

Cat Management Bill 2009

CLAUSE NOTES

PART 1 - PRELIMINARY

Clause 1 Short Title

Clause 2 Commencement

The Act will commence on a day or days to be proclaimed. This will allow different sections to be commenced at different times.

No part is expected to be commenced for some months, until Regulations have been prepared and other necessary steps taken.

In line with previous commitments to phase in the legislation, clause 24 is to commence in 4 years.

Clause 3 Purpose

Provides a concise statement of the intent of the Bill. This provision is not formally tied to the administration of the legislation, but indicates clearly its purpose.

Clause 4 Interpretation

Clause 4 provides interpretation and meanings of specific terminology used in the Bill. Among the significant definitions are:

“authorised person”: covers existing persons authorised to deal with animals under the Animal Welfare and Dog Control acts, as well as police officers, and allows for appointments of individuals and prescribing of persons or classes of persons

“cat management facility”: covers council pounds that have appropriate facilities, and the RSPCA and Hobart Cat Centre facilities. Allows for further approvals as prescribed (eg. a vet may wish to operate at such a facility, and other organisations may wish to provide the service)

“desex”: in light of the possibility of drug-based regimes in the future, there is power to prescribe temporary (ie. non-surgical) treatments in future

“microchip” and “microchip implanter”: allows the approval by the Secretary of appropriate devices, and the setting of rules for the training and qualification of implanters through the Regulations

“owner”: ties ownership of a microchipped cat to the information in the relevant database

“prohibited area” and “reserved land”: underpins clause 18 in particular, and defines as prohibited areas all important categories of land reserved wholly or partly for protection of natural values

“sell”: defined to cover gifts and other transfers, and to include offering for sale

PART 2 – AUTHORISED PERSONS

Clause 5 Authorised persons

Standard provision for the appointment by the Secretary of authorised persons, subject to “such conditions as the Secretary determines”.

It is expected that most authorised persons will be in existing categories (police, people authorised under other Acts), but this allows the appointment, for instance, of selected cat management facility staff.

The conditions provision will allow for differing functions and powers as appropriate (eg. not all authorised persons would have powers to issue infringement notices or to seize documents, etc).

Clause 6 Identification cards

Standard provisions to ensure cards are issued and to be carried and produced on reasonable request. Subclause (2) allows other cards (such as for Local Government animal control officers) to be endorsed for this purpose.

Clause 7 Powers of authorised persons

This clause is intended to provide the normal powers necessary to investigate offences under the legislation. As noted (clause 5 above) conditions of appointment may vary the application of particular powers to particular authorised persons, or classes of persons.

(Note that in (g) desex is included as a contingency, in case future drug treatments make this possible, although there is no current allowance for anyone but a vet to desex a cat.)

Clause 8 Entry into premises

Provides for application to a magistrate or justice for a warrant, with standard provisions.

Clause 9 Impersonating authorised persons

A standard offence to protect the public from impersonation of authorised persons.

Clause 10 Hindering authorised persons, &c.

A standard provision to protect authorised persons in the exercise of their functions under the legislation.

Clause 11 Protection from liability

A standard protection from personal liability in relation to acts “done ... in good faith” in the course of exercising powers and functions under the legislation.

PART 3 – MICROCHIPPING AND DESEXING OF CATS

Clause 12 Microchipping of cats

Provides (1) that an owner of a cat more than 6 months old is to ensure its implantation with a microchip (which may be done by earlier implantation). A vet (2) may issue a certificate that provides exemption from this provision.

The microchip implanter is responsible (3) for ensuring the prescribed details are entered into the relevant database. The Regulations will cover all aspects of microchipping.

Subclause (4) supports the use only of microchips as defined (clause 4 above), which means inadequate devices may not be used.

Clause 13 Interference with microchips

Provides an offence for removal or interference with a microchip.

Clause 14 Desexing of cats

Provides (1) that an owner of a cat more than 6 months old is to ensure its desexing (which may be done earlier).

