This local law and any subordinate local law made under it do not apply to the extent of any inconsistency with a law of the State or Commonwealth. See the Act, section 27.

Part 2 Keeping of animals

Division 1 Prohibition on keeping animals

5 Prohibition on keeping animals in prescribed circumstances

(1) The local government may, by subordinate local law, prohibit the keeping of animals in prescribed circumstances.

(2) The circumstances in which the keeping of animals is prohibited may be specified by reference to 1 or more of the following factors—

(a) species;

(b) breed;

(c) sex;

(d) age;

(e) number;

(f) whether an animal is a restricted dog;[3]

(g) the locality in which the animal would be kept;

(h) the nature of the premises in which the animal would be kept, including the size of the enclosure or the size of the allotment.[4]

Example for subsection (2)—

A prohibition may be imposed in relation to keeping certain species or a prescribed number of animals of a certain species in an urban locality.

(3) A person must not keep an animal in contravention of a prohibition under this section.

Maximum penalty for subsection (3)—50 penalty units.

Division 2 Animals for which approval is required

6 Requirement for approval

(1) Subject to subsections (3) and (4), the local government may, by subordinate local law, require an approval[5] for keeping an animal or animals in prescribed circumstances.

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[3] Section 72(3) of the *Animal Management (Cats and Dogs) Act 2008* provides: "A permit application may be made for more than 1 restricted dog for the same place only if the keeping of more than 1 restricted dog and more than 1 dog of any breed is permitted under a local law."

[4] See the *Animal Management (Cats and Dogs) Act 2008*, chapter 4, regarding particular conditions on keeping regulated dogs, including requirements about enclosures.

[5] Keeping an animal for which an approval is required under this local law is a ***prescribed activity*** under schedule 2 of *Local Law No. 1 (Administration) 2018*. The process for obtaining an approval for a prescribed activity is set out in part 2 of that local law and section 6 creates an offence for a person undertaking a prescribed activity without a current approval.

(2) The circumstances in which an approval is required may be specified by reference to 1 or more of the following factors—

(a) species;

(b) breed;

(c) sex;

(d) age;

(e) number;

(f) the locality in which the animal is to be kept, including whether it is an urban or non-urban locality;

(g) the nature of the premises in which the animal is to be kept, including the size of the enclosure or the size of the allotment.[6]

(3) An approval under this section is not required for the keeping of animals on land if the keeping of the animals on the land is authorised by a development approval under the Planning Act. [7]

(4) Under this section, the local government may not require an approval for keeping a restricted dog.[8]

Division 3 Animals for which desexing is required

7 Requirement to desex an animal

(1) The local government may, by subordinate local law, require an animal of a particular species or breed to be desexed.

(2) The subordinate local law may—

(a) specify that the requirement for desexing only applies once an animal reaches a certain age; and

(b) exempt animals under particular circumstances.

Example for paragraph (b)—

Exemption might be provided for an animal that is owned by a member of a recognised breeders' association for the purposes of breeding or showing.

(3) A person must not keep an animal that is required to be desexed unless the animal has been desexed.

Maximum penalty for subsection (3)—20 penalty units.

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[6] See note 4.

[7] See the definition of ***Planning Act*** in the Act, schedule 4.

[8] Section 71 of the *Animal Management (Cats and Dogs) Act 2008* requires a permit issued by the local government for a person to own or be responsible for a restricted dog. The processes for the granting of restricted dog permits are set out under chapter 4, part 3 of that Act.

Division 4 Minimum standards

8 Minimum standards for keeping animals

(1) The local government may, by subordinate local law, specify minimum standards for the keeping of animals or a particular species or breed of animal.

(2) A person who keeps an animal must ensure that the relevant minimum standards prescribed by a subordinate local law are complied with.[9]

Maximum penalty for subsection (2)—20 penalty units.

(3) If a person is required to hold an approval to keep an animal, the obligation to comply with the minimum standards prescribed by a subordinate local law is in addition to an obligation imposed by a condition of the approval.

