

TASMANIA

DOG CONTROL AMENDMENT BILL 2009

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DOG CONTROL AMENDMENT BILL 2009

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
27 August 2009

*(Brought in by the Minister for Local Government, the
Honourable James Glennister Cox)*

A BILL FOR

An Act to amend the *Dog Control Act 2000*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Dog Control Amendment Act 2009*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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3. Principal Act

In this Act, the *Dog Control Act 2000** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “animal” and substituting the following definition:

“animal” means any live vertebrate animal other than a human being;

- (b) by inserting the following definition after the definition of “declared area”:

“de-sex” means to render permanently incapable of reproduction;

- (c) by omitting the definition of “domestic animal”;

- (d) by inserting the following definition after the definition of “infringement notice”:

“laceration” means a wound caused by –

- (a) the tearing of body tissue;
or

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- (b) multiple punctures caused by more than one bite from a dog;
- (e) by inserting the following definition after the definition of “restricted area”:

“restricted breed dog” means a dog declared to be a restricted breed dog under section 29A;

- (f) by inserting the following definition after the definition of “road-related area”:

“serious injury” means –

- (a) an injury requiring medical or veterinary attention in the nature of –
 - (i) a broken bone; or
 - (ii) a laceration; or
 - (iii) a partial or total loss of sensation or function in a part of the body; or
- (b) an injury requiring medical or cosmetic surgery;

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5. Section 4 substituted

Section 4 of the Principal Act is repealed and the following section is substituted:

4. Dog under effective control

- (1) A dog is under the effective control of a person in a public place if the dog is –
 - (a) on a road or road-related area in a built-up area, or any other public place declared under Division 2 of Part 3 to be an area where a dog must be on a lead, and the dog is secured and restrained by means of a lead not more than 2 metres long held by hand by a person able to control the dog; or
 - (b) tethered to a fixed object by a lead not more than 2 metres long for a period not more than 30 minutes.
- (2) A dog is under the effective control of a person while not on a lead if the dog is –
 - (a) a working dog engaged in working; or
 - (b) a hunting dog engaged in hunting; or
 - (c) engaged in racing or showing; or
 - (d) engaged in obedience or agility trials; or

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- (e) engaged in training for any activity referred to in paragraph (a), (b), (c) or (d); or
 - (f) engaged in training in a training area.
- (3) In an area where a dog is not required to be on a lead, the dog is under the effective control of a person if –
- (a) it is in close proximity to the person; and
 - (b) it is in sight of the person; and
 - (c) the person is able to demonstrate to the satisfaction of an authorised person that the dog is immediately responsive to the person's commands.
- (4) A dog is under the effective control of a person on private premises if the dog is securely confined to those premises.
- (5) A person, at any one time, must not have in his or her charge more than –
- (a) 2 dogs on a lead on a footpath; or
 - (b) 4 dogs in a public place.

Penalty: Fine not exceeding 5 penalty units.

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6. Section 15 amended (Register)

Section 15(2)(d) of the Principal Act is amended by inserting “or a restricted breed dog” after “dangerous dog”.

7. Section 15A inserted

After section 15 of the Principal Act, the following section is inserted in Part 2:

15A. Implanting of micro-chips

- (1) The owner of a dog that is over 6 months of age must ensure that the dog is implanted in an approved manner with an approved micro-chip.

Penalty: Fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply to –
- (a) a dog in respect of which a veterinary surgeon has issued a certificate stating that to implant the dog with a micro-chip may adversely affect the health and welfare of the dog; or
 - (b) a type, class or breed of dog that the Minister, by order, declares is not required to be implanted with a micro-chip.

- (3) If a dog that is required to be implanted with a micro-chip is not so implanted and is seized in accordance with this Act, a general manager may cause the dog to be implanted in an approved manner with an approved micro-chip.
- (4) The owner of the dog is liable for the costs associated with the implanting.
- (5) A person who implants a dog with a micro-chip must enter the prescribed details in an approved database.

