

# Animal Management (Cats and Dogs) Bill 2008

## Explanatory Notes

### Introduction

There is an increasing level of community concern about the number of unwanted cats and dogs euthanased each year in Queensland.

In December 2007, an independent expert was engaged to provide recommendations to address high euthanasia rates. In February 2008, the expert presented the Review of Strategies for Effectively Managing Unwanted Dogs and Cats in Queensland (the Report) to the Minister for Primary Industries and Fisheries.

The Report highlighted the following issues:

- microchipping should be introduced as a mandatory form of identification;
- mandatory tattooing of desexed animals should be introduced;
- animal management matters should be integrated into one State-wide legislative framework; and
- legislation must be enforceable.

The *Animal Management (Cats and Dogs) Bill 2008* (the Bill) represents the second phase of a two phase strategy for responsible companion animal management in Queensland.

The first phase of the strategy involved three elements: a coordinated public education campaign on responsible pet ownership; a voluntary Code of Practice for pet shops setting standards for the care and management of animals at point of sale; and a two-year pilot study by four local governments of methods to increase the desexing rate of cats and dogs in these areas, with a view to establishing a State-wide approach.

To complement the first phase, the Bill is discrete legislation that provides a consistent State-wide regulatory framework for the effective management

of cats and dogs. The Bill, along with proposed subordinate legislation, proposes to consolidate relevant State and local laws regulating restricted, dangerous and menacing dogs, and introduce State-wide legislation for registering and microchipping cats and dogs. Currently, the regulatory system is administered by a combination of State legislation and local government animal management laws.

### **Short title of the Bill**

The short title of the Bill is *Animal Management (Cats and Dogs) Bill 2008*.

### **Objectives of the Bill**

The policy objective of the Bill is to provide a consolidated uniform, State-wide legislative framework for the effective animal management of cats and dogs by:

- introducing mandatory registration and microchipping of cats and dogs and ear tattooing of desexed cats and dogs;
- identifying and controlling regulated dogs (dangerous, menacing and restricted dogs) to minimise the risk to community health and safety, balanced with the rights of the individual;
- enhancing local governments' monitoring and enforcement powers;
- relocating chapter 17A (the restricted dogs provisions) from the *Local Government Act 1993* (LGA) to the Bill to provide a discrete and easily accessible legislative framework for companion animal management in Queensland; and
- minor consequential amendments to the *City of Brisbane Act 1924* and the LGA.

The Bill amends the *Local Government Act 1993* to ensure that the caretaker provision for a local government election does not apply during by-elections.

### **How objectives are achieved**

The Bill achieves the main policy objectives through the following means.

### Compulsory microchipping

Permanent microchipping identification is an effective way of reuniting lost cats and dogs with their owners. Facilitating the reunion of owners and their animals will contribute to reduced euthanasia rates.

The Bill provides for compulsory microchipping (by regulated implanters) of cats and dogs before 12 weeks of age or at transfer of ownership. Exempt animals include government authority dogs, working dogs and further classes of animals prescribed under a regulation.

The Bill provides for the licensing of permanent identification device registries (PID registries) to ensure that microchip information is available 24 hours a day, is handled securely and is shared with all other licensed PID registries.

Each microchip holds a unique number that will be identified with an animal post implantation. PID registries will maintain an electronic register of microchip numbers and identifying details of the animal associated with that number. PID registries hold Australia-wide information: if an owner is separated from an animal in, for example, Townsville, but the animal is registered in a different local government area, the Townsville City Council will not hold information about the animal. However, the council will be able to contact any licensed PID registry to obtain the animal's details. When this system is in place, the animal will have a much better chance of being reunited with its owner.

### Compulsory registration of cats and dogs

The Bill provides for the compulsory registration of cats and dogs 12 weeks of age and older. Exempt animals include government authority dogs; working dogs and further classes of animals that are prescribed under a regulation.

The Bill proposes that the duration of registration be specified by a local law to provide local governments with the requisite flexibility to meet local needs. Local governments must ensure that registration fees (to be fixed by a resolution of the relevant local government) provide an incentive for desexing animals.

Registration of cats and dogs will enable local governments to develop a better idea of animal ownership in their areas, thus allowing them to plan for initiatives such as responsible animal ownership education programs and appropriate local laws for animal control.