Division 5 Identification of registered cats and dogs

9 Identification for dogs in certain circumstances

The local government may, by subordinate local law, prescribe the identification required by the *Animal Management (Cats and Dogs) Act* 2008 for a dog that is at a place other than the address stated in the registration notice for the cat or dog.[10]

Part 3 Control of animals

Division 1 Animals in public places

10 Exclusion of animals

(1) The local government may, by subordinate local law, specify public places where animals, or animals of a particular species or breed, are prohibited.

(2) The owner or responsible person for an animal must ensure that the animal is not in a public place in contravention of a prohibition specified under subsection (1).

Maximum penalty for subsection (2)—20 penalty units.

(3) The local government must take reasonable steps to provide notice to members of the public regarding the animals that are prohibited in a particular public place.

(4) In this section—

reasonable steps include, as a minimum, the display of a notice at a prominent place within the particular public place, stating—

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[9] See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, sections 4 to 5, regarding the requirements about enclosures for declared dangerous dogs, declared menacing dogs and restricted dogs.

[10] Section 45 of the *Animal Management (Cats and Dogs) Act 2008* requires a person who keeps a cat or dog at a place other than the address in the registration notice to ensure it bears the identification prescribed by the local government under a local law.

(a) the animals that are prohibited in the place; and

(b) in general terms, the provisions of subsection (2).

11 Dog off-leash areas

(1) The local government may, by subordinate local law, designate an area within a public place as an area where a dog is not required to be on a leash (a ***dog off-leash area***).

(2) The local government must take reasonable steps to provide notice to members of the public regarding the designation of an area as a dog off-leash area.

(3) In this section—

reasonable steps include, as a minimum, the display of a notice at a prominent place within the dog off-leash area indicating the extent of the area.

12 Control of animals in public places[11]

(1) The owner or responsible person for an animal must ensure that the animal is not in a public place—

(a) unless the animal is under the effective control of someone; and

(b) if the animal is a declared dangerous animal[12]—unless the animal is securely restrained to prevent it from—

(i) attacking a person or animal; or

(ii) acting in a way that causes fear to a person or animal; or

(iii) causing damage to property.

Maximum penalty for subsection (1)—20 penalty units.

(2) The owner or responsible person for a dog that is on heat must ensure that the animal is not in a public place.

Maximum penalty for subsection (2)—20 penalty units.

(3) An animal is under the ***effective control*** of someone only if—

(a) a person who is physically able to control the animal—

(i) is holding it by an appropriate leash, halter or rein; or

(ii) has appropriately tethered it to an object fixed to a place from which the object can not be moved by the animal and is continuously supervising the animal; or

(iii) has corralled it in a temporary enclosure adequate to contain the animal and is continuously supervising the animal; or

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[11] See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, section 3, regarding the requirement for muzzling and effective control of regulated dogs in public and section 93, which applies this requirement where a dog is subject to a proposed declaration notice.

[12] See the definition of ***declared dangerous animal*** in the schedule.

(b) the animal is tethered in or on a vehicle and unable to reach beyond the vehicle extremities; or

(c) the animal is a dog in a dog off-leash area and under the supervision of a person who is able to control the animal by voice command; or

(d) the animal is participating in, or being exhibited or trained at, an exhibition or an obedience trial supervised by a body recognised for this section by the local government; or

(e) the animal is a working animal actually engaged in moving livestock and under the supervision of a person who is able to control the animal by voice command.

13 Person in control of dog or prescribed animal to clean up faeces

If a dog or any other animal prescribed by subordinate local law defecates in a public place, the person who has control of the dog or animal must immediately remove and dispose of the faeces in a sanitary way.

Maximum penalty—20 penalty units.

Division 2 Restraint of animals

14 Duty to provide proper enclosure and prevent animal from wandering

(1) A person who keeps an animal must maintain a proper enclosure to prevent the animal from wandering or escaping from the person's land.[13]

Maximum penalty for subsection (1)—20 penalty units.

(2) The local government may, by subordinate local law, prescribe requirements for a proper enclosure for an animal or species or breed of animal.