Under (2), a vet may issue a certificate that provides exemption from this provision. In addition, it does not apply to cats owned by registered breeders for the purpose of breeding; there is the ability to prescribe other exceptions as necessary.

Desexed cats are to be identified (3) as prescribed (eg. by ear tattoos etc). This is supported by a penalty (4) for false use of such identifications.

Clause 15 Sale, &c., of cats

Under (1), provides for the key conditions applying to the sale (as defined above) of cats. Subject to appropriate qualifications, cats are to be more than 8 weeks old, microchipped, desexed and properly identified as such, and to meet prescribed health checks. The latter are expected to include standard vaccinations and worming.

A general exception allows for the operation of foster programs by cat management facilities and others, and provides for other exceptions as prescribed.

Clause 16 Care agreements

These agreements are already common, but are formalised here. The common case includes the use of a desexing voucher system operating in

some cat management facilities. An agreement, usually accompanied by a deposit on the veterinary costs, is a pledge for the procedure being carried out.

The clause includes penalties under (5) and (6) for the non-fulfilment of care agreements.

PART 4 – MANAGEMENT OF CATS

Clause 17 Protection of property from cats

This clause provides for private landowners or persons acting on their behalf to “trap, seize or humanely destroy” cats on their land, under certain circumstances.

Under (1) land used for farming relating to livestock is covered, and the words “a person carrying on primary production relating to livestock on rural land” are identical to those under the Dog Control Act. Under (2), remote land (more than 1 km from a house) is similarly covered, as in South Australia. There is provision to prescribe other appropriate circumstances.

Under (3), a trapped cat may be either returned to its owner or taken to a cat management facility.

Clause 18 Cats in prohibited areas

This clause relates back to the definition of “prohibited area” in clause 4. It defines under (1) “cat management actions”. Again, this covers mainly humane destruction, trapping, seizing and detaining. (It includes also returning a desexed cat, to allow for the technique known as “trap, neuter and release”. Although this is not current practice in Tasmania, it is emerging as an alternate management approach, particularly in the management of small isolated feral cat populations.)

The provisions allowing authorised persons and “responsible persons” to take “cat management actions” are intended to cover all reasonable eventualities, in terms of the management of public and private land that falls under the definition of “prohibited area”.

Clause 19 Declaration of prohibited areas

This clause allows councils to declare additional land to be prohibited. Such land can only be land that the council owns or manages. It provides also that such a declaration is to be made only after public notice (see also clause 21).

Clause 20 Declaration of cat management areas

This clause allows councils to declare land to be “cat management areas”. Unlike clause 19, this might apply to whole geographical areas, suburbs etc. This is specifically to accommodate local initiatives, such as those involving community groups in funded projects of local cat control. Councils may also wish, for example, to trial or establish local curfews.

It provides also that such a declaration is to be made only after public notice (see also clause 21).

Clause 21 Council declarations

This clause provides that before it makes a declaration under clauses 19 or 20, a council must give notice of its intention to do so. It must also allow 15 days for submissions to be made, which it is to consider. This process is similar to that used to declare areas under the Dog Control Act.

PART 5 – SEIZED, UNCLAIMED AND SURRENDERED CATS

Clause 22 Scanning of cats at cat management facilities

Part 5 relates mainly to the powers and activities of cat management facilities.

This clause provides that as far as practicable, cats entering a cat management facility are to be scanned. Necessary exceptions are provided, as some cats (feral cats and some strays in particular) may be very difficult to scan. “Scan” is defined in clause 4.

Clause 23 Notification where owner identified

This clause provides for the nature of the information to be provided to owners when an owner is identifiable. That information is to include the possible consequences of not reclaiming the cat within a specified period (see also clause 25), which may include the cat’s re-homing or humane destruction.

The owner is also to be notified that he or she may be responsible for certain costs. The nature of these may vary before and after the commencement of clause 24.

Clause 24 Reclaiming cats

As noted above, this provision is expected to commence 4 years after the Act first commences (ie. probably in July 2014). It provides that after that date, a cat may not be reclaimed unless it is desexed and microchipped. This will reinforce the strongly directive provisions of clauses 12 and 14.