8. Section 19 substituted

Section 19 of the Principal Act is repealed and the following sections are substituted:

19. Dogs attacking persons or animals

- (1) If a dog rushes at or chases any person, the owner of the dog is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units.

- (2) If a dog that is not a dangerous dog or a restricted breed dog attacks or bites any person or animal and the injuries caused by the dog to the person or animal are not in the nature of a serious injury, the owner of the dog is guilty of an offence.

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Penalty: Fine not exceeding 10 penalty units.

- (3) If a dog that is not a dangerous dog or a restricted breed dog attacks or bites any person or animal and causes a serious injury to the person or a serious injury or death to the animal, the owner of the dog is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units.

- (4) If a dangerous dog or a restricted breed dog, that is not a guard dog guarding non-residential premises, attacks or bites any person or animal, the owner of the dog is guilty of an offence.

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one month, or both.

- (5) If a dog attacks a person, the owner of the dog must notify the council within 24 hours after the attack.

Penalty: Fine not exceeding 5 penalty units.

- (6) In any proceedings under this section, it is not necessary to prove that any actual injury was caused to any person.

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- (7) It is a defence in proceedings for an offence under this section if the defendant establishes that –
- (a) the dog was being used in the reasonable defence of any person or property; or
 - (b) the dog was being teased, abused or assaulted; or
 - (c) the dog was a working dog engaged in –
 - (i) working with police; or
 - (ii) droving or tending livestock; or
 - (d) the dog was a hunting dog engaged in hunting.
- (8) If an owner of a dog is found guilty of an offence under this section, the court may, in addition to any other order made by the court, order that the owner pay compensation for any damage caused or costs incurred as a result of the conduct of the dog.
- (9) If the owner of a dog is found guilty of an offence under this section, the court may order that the dog be destroyed.
- (10) In this section –
- “**owner**”, in relation to a dog, means the person who apparently has

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control of the dog at the relevant time.

19A. Subsequent attack by dangerous dog

- (1) If a dangerous dog that has attacked an animal or a person subsequently attacks any animal or person, an authorised officer may seize and detain the dog.
- (2) The general manager may destroy a dog seized and detained under subsection (1).
- (3) The general manager, by notice in writing served on the owner of the dog, is to notify the owner of the general manager's decision to destroy the dog.
- (4) An owner served with a notice under subsection (3) may, within 14 days after being served with the notice, appeal to the Magistrates Court (Administrative Appeals Division) against the general manager's decision.
- (5) The Magistrates Court (Administrative Appeals Division) may order that –
 - (a) the decision is confirmed; or
 - (b) the decision be set aside.
- (6) The owner of a dog that is detained under subsection (1) is liable for the costs of detaining the dog and, in the event that the dog is destroyed, the costs associated

with its destruction and the disposal of its body.

- (7) The owner of a dangerous dog that has attacked an animal or a person and that subsequently attacks any animal or person is guilty of an offence and is liable, on summary conviction, to a penalty not exceeding 50 penalty units or a term of imprisonment not exceeding 12 months, or both.
- (8) The owner of a dangerous dog to which subsection (7) applies must not own, or be in charge of, any dog in the period of 5 years immediately following conviction or finding of guilt in respect of the subsequent attack.

Penalty: Fine not exceeding 30 penalty units.

9. Part 3, Division 3: Heading amended

Division 3 of Part 3 of the Principal Act is amended by omitting “*Dangerous dogs*” from the heading to that Division and substituting “*Dangerous dogs and restricted breed dogs*”.

10. Section 29 amended (Declaration of particular dangerous dog)

Section 29 of the Principal Act is amended by omitting subsection (2).