(3) The owner of the animal must ensure that it is not wandering at large.[14]

Maximum penalty for subsection (3)—20 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) for the defendant to prove that—

(a) the defendant maintained a proper enclosure for the animal and could not, by the exercise of reasonable diligence, have prevented the escape of the animal; or

(b) the animal was wandering at large in circumstances authorised by the conditions of an approval granted under a local law.

Example for paragraph (b)—

The conditions of an approval to keep racing pigeons might authorise the approval holder to release the pigeons from their enclosure for a certain amount of time each day and during official pigeon racing events.

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[13] See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, sections 4 to 5, regarding the requirements about enclosures for declared dangerous dogs, declared menacing dogs and restricted dogs.

[14] See the definition of ***wandering at large*** in the schedule.

15 Koala conservation requirements

(1) The local government may, by subordinate local law, prescribe requirements for keeping a dog on land that is within a koala area.

(2) The prescribed requirements may relate to—

(a) the enclosure in which the dog must be kept between sunset and sunrise; or

(b) tethering the dog between sunset and sunrise to prevent it from attacking a koala; or

(c) fencing that must be in place to separate dogs from koalas on the land or on a part of the land; or

(d) other measures that will be likely to prevent an attack by the dog on a koala between sunset and sunrise.

(3) A person who keeps a dog on land that is within a koala area must comply with requirements prescribed under this section.

Maximum penalty for subsection (3)—20 penalty units.

(4) In this section—

koala area means—

(a) a koala habitat area; or

(b) an area designated by subordinate local law as a koala area.

koala habitat area means an area designated as a koala habitat by—

(a) a conservation plan made under the *Nature Conservation Act 1992*; or

(b) a State planning instrument.

Division 3 Aggressive behaviour by animals other than dogs

16 Limited application of division to dogs[15]

(1) Unless otherwise indicated, this division does not apply in relation to aggressive behaviour by a dog.

(2) In this section—

aggressive behaviour means attacking, or acting in a way that causes fear to, someone else or another animal.

17 Animals not to attack or cause fear to persons or animals

(1) A responsible person for an animal must take reasonable steps to ensure the animal does not attack, or act in a way that causes fear to, someone else or another animal.

[15] Aggressive behaviour by dogs is covered by the *Animal Management (Cats and Dogs) Act 2008*, sections 194 to 196.

Maximum penalty for subsection (1)—

(a) if the attack causes the death of or grievous bodily harm to a person—300 penalty units; or

(b) if the attack causes the death of or grievous bodily harm to another animal—100 penalty units; or

(c) if the attack causes bodily harm to a person or another animal—50 penalty units; or

(d) otherwise—20 penalty units.

(2) A person must not allow or encourage an animal to attack, or act in a way that causes fear to, a person or another animal.

Maximum penalty for subsection (2)—

(a) if the attack causes the death of or grievous bodily harm to a person—300 penalty units; or

(b) if the attack causes the death of or grievous bodily harm to another animal—100 penalty units; or

(c) if the attack causes bodily harm to a person or another animal—50 penalty units; or

(d) otherwise—20 penalty units.

(3) In this section—

allow or encourage, without limiting the *Criminal Code*, sections 7 and 8, includes cause to allow or encourage.

another animal does not include vermin that are not the property of anyone.

Examples of vermin that are someone's property—

- a pet mouse or guinea pig
- vermin that are protected animals under the *Nature Conservation Act 1992*.[16]

18 Defences for offence against s 17

It is a defence to a prosecution for an offence against section 17 for the defendant to prove that the animal attacked, or acted in a way that caused fear to, the person or other animal—

(a) as a result of the animal being attacked, mistreated, teased, or provoked by the person or other animal, including a dog; or

(b) to protect the responsible person, or a person accompanying the responsible person (the ***accompanying person***), or the responsible person's or accompanying person's property.

[16] See section 83 of that Act.

Division 4 Dangerous animals other than dogs[17]

19 Declaration of dangerous animal other than a dog

(1) A local government may, by subordinate local law, specify criteria for an authorised person to declare an animal other than a dog to be a declared dangerous animal.

(2) An authorised person may declare an animal other than a dog to be a declared dangerous animal if the animal meets the criteria prescribed by subordinate local law.