Note that owners are to be contacted before these procedures are undertaken (see also comments under clause 34, Costs, below). Under (4), the necessary exceptions are provided, but otherwise it will become an offence to reclaim a cat that has not been desexed or microchipped, or is not subject to a care agreement to do so.

Clause 25 Unidentified, unclaimed and surrendered cats

This is another key provision that sets minimum holding times before a cat may be re-homed, offered for sale, or humanely destroyed. The periods are the same as for non-identifiable and identifiable dogs under the Dog Control Act.

For a cat that is not microchipped (1), if the owner cannot be found, or suitable arrangements are not made, the minimum is 3 working days. For a microchipped cat (2), it is 5 working days.

Under (3), a cat management facility has discretion to make an immediate decision on how to deal with a surrendered cat or a stray that comes into its possession.

Clause 26 Destruction of cats at cat management facilities

This clause reinforces 25(3), and provides a specific power to cat management facilities to destroy cats that they “reasonably believe” to be dangerous; or that are not microchipped and are unfit for re-homing, or cannot be accommodated.

Such decisions are made reluctantly by cat management facilities but are at times necessary. Note that the euthanasia of cats in cat management facilities is carried out by vets. (Provision for the “operator” to do so is in case a vet has become the operator of an approved cat management facility, or if a cat management facility has a vet on staff.)

PART 6 – DESTRUCTION OF CATS

Clause 27 Destruction of cats

Under (1), it is an offence to destroy a cat except in accordance with this or another Act. Again, this emphasises the continued application of Animal Welfare and other relevant legislation.

Under (2), an authorised person has power to destroy (or cause to be destroyed) a feral cat, or one that appears dangerously aggressive.

Clause 28 Humane destruction of cats

Provides specific rules for destruction of cats.

Subclause (1) specifies that cats to be destroyed are not to be held any longer than necessary. Under (2), the killing is to be as quick and painless as possible.

The provisions in (2)(b) and (3) are to ensure cat remains are disposed of hygienically and without causing unnecessary offence. (2)(b) uses terms (“buried, burned ... a reasonable time”) identical to those in s.55 of the *Animal Health Act 1995*. (3) prevents public display; prescribed exceptions could cover, for example, taxidermist’s work.

PART 7 – BREEDIING OF CATS

Clause 29 Restriction on breeding of cats

This is a core provision, in providing (1) that the breeding of cats otherwise than by a registered breeder is an offence, with a significant potential penalty.

The additional penalty under (2) is to ensure, if necessary, that future offences are precluded.

Clause 30 Registration of cat breeders

The expectation is that most registered breeders will be members of the existing cat organisations, which have standards that members comply with. However, they will not be specified under (1) until the Secretary is satisfied that membership ensures that appropriate standards are met.

Subclauses (2) – (5) provide for a process of registration outside the cat organisations. The Department will administer this register. The processes are as simple as is compatible with providing normal good administrative practice.

It is important to note that clause 34 applies to all decisions of the Secretary under this Part, so aggrieved persons have access to redress in the Magistrates Court (Administrative Appeals Division).

The mechanism of a “registered breeder number” was suggested by a representative stakeholder organisation. As well as being issued to persons registered directly by the Secretary, organisations may be provided with numbers to issue to members. The procedures will be worked through in the implementation process.

The offence under (7) provides some protection against attempts to circumvent clauses 29 and 30.

Clause 31 Cancellation or suspension of registration

The detail is generally standard, to ensure good processes and that natural justice is complied with. Under (1), the Secretary is able to act on broad public interest grounds (d) or for any prescribed matter (e). These issues will be further discussed in the implementation phase.

Clause 32 Surrender of registration

Allows in the simplest terms for a surrender of a registration.

Clause 33 Review of decisions

As noted above, this ensures that registered breeders (or applicants to be so) have access to appropriate grievance procedures.

PART 8 – MISCELLANEOUS

Clause 34 Costs

This clause allows costs incurred in holding and looking after a cat to be recovered from the owner. It is expected to apply mainly to cat management facilities, but could be used by councils and authorised persons.