Each local government will be required to maintain registers for cats and dogs generally and for regulated dogs (restricted, dangerous and menacing dogs). The Bill also provides for the State government to introduce and maintain a State-wide register for regulated dogs. After the State register is introduced, local governments will no longer be required to maintain regulated dog registers. However, they will be required to provide information for the State register and will have access to that register. This will enhance public safety through improved State-wide control of regulated animals.

#### Tattooing of desexed animals

This Bill does not provide for mandatory desexing of cats and dogs. However, ear tattooing enables a non-invasive determination of an animal's reproductive status. In the interests of animal health, the Bill requires mandatory ear tattooing, under veterinary supervision, of cats and dogs at the time of desexing if the owner chooses to desex the animal. It will be an offence for both owners and veterinary surgeons to fail to ensure that an animal is tattooed at the time of desexing. Exemptions are provided if tattooing is likely to threaten the animal's health and for show animals.

#### Regulated dogs

The Bill provides for dogs that are of a restricted breed or that have shown various forms of aggression. Regulated dogs are divided into three categories – menacing, dangerous and restricted. To ensure consistency with Commonwealth legislation and the legislation of other States and territories, the definition of restricted dogs, under this legislation, will no longer include cross-breeds.

Currently, local governments have the power to prohibit keeping certain dogs (purebred/crossbreeds) in their local government areas. This power will not be impacted by this legislation.

#### Aggressive behaviours in dogs

To better manage the risks of an escalation of aggressive behaviour by a dog, the Bill provides for local governments to identify and declare two categories of aggressive behaviour in dogs – menacing and dangerous.

A menacing dog is defined as a dog that has attacked, or acted in a way that causes fear to, a person or another animal or may, in the opinion of an authorised person having regard to the way the dog has behaved, be likely to do so.

A dangerous dog is defined as a dog that has seriously attacked, or acted in a way that causes fear to, a person or another animal or, in the opinion of an authorised person having regard to the way the dog has behaved, is likely to do so. A serious attack means an attack causing death, grievous bodily harm or bodily harm.

To provide jurisdictional consistency, a dangerous dog declared in one local government jurisdiction is deemed to be a dangerous dog in all local government jurisdictions. The same applies to a dog declared under a corresponding law of another State or territory.

#### Keeping conditions for regulated dogs

The Bill provides for keeping conditions for regulated dogs that largely reflect those currently provided for in the LGA. Owners of all regulated dogs (restricted, dangerous and menacing) will be required to:

- keep the dog under effective control in public, including physical control of the dog (restraint with an appropriate leash or appropriately tethering the dog to an object with supervision);
- keep the dog in a prescribed enclosure;
- place a prescribed sign near each entrance to where the regulated dog is usually kept;
- ensure the dog is usually kept at the address that is identified on the permit or declaration; and
- ensure the dog is microchipped.

Owners of dangerous and restricted dogs will be required to meet the following additional conditions:

- compulsory desexing within three months of the dog being declared as a restricted or dangerous dog, or a restricted dog permit being issued;
- muzzling when the dog is in a public place; and
- the use of prescribed collars and tags identifying the dog as dangerous or restricted.

#### Monitoring and enforcement

The Bill provides for a chief executive officer of a local government to appoint authorised persons, and for an authorised person to be declared a

public official under the *Police Powers and Responsibilities Act 2000* (PPRA).

This enables the authorised person, acting as a 'public official', to request that a police officer assist that person or another authorised person in exercising powers of entry and seizure.

#### Appeals and reviews against decisions of local governments regarding regulated dogs

When a local government makes a decision about a cat or dog under this Bill, an applicant may lodge a review application with the local government within 14 days of the applicant being given the original decision.

When the chief executive of the administering department makes a decision about a licence or an implanter under this Bill, an applicant may lodge a PID review application with the chief executive within 14 days of the applicant being given the original decision.

A review will not automatically stay a decision but the applicant may apply to the Magistrate's Court for a stay.

Within 20 days of receiving the review application, the chief executive officer of the relevant local government or the chief executive must make a review decision. If no notification is received within the required timeframe it is deemed to confirm the original decision.

#### Transitional provisions

The Bill will not operate retrospectively. Animals that are 12 weeks or older at the time the Bill commences will not be required to be microchipped, unless and until their ownership changes. Animals that are desexed before the commencement of the Bill will not be required to have a tattoo indicating that they have been desexed.