(3) A declaration under subsection (2) takes effect at the time the local government gives the responsible person for the animal an information notice[18] about the declaration.

20 Power to require responsible person for declared dangerous animal to take specified action

An authorised person may, by giving a compliance notice,[19] require the responsible person for a declared dangerous animal to take specified action—

(a) to warn persons who enter land on which the animal is kept of the presence of a declared dangerous animal on the land; and

(b) to ensure that the animal remains in secure custody and is unable to attack or cause fear to persons or other animals or cause damage to another person's property.

Part 4 Seizure, impounding or destruction of animals

Division 1 Seizure of animals

21 Seizure of animals

(1) An authorised person may seize[20] an animal, other than a dog,[21] in the following circumstances—

(a) the animal is found wandering at large; or

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[17] Dangerous dogs are dealt with in the *Animal Management (Cats and Dogs) Act 2008*.

[18] See the definition of ***information notice*** in *Local Law No.1 (Administration) 2018*, schedule 1.

[19] See *Local Law No.1 (Administration) 2018*, section 27 regarding the requirements for compliance notices and the offence for not complying with a compliance notice.

[20] See the *Local Government Act 2009*, chapter 5, part 2, division 1 in relation to authorised persons' enforcement powers, including entry to land.

[21] See the *Animal Management (Cats and Dogs) Act 2008*, section 125, for seizure of a dog.

(b) the responsible person for the animal has not complied with a compliance notice that has been issued in relation to compliance with this local law; or

(c) the animal has attacked, threatened to attack, or acted in a way that causes fear to, a person or another animal; or

(d) the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995*.[22]

(2) An authorised person may seize a dog in the following circumstances—

(a) the dog is found wandering at large; or

(b) the responsible person for the dog has not complied with a compliance notice that has been issued in relation to compliance with this local law; or

(c) the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995*.

(3) The authorised person may seize an animal under subsection (1)(a) or a dog under subsection (2)(a) where—

(a) another person has found the animal or dog wandering at large and delivered it to the authorised person; or

(b) an occupier of private land has found the animal or dog wandering at large on the land, taken it under effective control and requested the authorised person to enter the land to seize it.

(4) However, an authorised person is not obliged to accept the custody of an animal under this section.

(5) For the purposes of seizing an animal, an authorised person may take any action, including the use of force, which is reasonable in the circumstances to capture or control the animal.

Division 2 Destruction of animal without notice

22 Power to immediately destroy seized animal

(1) This section applies where an authorised person has seized an animal, other than a regulated dog,[23] under this local law or another law.

(2) The authorised person may, without notice, immediately destroy the animal if—

(a) the authorised person reasonably believes the animal is dangerous and the authorised person can not control it; or

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[22] The *Transport Operations (Road Use Management) Act 1995*, section 100(13) provides: "If a local law provides for a matter mentioned in subsection (12), subsections (3) to (11) no longer apply in the local government's area."

[23] See the *Animal Management (Cats and Dogs) Act 2008*, section 127, for power to destroy a seized regulated dog.

(b) the animal is significantly suffering as a result of disease, severe emaciation or serious injuries; or

(c) an owner of the animal has requested the authorised person to destroy it.

Division 3 Return or impounding of animals

23 Immediate return of animal seized wandering at large

(1) This section applies where—

(a) an animal has been seized under section 21(1)(a) or section 21(2)(a); and

(b) the authorised person who seizes the animal knows, or can readily find out, the name and address of the owner or responsible person for the animal.

(2) The authorised person may return the animal to the owner or responsible person.

24 Impounding of seized animal

An authorised person who seizes an animal under this local law or another law may impound the animal at a place of care for animals operated by—

(a) the local government; or

(b) another organisation or local government prescribed by subordinate local law.

Example for paragraph (a)—

An animal pound.

Example for paragraph (b)—

A veterinary surgery or an animal refuge.