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11. Section 29A inserted

After section 29 of the Principal Act, the following section is inserted in Division 3:

29A. Declaration of restricted breed dogs

- (1) An authorised person, by notice served on the owner of a dog, may declare that dog to be a restricted breed dog if the authorised person, having regard to any approved guidelines relating to restricted breeds, is satisfied that the dog is a dog of a restricted breed.
- (2) A notice under subsection (1) is to –
 - (a) state the reasons for the declaration; and
 - (b) advise the owner of the right of appeal under section 31.
- (3) For the purposes of subsection (1), the following breeds of dog are restricted breeds:
 - (a) dogo Argentino;
 - (b) fila Brasileiro;
 - (c) Japanese tosa;
 - (d) American pit bull terrier or pit bull terrier;
 - (e) Perro de Presa Canario or Presa Canario;

- (f) any other breed, kind or description of dog whose importation into Australia is prohibited by or under the *Customs Act 1901* of the Commonwealth.

12. Section 31 amended (Appeal against declaration)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a magistrate” and substituting “the Magistrates Court (Administrative Appeals Division)”;
- (b) by inserting the following subsections after subsection (1):
 - (1A) An owner of a dog declared to be a restricted breed dog under section 29A may appeal against the declaration to the Magistrates Court (Administrative Appeals Division) within 28 days after service of the notice.
 - (1B) The onus of proving that a dog is not a restricted breed dog is on the person making that assertion.
- (c) by omitting from subsection (2) “A magistrate” and substituting “The

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Magistrates Court (Administrative Appeals Division)”;

(d) by omitting subsection (3) and substituting the following subsection:

(3) If the Magistrates Court (Administrative Appeals Division) orders that a declaration in respect of a dangerous dog be set aside, a general manager may only declare the dog to be a dangerous dog in respect of behaviour of the dog that occurs after that order.

13. Section 32 substituted

Section 32 of the Principal Act is repealed and the following sections are substituted:

32. Control of dangerous dogs and restricted breed dogs

(1) The owner or person in charge of a dangerous dog or a restricted breed dog must ensure that –

(a) the dog, when in a public place –

(i) is muzzled so as to be unable to bite a person or animal; and

(ii) is on a lead that is not more than 2 metres long,

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is held by hand and is sufficient to control and restrain the dog; and

(iii) is under the control of a person at least 18 years of age; and

(b) the dog wears an approved collar at all times; and

(c) the microchip implanted in the dog is not removed without the approval of the general manager.

Penalty: Fine not exceeding 20 penalty units.

(2) The owner or person in charge of a dangerous dog must ensure that the dog, when not in a public place, is housed in an enclosure that complies with the prescribed requirements.

Penalty: Fine not exceeding 20 penalty units.

(3) This section does not apply in respect of a dangerous dog, or a restricted breed dog, that is guarding premises that are not residential premises if the owner of the dog has notified the general manager, in writing, that the dog is a guard dog.

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32A. Dangerous dogs and restricted breed dogs to be de-sexed and micro-chipped

- (1) The owner of a dog that is declared to be a dangerous dog or a restricted breed dog must ensure that the dog is de-sexed, and implanted in an approved manner with an approved microchip, within –
- (a) 28 days after service of the notice, if an appeal is not made under section 31; or
 - (b) 7 days after an order is made under section 31(2)(a), if an appeal is made under that section and such an order is made.

Penalty: Fine not exceeding 20 penalty units.

- (2) The owner of a dog, that at any time before the commencement of the *Dog Control Amendment Act 2009* was declared to be a dangerous dog, must ensure that the dog is de-sexed within 28 days after the commencement of that Act.

Penalty: Fine not exceeding 20 penalty units.

- (3) The owner of a dangerous dog or a restricted breed dog must provide the general manager of the municipal area in which the owner normally resides with a copy of a veterinary surgeon's certificate,

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stating that the dog has been de-sexed or implanted with a microchip, within 7 days after the de-sexing or implanting.

Penalty: Fine not exceeding 10 penalty units.

- (4) A dog that is declared to be a dangerous dog under section 30(2) is not required to be de-sexed.

14. Section 33 amended (Warning signs)

Section 33 of the Principal Act is amended by inserting “or a restricted breed dog” after “dangerous dog”.