Dogs that are declared to be restricted dogs or issued restricted dog permits under the LGA before the commencement of this Bill will be taken to be declared restricted dogs or have restricted dog permits under this Bill.

#### Greyhounds

The Bill includes a provision that local governments cannot require that a greyhound be muzzled when in a public place if the dog has undergone Greyhound Queensland's Greyhound Adoption Program (GAP) training. Under GAP greyhounds are microchipped, desexed, and obedience trained.

After completion, they wear specially designed collars to indicate that they have undergone the program and been certified.

A number of local governments have already introduced exemptions from muzzling for GAP-trained greyhounds.

### Commencement

Existing provisions regarding restricted dogs relocated from the LGA into the Bill will come into force at the same time for all local government areas. This will avoid a break in the application of the legislation when it is transferred from one legislative instrument to another.

Because the provisions relating to restricted dogs are closely linked with those for dangerous and menacing dogs, it has been decided to commence all provisions at the same time. Chapter 17A of the LGA will be repealed simultaneously.

The Bill proposes that provisions dealing with dangerous and menacing dogs will come into force for all local government areas from 1 July 2009. Current local laws will remain in force until then, but sections relating to dangerous dogs in local laws will become obsolete when the Bill comes into force.

The Bill proposes that provisions relating to compulsory registration, microchipping and tattooing be introduced progressively across the State, commencing on 1 July 2009 for South East Queensland (SEQ) councils. Implementation dates for other local governments will be declared by proclamation following consultation. This will permit time for the development of necessary infrastructure and training to support the changes.

### Caretaker provisions during local government by-elections

The Bill proposes to amend Chapter 5, Part 9, Division 6 of the *Local Government Act 1993* to ensure that the caretaker provision for a local government election does not apply during by-elections and alleviate the potential situation where both State Government and a local government are simultaneously subject to caretaker conventions or provisions.

## **Alternative method of achieving the policy objectives**

A uniform State-wide legislative framework for the effective management of cats and dogs can only be achieved through primary legislation.

## **Consistency**

The Bill provides for a chief executive officer of a local government to appoint authorised persons and for an authorised person to be declared a public official under the PPRA.

Declaration as a public official under the PPRA enables the authorised person to request that a police officer assist that person or another authorised person in exercising powers of entry and seizure. In giving this assistance, a police officer is taken to have responded to a request by a public official under section 16(3) of the PPRA.

This reflects the current legislation with regard to restricted dogs under the LGA chapter 17A.

## **Estimated cost for Government implementation**

The Bill requires each local government to maintain registers for cats and dogs generally and restricted dogs for each local government area, and maintain records for dangerous and menacing dogs. The costs involved will be met by the relevant local government.

The Bill proposes that the State government will introduce a State-wide register of regulated dogs as soon as possible. The register will be populated by the local governments' restricted dogs registers and their records of dangerous and menacing dogs. The information will be updated by the local governments as new information becomes available. It is proposed that implementation costs will be met within the current budget of the Department of Local Government, Sport and Recreation (DLGSR). It is predicted that the regulated dog register will cost \$20,000 in the year it is set up and \$2,000 annually to maintain the register. DLGSR proposes that ongoing maintenance costs be covered by charging local governments a percentage of their regulated dog registration fees (proposed to be \$3 per dog).

## **Consistency with Fundamental Legislative Principles**

The Bill raises the following issues relevant to fundamental legislative principles:

- (a) Rights and liberties of individuals (*Legislative Standards Act 1992* section 4(2)(a))



The Bill imposes significant obligations on the keeper of a regulated dog. However, as the keeping conditions largely reflect those currently provided for in the LGA, and given the potential for regulated dogs to inflict serious injury upon people or animals, the obligations are considered appropriate on balance between individual and community interests.

Prohibitions and restrictions on the sale and breeding of restricted dogs are considered to interfere with the proprietary rights and commercial interest of a person who currently owns or breeds restricted dogs. Prohibition of breeding and sale of restricted dogs currently exists in the LGA.

The prohibition on breeding and supply of declared dangerous dogs is designed to achieve a reduction in the population of these dogs.

These provisions are considered necessary in order to provide a means of controlling existing dogs, whilst progressing toward the ultimate aim of a reduction in populations of declared dangerous and restricted dogs in the State.