25 What is a notice of impounding

(1) A ***notice of impounding*** means a written notice, given to the owner or responsible person for an animal, stating that—

(a) the animal has been impounded; and

(b) the animal may be reclaimed within the prescribed period provided that—

(i) the cost-recovery fee is paid; and

(ii) if an approval or registration is required for the keeping of the animal and the owner or responsible person does not have the approval or registration— the approval or registration is obtained; and

(iii) if the animal has been seized under section 21(1)(b) or 21(2)(b)— the owner or responsible person has complied with the relevant compliance notice; and

(iv) continued retention of the animal is not needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; and

(v) no destruction order has been made for the animal.

(2) In this section—

relevant compliance notice means the compliance notice mentioned in section 21(1)(b) or 21(2)(b).

26 Dealing with animal seized and impounded for wandering at large

(1) Subsection (2) applies where—

(a) an authorised person has impounded an animal seized under section 21(1)(a) or 21(2)(a); and

(b) the animal was not a declared dangerous animal at the time of being seized; and

(c) the authorised person knows, or can readily find out, the name and address of the owner or responsible person for the animal.

(2) The authorised person must give the owner or responsible person a notice of impounding.

(3) Subsection (4) applies where—

(a) an authorised person has impounded a declared dangerous animal seized under section 21(1)(a); or

(b) an authorised person has impounded an animal that has been seized more than 3 times during a 12 month period.

(4) The authorised person may—

(a) give the owner or responsible person for the animal a notice of impounding; or

(b) make a destruction order for the animal under section 30.

27 Dealing with animal seized and impounded for non-compliance with local law

(1) This section applies where an authorised person has impounded an animal seized under section 21(1)(b) or 21(2)(b).

(2) The authorised person may—

(a) give the owner or responsible person for the animal a notice of impounding; or

(b) if the animal was being kept in contravention of section 5 of this local law or is an animal for which an approval cannot be granted under this local law or is an animal for which an application for approval under this local law has been rejected— dispose of the animal under division 5.

28 Dealing with animal seized and impounded for attacking etc a person or another animal

(1) This section applies where an authorised person has impounded an animal seized under section 21(1)(c).

(2) The authorised person may[24]—

(a) make a destruction order for the animal under section 30; or

(b) give the owner or responsible person a notice of impounding.

29 Reclaiming an impounded animal

(1) This section applies where—

(a) the owner or responsible person for an animal has been given a notice of impounding; or

(b) an authorised person does not know, and cannot readily find out, the name and address of an owner or responsible person for the animal.

(2) The animal may be reclaimed by an owner or responsible person if the owner or responsible person—

(a) reclaims the animal within the prescribed period; and

(b) pays the cost-recovery fee; and

(c) if an approval or registration is required for the keeping of the animal and the owner or responsible person does not have the approval or registration—obtains the approval or registration; and

(d) if the responsible person has not complied with a current compliance notice that has been issued in relation to compliance with this local law—complies with the compliance notice.

(3) However, the animal may not be reclaimed by an owner or responsible person if—

(a) continued retention of the animal is needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; or

(b) a destruction order has been made for the animal.

(4) The animal may be reclaimed by an owner or responsible person for the animal if an event as follows happens—

(a) if subsection (3)(a) applies—

(i) an authorised person advises the owner or responsible person that the animal's continued retention as evidence is no longer required; and

(ii) the owner or responsible person has satisfied subsection (2)(b)-(d);

(b) if subsection (3)(b) applies—

(i) an application for a review or an appeal is made relating to the destruction order and, as a result of the review or appeal, the order is no longer in force; and

[24] An authorised person may also declare an animal as a declared dangerous animal under section 19 if specified criteria are met.

(ii) the owner or responsible person has satisfied subsection (2)(b)-(d).

Division 4 Destruction of animal following notice

30 Destruction orders

(1) An authorised person may make an order (a ***destruction order***) stating the person proposes to destroy an animal 14 days after the order is served.

(2) A destruction order may only be made in 1 or more of the following circumstances—

(a) the animal has attacked, threatened to attack, or acted in a way that causes fear to, a person or another animal; or

(b) the animal is a declared dangerous animal and was found wandering at large; or

(c) the animal has been seized more than 3 times during a 12 month period.

(3) The destruction order must—

(a) be served on a person who owns, or is a responsible person for, the animal; and

(b) include or be accompanied by an information notice.[25]

(4) If a destruction order is made for the animal, the person may destroy the animal 14 days after the order is served if no review application has been made relating to the decision to make the order.