The provision of (2)(b) is to be read in conjunction with clause 24, where it is clear that major costs (like desexing) are not to be incurred before the owner is informed. Under clause 24(4)(d) the owner may enter into a care agreement. Otherwise, “must be paid” can include entering into an arrangement to pay and does not necessarily mean “in whole, up-front”.

Clause 35 Misrepresentation as cat management facility

A simple protection of the public and legitimate cat management facilities against false representations to be acting as or for such a facility.

Clause 36 Surrender, &c., of cats to cat management facility

It is important to allow people to surrender cats when appropriate. The cat management facilities have requested that they may be able to charge a small fee, though the provision gives them discretion as to whether they do so.

It is also necessary to ensure that someone who has possession of a cat may surrender it. Many strays, especially kittens, are so surrendered, and such action is not to be discouraged by fees. (Rural landowners and authorised persons are already covered under clauses 17(3) and 18(5).)

Clause 37 Cats not to be abandoned

This provision makes it a specific offence to abandon a cat. It thus supplements the general provision on abandoning domestic animals in the *Animal Welfare Act 1993*, at s.8(2)(f) & 8(3). (The exception is in case “trap, neuter, release” – see reference under clause 18 above – is ever trialled, as strictly that would constitute “abandoning”).

Clause 38 Cats not to be offered as prizes

The minor offence of offering a cat as a prize is created to help ensure people do not find themselves burdened, inadvertently and unprepared, with the responsibilities of cat ownership.

Clause 39 Infringement notices

This is essentially the standard provisions to allow the use of infringement notices. As defined in (1), it will be necessary to prescribe the relevant offences in the Regulations.

Provision is made for council officers to issue such notices in (7)(a), but council officers will not become involved at this level except by voluntary decision of the council concerned.

Clause 40 Compensation not payable

The owner of a cat that is dealt with “in accordance with this Act” will have no right to compensation.

Clause 41 Delegation

A standard delegation provision. As necessary or appropriate, delegations may be provided to persons outside the Department, including in councils.

Clause 42 Relationship with other legislation

Under (1), this Bill specifically prevails over the standard holding periods for animals under the *Local Government Act 1993*, which are designed for farm stock and otherwise require councils to hold cats for unnecessarily long periods. This provision is similar to what also happens for dogs.

It is also stated (2) that the Bill does not derogate from other legislation. Important examples are the Animal Welfare and Firearms Acts.

Clause 43 Council may make by-laws

This provision clarifies the ability of councils to make by-laws on cats. At least one council has sought advice on doing this and there are doubts as to the applicability of the general powers under the *Local Government Act 1993*. This removes that doubt, and has been welcomed by the LGAT.

Clause 44 Notices not statutory rule

A technical provision. Notices under this legislation would be few (under clause 30) and not of the sort to be appropriately considered subordinate legislation.

Clause 45 Regulations

It is intended that the Regulations will contain much of the detail necessary for implementation. The general power in (1) is complemented by specific indications in (2) of the matters expected to be covered in the Regulations, although this is not intended to be comprehensive. They include:

- The “requirements, practices and procedures” relating to microchipping, and to cover the training of implanters, the types of devices and rules for access to database information (ie. to ensure those scanning can find relevant information): (b) – (e). There are comprehensive provisions in other States, especially Victoria, and it is expected that the relevant provisions will largely be taken from such sources.
- Requirements, practices and obligations relating to breeders: (f) & (i)
- Provisions for the approval of additional cat management facilities, and relevant conditions: (g) & (h)
- Any further requirement or practices relating to the humane destruction of cats: (j)

Under (5) and (6) it will be possible to adopt codes and standards; these may include, for example, standards for implanters developed in Victoria, etc.

Under (7), the Regulations will also cover savings and transitional matters.

Clause 46 Administration of Act

The Bill will be assigned to the Minister for Primary Industries and Water; the responsible Department will be the Department of Primary Industries, Parks, Water and Environment.