The Bill provides for the review of local governments decisions regarding the declaration of a regulated dog. A review will not automatically stay a decision but the applicant may apply to the Magistrate's Court, after which the decision may be stayed until completion of the review and appeal process.

The chief executive officer of the relevant local government must make a decision within 20 days of receiving the review application. To ensure natural justice, the review application cannot be dealt with by the person who made the original decision or by an officer in an equivalent or lesser position to the person who made the original decision.

**(b) Rights and liberties of individuals** (*Legislative Standards Act 1992* section 4(2)(a))

The Bill provides that a local government may declare a dog to be a restricted dog based on an expert opinion from a veterinary surgeon about the breed of the dog. If this method is used, the owner of the dog is unable to have the decision reviewed and subsequently appeal against the review decision through chapter 8 (Reviews and appeals) of the Bill. If a local government does not obtain an expert opinion,

the owner may have the decision reviewed and subsequently appeal against the review decision within a certain timeframe.

Whether legislation has sufficient regard to the rights and liberties of individuals rests on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

This provision currently exists under the LGA.

If a local government has relied upon the professional expertise of a veterinary surgeon in making its decision, the same right of appeal is not considered appropriate. However, in these circumstances an owner could seek a review of the decision under the *Judicial Review Act 1991*. In addition, the council will have to give the owner the right to respond to its assessment before a declaration is made. This provides an opportunity for an owner to demonstrate that the dog is not a restricted dog.

(c) Powers of entry (*Legislative Standards Act 1992* section 4(3)(e))

The Bill has sufficient regard to the principle that the power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate.

The Bill provides powers of entry to authorised persons (clause 111 (General power to enter places) to investigate offences without the occupier's agreement or without a warrant. The exercise of this power is restricted to entering a public place when it is open to the public or to enable an authorised person to ask for the occupier's agreement to enter the land or a building or a structure on the land.

The Bill also enables an authorised person to enter a building or other structure used for residential purposes to monitor authorisations, notices and to process applications without a warrant but only if the authorised person is accompanied by the occupier or if the occupier has been given reasonable notice of the authorised person's intention to enter and the occupier is unavailable or unwilling to accompany the authorised person.

The Bill also provides powers of entry to authorised persons without a warrant under an approved inspection program but only following the giving of an appropriate notice of the inspection program provided for under the Bill. The power does not extend to a building or structure used for residential purposes.

(d) Powers of seizure (*Legislative Standards Act 1992* section 4(3)(e))

The Bill has sufficient regard to the principle that the power to enter premises to seize property should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate.

Clause 112 (Additional entry powers for particular dogs) and clause 125 (Seizure powers for dogs) give an authorised person power under certain circumstances to enter a place without a warrant and seize a dog. Provisions that confer power to enter premises and search for or seize property without a warrant may depart from fundamental legislative principles. However, these powers are necessary to ensure the legislation is enforced and to protect the public from dogs which demonstrate a risk to community health and safety.

In exercising the power to enter a place an authorised person may use necessary and reasonable force (under specified circumstances). This ability currently exists under s 1105 of the *LGA*.

The Bill provides powers for authorised persons, under certain circumstances, to enter a place without a warrant and seize a dog. This is a significant departure from fundamental legislative principles particularly as these powers extend to residential property. They are however not unprecedented, given chapter 17A of the *LGA* currently contains similar provisions.

The Bill's entry and seizure powers also contain appropriate checks and balances, including:

- entry and seizure limited to specific circumstances;
- procedural requirements must be maintained and followed, such as producing an identity card, telling the occupier the purpose of the entry and advising that it is permitted without the occupier's consent or a warrant under specific circumstances; and
- a receipt for seized dogs is produced.

Similarly, the seizure and destruction powers under this Bill are necessary for the enforcement of the regulatory framework in the interests of public health and safety. The circumstances in which these powers may be exercised relate primarily to incidents of non-compliance with keeping conditions for regulated dogs or where there is an immanent risk to community health and safety.

- (e) Immunity from proceedings (*Legislative Standards Act 1992* section 4(3)(h))

The Bill confers immunity from proceeding or prosecution without adequate justification.

The Bill provides protection from civil and criminal liability to a person who has complied with clause 40 (Operator must ensure cat or dog is scanned) and deals with a cat or dog in a way that is adverse to the owner. This protection only applies if the person does not know who the owner is.