(5) If an application for review has been made relating to the decision to make the order, the person may destroy the animal if—

(a) the review is finally decided or is otherwise ended; and

(b) the order is still in force; and

(c) the time allowed for filing a notice of appeal has expired and no notice of appeal has been filed.

(6) If an appeal is made relating to the decision to make the order, the person may destroy the animal if—

(a) the appeal is finally decided or is otherwise ended; and

(b) the order is still in force.

(7) If the animal has been impounded, the owner or responsible person for an animal may reclaim the animal if—

(a) a review relating to the decision to make the order is finally decided or is otherwise ended; and

(b) no application for an appeal has been made against the order; and

[25] See note 17.

(c) the order is no longer in force; and

(d) the owner or responsible person has satisfied section 29(2)(b)-(d).

(8) If the animal has been impounded, the owner or responsible person for an animal may reclaim the animal if—

(a) an appeal relating to the decision to make the order is finally decided or is otherwise ended; and

(b) the order is no longer in force; and

(c) the owner or responsible person has satisfied section 29(2)(b)-(d).

(9) In this section—

review means a review conducted under the process mentioned in part 4 of *Local Law No.1 (Administration) 2018.*

appeal means an appeal under part 4 of this local law.

Division 5 Disposal of impounded animals

31 Application of this division

This division applies where—

(a) an impounded animal has not been reclaimed within the prescribed period under section 29(2); or

(b) if section 29(3)(a) applies— the impounded animal has not been reclaimed within 3 days of an authorised person's advice to the owner or responsible person that the animal's continued retention as evidence is no longer required; or

(c) if section 29(3)(b) applies—the impounded animal has not been reclaimed within 3 days of the completion of a review or appeal that caused a destruction order to no longer be in force; or

(d) an authorised person has seized an animal mentioned in section 27(2)(b); or

(e) the owner of an animal has surrendered the animal to the local government.

32 Sale, disposal or destruction of animals

(1) The local government may—

(a) offer the animal for sale by public auction or by tender; or

(b) if the animal is an animal mentioned in section 27(2)(b) or is of a species, breed or class specified by subordinate local law for this paragraph—

(i) sell the animal by private agreement; or

(ii) dispose of the animal in some other way without destroying it; or

(iii) destroy the animal.

Example for paragraph (b)—

The subordinate local law might specify dogs, cats and other small domestic animals, for which a public auction or tender might not be practicable.

(2) An animal may only be sold or disposed of under subsection (1) if the local government is satisfied that this will not result in the animal being kept in contravention of the requirements of this local law.

Examples—

- A pig that has been seized because it is being kept in an urban area in contravention of a prohibition under a subordinate local law could be sold to a person outside the urban area but not to another person in an urban area.
- An animal that a subordinate local law has prohibited in any part of the local government area could not be sold to a person who resides within the local government area.
- A declared dangerous animal could only be sold to a person who has complied with any specified requirements for keeping such an animal.

(3) If an animal is to be offered for sale at a public auction under this section, notice of the time and place of the auction must be exhibited at the local government's public office for at least 2 days before the date of the auction.

(4) An amount realised on sale of an impounded animal must be applied—

(a) first, towards the costs of the sale; and

(b) second, towards the cost-recovery fee for impounding; and

(c) third, in payment of the remainder to the former owner of the animal, unless the owner had surrendered the animal to the local government.

(5) If no person establishes a valid claim to the amount to which the former owner is entitled under subsection (4)(c) within 1 year of the date of the sale, the amount becomes the property of the local government.

(6) If an animal that is offered for sale by public auction or tender is not sold through the auction or tender process, the local government may dispose of the animal as it considers appropriate.

Examples—

- The local government may give the animal away.
- The local government may have the animal destroyed.

Division 6 Other impounding matters

33 Register of impounded animals

(1) The local government must ensure that a proper record of impounded animals (the ***register of impounded animals***) is kept.