15. Section 34 amended (Dangerous dog or restricted breed dog missing, dying, &c.)

Section 34 of the Principal Act is amended as follows:

- (a) by inserting “or a restricted breed dog” after “dangerous dog”;
- (b) by inserting “, strays” after “missing”.

16. Sections 34A, 34B, 34C and 34D inserted

After section 34 of the Principal Act, the following sections are inserted in Division 3:

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34A. Application for approval to transfer ownership of dangerous dog or restricted breed dog

- (1) A person who wishes to have ownership of a dangerous dog or a restricted breed dog transferred to him or her (the “prospective owner”) is to apply to the general manager of the municipal area in which the prospective owner normally resides for approval to transfer ownership of the dog.
- (2) An application is to –
 - (a) be in writing; and
 - (b) identify the dog to be transferred; and
 - (c) state the name and address of the prospective owner; and
 - (d) be signed by the owner and the prospective owner.
- (3) On receipt of an application, a general manager may –
 - (a) approve the transfer; or
 - (b) disallow the transfer and notify the prospective owner of the decision and the reasons for it within 14 days.
- (4) The prospective owner may appeal to the Magistrates Court (Administrative

Appeals Division) against a decision of a general manager to disallow a transfer, within 14 days after being notified of the decision.

- (5) The Magistrates Court (Administrative Appeals Division) may order that –
- (a) the decision is confirmed; or
 - (b) the decision be set aside.

34B. Offence to transfer ownership of dangerous dog or restricted breed dog without approval

- (1) A person must not, without the written approval of a general manager, sell, or otherwise transfer ownership of, a dangerous dog or a restricted breed dog.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person does not commit an offence under this section by reason only of surrendering a dog to a pound or an approved animal welfare organisation.

34C. Limit on number of restricted breed dogs

- (1) A person must not own, keep, or allow to be kept on any premises, more than 2 restricted breed dogs over the age of 6 months.

Penalty: Fine not exceeding 20 penalty units.

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- (2) Subsection (1) does not apply in respect of a dog that immediately before the commencement of the *Dog Control Amendment Act 2009* was not a restricted breed dog.

34D. Interstate dangerous dogs and restricted breed dogs

- (1) A dog that is declared under a corresponding law to be equivalent to a dangerous dog or a restricted breed dog, is taken to be a dangerous dog or a restricted breed dog for the purposes of this Act.
- (2) A person who imports into this State a dog to which subsection (1) applies must, within 7 days after the importation, notify the general manager of the municipal area in which the person normally resides that the dog has been imported.

Penalty: Fine not exceeding 20 penalty units.

- (3) In this section –

“corresponding law” means a provision of a law of another State or a Territory that relates to the declaration of dogs as dangerous dogs or restricted breed dogs or equivalent.

17. Section 35 amended (Seizure and detention of dogs at large)

Section 35 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4)(a) “or a restricted breed dog” after “dangerous dog”;
- (b) by inserting in subsection (4)(b) “or a restricted breed dog” after “dangerous dog”;
- (c) by inserting the following subsections after subsection (5):
 - (6) The general manager may cause a dog that is seized under this section to be implanted in an approved manner with an approved micro-chip.
 - (7) The owner of the dog is liable for the costs associated with the implanting.
 - (8) Subsection (6) does not apply to –
 - (a) a dog referred to in section 15A(2)(a); or
 - (b) a dog or a type, class or breed of dog, declared under section 15A(2)(b) to be not required to be

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implanted with a micro-chip.

18. Section 36 amended (Payment of fees relating to seized dogs)

Section 36(1) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) the cost of implanting the dog with a micro-chip under section 35(6); and

19. Section 37 amended (Seizure and detention of other dogs)

Section 37(2) of the Principal Act is amended by inserting “a pound, approved animal welfare organisation or” after “in”.