This provision is considered necessary to protect pound and shelter staff from civil and criminal liability should an animal be scanned, no microchip located, the owner unable to be identified and the cat or dog then on-sold (as it was considered ownerless).

Under the Bill an operator must ensure that the animal is scanned within three days of entry to the pound or shelter, or that scanning the animal would endanger the health of anyone attempting to scan the animal before protection from civil and criminal liability applies.

For a person to not be criminally liable for doing an act, in relation to the cat or dog, the act or omission could lawfully have been done or omitted by the owner. This ensures that criminal protection is not provided should the person have acted in a way that an owner could not act.

This ensures that a person who acts without negligence in their duties is protected. Given the limited nature of the protection and the necessary compliance under clause 40 there is considered adequate justification for this provision.

- (f) Rights or liberties, or obligations dependant on administrative power (*Legislative Standards Act 1992* section 4(3)(a))

The Bill makes rights or liberties, or obligations, dependant on administrative power.

Clause 132 (Power to give compliance notice) gives a local government authorised person power to issue compliance notices where non-compliance with the requirements of chapter 4 (Regulated dogs) is reasonably suspected. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on

administrative power only if the power is sufficiently defined and subject to appropriate review.

While an owner of a regulated dog may not have the decision to issue a compliance notice reviewed or appealed under chapter 8 (Reviews and appeals) of this Bill, a 'reasonable excuse' defence against non-compliance with the notice is provided in clause 134 (Failure to comply with notice).

There may be circumstances where immediate action by an owner of, or responsible person for, a regulated dog is needed in the interests of public health and safety. In this regard, the use of compliance notices provides an effective enforcement tool. Provision of review and appeal rights in such circumstances would not achieve the desired outcome.

- (g) Acquisition of property (*Legislative Standards Act 1992* section 4(3)(a))

The Bill provides for the acquisition of property without compensation.

Under clause 142, compensation cannot be claimed or ordered to be paid for loss or expense caused by the seizure or destruction of a regulated dog. Legislation that does not provide fair compensation for the compulsory acquisition of property may offend fundamental legislative principles.

The seizure and destruction powers under chapter 5 (Investigation, monitoring and enforcement) of the Bill are necessary for the enforcement of the regulatory framework in the interests of public health and safety. The circumstances in which these powers may be exercised relate primarily to incidents of non-compliance with the requirements about regulated dogs in chapter 4 (Regulated dogs) or where there is a risk to community health and safety. Providing compensation to owners in these circumstances is not considered appropriate.

- (h) Is inconsistent with principles of natural justice (*Legislative Standards Act 1992* section 4(3)(b))

The Bill provides for the immediate suspension of an authorised implanter, which is not considered to be consistent with the principles of natural justice.

Clause 28 gives the chief executive the ability to suspend an authorised implanter immediately if the grounds exist to suspend or

prohibit a person from implanting PPIDs and it is necessary to suspend the person immediately because there is an immediate and serious harm to the effectiveness of the identification of cats and dogs.

The Bill also provides for the immediate suspension of PID registry licensees, which is not considered to be consistent with the principles of natural justice.

Clause 160 gives the chief executive the ability to suspend a licence immediately if the grounds exist to suspend or cancel the licence and it is necessary to suspend the person immediately because there is an immediate and serious harm to the effectiveness of the identification of cats and dogs.

While the authorised implanter and the licensee may be suspended immediately the chief executive will provide the implanter or licensee with a show cause notice and the implanter or licensee may make written representations about the show cause notice to the chief executive in the period provided. The chief executive can cancel the remaining period of the suspension.

There may be circumstances where immediate action by a chief executive is in the interest of the health of animals and to ensure the integrity of the PID system.

- (i) Reversal of onus of proof (*Legislative Standards Act 1992* section 4(3)(d))

The Bill provides that it is a defence for an owner in response to an offence under chapter 4 of the Bill to prove that another person also owns the dog (or owned the dog when the subject of the proceeding happened) and the other owner has been convicted of the same offence and paid the penalty imposed for the conviction. Legislation that reverses the onus of proof in criminal proceedings without adequate justification is considered to breach the fundamental legislative principles.

It is considered that the reversal of the onus of proof is justified in this instance as it requires information of which the defendant is well positioned to provide evidence in the defence of, but would be difficult for a local government to prove.

- (j) Rights or liberties, or obligations dependant on administrative power (*Legislative Standards Act 1992* section 4(3)(a))

The Bill provides for the establishment of registers to be kept by the chief executive of the Department and the chief executive officer of each local government.