(2) The register of impounded animals must contain the following information about each impounded animal—

(a) the species, breed and sex of the animal; and

(b) the brand, colour, distinguishing markings and features of the animal; and

(c) if applicable—the registration number of the animal; and

(d) if known—the name and address of the responsible person; and

(e) the date and time of seizure and impounding; and

(f) the name of the authorised person who impounded the animal; and

(g) the reason for the impounding; and

(h) a note of any order made by an authorised person relating to the animal; and

(i) the date and details of whether the animal was sold, released, destroyed or disposed of in some other way.

(3) The register of impounded animals must be kept available for public inspection at the place of care for animals or, if the place has no public office, at an office prescribed by subordinate local law.

34 Access to impounded animal

(1) This section applies to an animal impounded under section 24.

(2) The local government must allow the owner of the animal to inspect it at any reasonable time, from time to time.

(3) Subsection (2) does not apply if it is impracticable or would be unreasonable to allow the inspection.

(4) The inspection must be provided free of charge.

35 Unlawful removal of seized or impounded animal

(1) A person must not, without the authority of an authorised person, remove or attempt to remove—

(a) a seized animal from the custody or control of an authorised person; or

(b) an impounded animal from the local government's facility for keeping impounded animals.

Maximum penalty for subsection (1)—50 penalty units.

(2) Any costs arising from damage or loss caused by a person contravening subsection (1) are recoverable by the local government as a debt.

Part 5 Appeals against destruction orders

36 Who may appeal

An owner or responsible person for an animal the subject of a destruction order may appeal to the Magistrates Court against the decision to make the destruction order.

37 Starting appeal

(1) An appeal must not be started unless a review of the decision to make the destruction order has been finally decided or otherwise ended.

(2) An appeal is started by—

(a) filing notice of appeal with the Magistrates Court; and

(b) serving a copy of the notice of appeal on the local government; and

(c) complying with rules of court applicable to the appeal.

(3) The notice of appeal must be filed within 14 days after the appellant is given notice by the local government about the finalisation of the review of the decision to make a destruction order.

(4) However, the court may, at any time, extend the time for filing the notice of appeal.

(5) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

38 Stay of destruction order

Upon filing the notice of appeal, the destruction order is stayed until the court decides the appeal.

39 Hearing procedures

(1) In deciding an appeal, the Magistrates Court—

(a) has the same powers as the local government; and

(b) is not bound by the rules of evidence; and

(c) must comply with natural justice.

(2) An appeal is by way of rehearing, unaffected by the decision appealed against.

40 Court's powers on appeal

(1) In deciding an appeal, the Magistrates Court may—

(a) confirm the decision appealed against; or

(b) set aside the decision and substitute another decision; or

(c) set aside the decision and return the matter to the local government with directions the court considers appropriate.

(2) If the court substitutes another decision, the substituted decision is, for the purposes of this local law, other than this part, taken to be the decision of the local government.

(3) An order for the costs of an appeal may only be made against the local government if the court is satisfied that the animal was unlawfully seized or there was no reasonable basis for making the decision subject to the appeal.

41 Appeal to District Court

An appeal lies to a District Court from a decision of the Magistrates Court, but only on a question of law.

Part 6 Miscellaneous

42 Sale of animals

(1) The local government may, by subordinate local law, specify conditions to be complied with by persons who offer animals, or a particular species of animal, for sale.

(2) Conditions specified under subsection (1) are in addition to requirements of the *Animal Management (Cats and Dogs) Act 2008* in relation to the supply of cats and dogs.

(3) A person must not offer or display animals for sale in the area unless the person complies with conditions specified under subsection (1).

Maximum penalty for subsection (3)—50 penalty units.

43 Subordinate local laws

The local government may make subordinate local laws about—

(a) the circumstances in which the keeping of animals is prohibited;[26] or

(b) the circumstances in which an approval is required for the keeping of animals;[27] or

(c) the circumstances in which desexing of an animal is required;[28] or

(d) minimum standards for keeping animals generally or animals of a particular species or breed;[29] or

(e) the identification for cats and dogs required under the *Animal Management (Cats and Dogs) Act 2008*;[30] or

(f) the exclusion of animals, or animals of a specified species, from public places;[31] or

(g) designated dog off-leash areas;[32] or

(h) animals whose faeces in public places must be removed and disposed of;[33] or

(i) proper enclosure requirements;[34] or

(j) requirements for keeping a dog within a koala area;[35] or

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[26] See section 5(1).