20. Section 39 amended (Release of dogs)

Section 39 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) subject to section 39A, on payment of –
 - (i) any fines or costs ordered to be paid by a court if the court does not order the destruction of the dog; and

- (ii) any registration fees if the dog is unregistered; or

21. Section 39A inserted

After section 39 of the Principal Act, the following section is inserted in Division 4:

39A. Destruction of dangerous dog if enclosure not suitable

- (1) The general manager is not to release a dangerous dog to its owner unless the general manager is of the opinion that –
 - (a) the owner has an enclosure in which to keep the dog that satisfies the requirements of section 32; or
 - (b) satisfactory alternative arrangements for housing the dog have been made.
- (2) If the owner of a dangerous dog does not have an enclosure referred to in subsection (1), the general manager may, by notice in writing served on the owner, require the owner to build, or have built, such an enclosure within 28 days after service of the notice.
- (3) The general manager may extend the period specified in subsection (2) if of the opinion that sufficient progress

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towards the completion of the enclosure has been made.

- (4) If the owner does not build, or have built, a suitable enclosure within the period specified in the notice or such other period as the general manager allows under subsection (3), or does not make satisfactory alternative arrangements for housing the dog, the general manager may destroy the dog.
- (5) Before destroying a dog under this section, the general manager must, by notice in writing served on the owner, notify the owner of the general manager's intention to destroy the dog.
- (6) An owner served with a notice under subsection (5) may, within 14 days after being served with the notice, appeal to the Magistrates Court (Administrative Appeals Division) against the general manager's decision to destroy the dog.
- (7) The Magistrates Court (Administrative Appeals Division) may order that –
 - (a) the decision is confirmed; or
 - (b) the decision be set aside.
- (8) The owner of a dog that is detained under subsection (1) is liable for the costs of detaining the dog until it is released or destroyed in accordance with this section and, if it is destroyed, the costs

associated with its destruction and the disposal of its body.

22. Section 49A inserted

After section 49 of the Principal Act, the following section is inserted in Division 6:

49A. Abatement notices

- (1) If a general manager is satisfied that a dog is creating a nuisance, the general manager may serve an abatement notice on the owner or person apparently in charge of the dog.
- (2) An abatement notice is to state –
 - (a) the nature of the nuisance; and
 - (b) any action to be taken that the general manager considers to be necessary to abate the nuisance; and
 - (c) the period within which such action is to be taken.
- (3) A person served with an abatement notice must comply with the notice, unless the person lodges an appeal under subsection (5).

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- (4) For the purpose of ascertaining whether a nuisance exists, the general manager may –
 - (a) enter and remain on land; and
 - (b) do any thing reasonably necessary for that purpose.
- (5) A person served with an abatement notice may appeal to the Magistrates Court (Administrative Appeals Division) within 14 days after service of the notice on any one or more of the following grounds:
 - (a) that a nuisance does not exist;
 - (b) that an action required by the abatement notice is unreasonable;
 - (c) that the period stated in the abatement notice is unreasonable.
- (6) The Magistrates Court (Administrative Appeals Division) may –
 - (a) order that the person is to comply with the abatement notice; or
 - (b) modify the abatement notice and order that the person and the council are to comply with the modified notice; or
 - (c) order that the council withdraw the abatement notice.

23. Section 62 amended (Order for destruction of dog)

Section 62(3)(c) of the Principal Act is amended by inserting “or a restricted breed dog” after “dangerous dog”.

24. Section 73 amended (Entering land)

Section 73 of the Principal Act is amended by inserting after subsection (4) the following subsections:

- (5) Division 4 of Part 3 applies in respect of a dog seized under this section as if it were a dog at large.
- (6) If a dog is seized under this section, the relevant general manager must give the owner of the dog written notice stating –
 - (a) the offence against this Act that it is alleged has been committed; and
 - (b) any steps that the general manager requires to be undertaken before the dog is returned, to prevent the commission of the same or another offence against this Act; and
 - (c) that the dog may be disposed of or destroyed if not claimed within 5 days after the date of the notice.