[27] See section 6(1).

[28] See section 7(1).

[29] See section 8(1).

[30] See section 9.

[31] See section 10(1).

[32] See section 11(1)

[33] See section 13.

[34] See section 14(2).

[35] See section 15(1).

(k) designation of an area as a koala area;[36] or

(l) the criteria for declaring an animal other than a dog to be a declared dangerous animal;[37] or

(m) the organisation or local government that operates a place or care for impounded animals;[38] or

(n) the species, breed or class of animal that may be disposed of other than by public auction or tender;[39] or

(o) the office at which the register of impounded animals is available for public inspection;[40] or

(p) the conditions to be complied with by persons who offer animals, or a particular species of animal, for sale;[41] or

(q) the exclusion of animals of a particular species from the application of this local law;[42] or

(r) the declaration of a species of animal as a declared dangerous animal;[43] or

(s) the period within which an impounded animal may be reclaimed.[44]

[36] See section 15(4).

[37] See section 19(1).

[38] See section 24(b).

[39] See section 32(1)(b).

[40] See section 33(3).

[41] See section 42(1).

[42] See the definition of ***animal*** in the schedule.

[43] See the definition of ***declared dangerous animal*** in the schedule.

[44] See the definition of ***prescribed period*** in the schedule.

Schedule Dictionary

Section 3

animal includes a mammal, fish, bird, reptile, amphibian or insect but does not include an animal of a species excluded by subordinate local law from the application of this local law.

attack, by an animal, means—

(a) aggressively rushing at or harassing any person or animal; or

(b) biting, butting, kicking, or otherwise causing physical injury to, a person or an animal; or

(c) tearing clothing on, or otherwise causing damage to the property in the immediate possession of, a person.

compliance notice means a compliance notice mentioned in *Local Law No.1 (Administration) 2018*, section 27.

cost-recovery fee means the fee fixed by the local government to cover the costs associated with impounding an animal.[45]

declared dangerous animal means an animal—

(a) of a species declared by subordinate local law as a declared dangerous animal; or

(b) declared under section 19 of this local law to be a declared dangerous animal.

destroy, an animal, includes causing it to be destroyed.

destruction order see section 30(1).

dog off-leash area see section 11(1).

effective control see section 12(3).

notice of impounding see section 25(1).

owner, of an animal, means

(a) its registered owner;

(b) a person who owns the animal, in the sense of it being the person's personal property;

(c) a person who usually keeps the animal, including through an agent, employee or anyone else;

(d) if a person mentioned in paragraphs (a) to (c) is a minor—a parent or guardian of the minor.

prescribed period means the period, fixed by subordinate local law, of not less than—

(a) if the animal is registered with the local government—5 days; or

(b) if the animal is not registered with the local government—3 days,

and commencing on the day a notice of impounding is given to a person or, if no notice is given to a person, on the day of the seizure.

registered owner, of an animal, means a person recorded as being the owner of the animal in a registry kept by a local government.

[45] See the Act, section 97 for the power of a local government to fix a cost recovery fee.

responsible person, for an animal, means—

(a) the person, or the person's employee acting within the scope of the employment, who has immediate control or custody of the animal; or

(b) the parent or guardian of a minor who has immediate control or custody of the animal; or

(c) the person who occupies the place at which the animal is usually kept,

but does not include—

(a) a person who occupies the place at which the animal is usually kept, if someone else who is an adult and lives at the place keeps the animal; or

(b) a person who has the control or custody of or keeps the animal as an employee of someone else, if the person is acting within the scope of the employment.

restricted dog see *Animal Management (Cats and Dogs) Act 2008*, section 63.

State planning instrument see *Planning Act 2016,* schedule 2.

the Act means the *Local Government Act 2009*.

wandering at large means—

(a) the animal is not under the effective control of someone; and

(b) the animal is in either—

(i) a public place; or

(ii) a private place without the consent of the occupier.