A regulated dog registry kept by the chief executive of the Department has restricted access. The persons able to access the regulated dog registry are persons with a particular role in maintaining the integrity of the register or who have a role in fulfilling the requirements of this Act.

Each local government must keep its cat and dog registry open to inspection, however, information about the owner of a cat or dog is not open to public inspection.

The Bill does provide protection to the privacy of the owner information in both instances and is seen to have sufficient regard to the rights and liberties of persons named in the register.

## **Consultation**

### Community

Before the *Animal Management (Cats and Dogs) Bill 2008* received Cabinet Authority to Prepare, there was extensive public consultation about the issue of unwanted cats and dogs. On 4 July 2007, the then Premier and Minister for Trade released for public comment a paper titled *Managing unwanted cats and dogs*.

The majority of the 5,300 responses received indicated dissatisfaction with Queensland's system of dealing with unwanted cats and dogs, which had failed to reduce the number of unwanted cats and dogs being euthanased. The responses supported mandatory registration and identification of cats and dogs and responsible pet ownership education.

### Animal welfare stakeholders

Early in 2007, the Minister for Primary Industries and Fisheries requested that a meeting be convened with animal welfare stakeholders to discuss companion animal management issues.

Stakeholder representatives from the RSPCA, the Animal Welfare League, the Canine Council of Australia, the Australian Veterinary Association, the Local Government Association of Queensland, the Australian Pet Industry Association and officers from the Department of Local Government, Sport and Recreation and the Department of Primary Industries and Fisheries met

and unanimously agreed that a Queensland Companion Animal Management Group (QCAMG) be established, with a State-wide focus and joint participation by stakeholders.

There was continuous consultation with QCAMG throughout the drafting process, which provided ongoing commentary on the developing Bill

As one example, compulsory identification through micro-chipping cats and dogs has been recognised by QCAMG members as an effective tool in reuniting lost and found cats and dogs with their owners, thereby contributing to reduced euthanasia rates.

#### Local governments

A consultation draft of the Bill was made available to key stakeholders in forums across the State.

As part of the consultation process a letter was sent to all local governments outlining the purpose of the Bill and providing a summary of the drafting instructions. Feedback was received at consultation forums, by telephone and by written submissions.

A number of face-to-face consultation sessions have also been held with various councils.

#### Government agencies

All Departments have been consulted through the Cabinet Liaison and Legislation Office network as part of the submission process. In addition, individual agencies were consulted about particular aspects of the Bill, including the Department of Justice and Attorney-General with regard to penalty provisions and privacy issues, Disabilities Queensland with regard to guide, hearing and assistance dogs and other agencies about government authority dogs.

#### Government agencies and associated bodies in other States

The framework of the Bill was based to a large extent on the system already in place in Victoria. However, before the decision was made to follow this path, extensive examination of legislation in other States took place together with telephone consultation with officers in government agencies and relevant organisations.



# **Chapter 1 Preliminary**

## **Part 1 Introduction**

### **Clause 1 - Short title**

Clause 1 provides that the short title of this Bill is the *Animal Management (Cats and Dogs) Act 2008*.

### **Clause 2 – Commencement**

Clause 2 provides that the Bill commences on 1 July 2009 except for certain provisions in Chapter 7 (Registers) and section 227. Section 227 will commence on assent. The relevant Chapter 7 provisions will commence on proclamation.

## **Part 2 Purposes and application of Act**

### **Division 1 Purposes**

#### **Clause 3 – Purposes of the Act**

Clause 3 provides the purposes of the Bill. Outlining these purposes makes clear to local governments and others the areas of cat and dog management that the Bill does address and about which local laws may be made.

#### **Clause 4 – How purposes are to be primarily achieved**

Clause 4 outlines the main areas of animal management about which the Bill legislates to achieve its purpose.

## **Division 2            Application**

### **Clause 5 – Act binds all persons**

Clause 5 provides that the Bill applies to everyone within the jurisdiction of Queensland legislation.

The Commonwealth or the State can not be prosecuted for an offence against this Bill.

### **Clause 6 – Relationship of Act with local laws**

Clause 6(1) provides that this Bill does not prevent a local government making a local law (including a subordinate local law) imposing requirements in relation to cats and dogs generally. However, if this Bill and a local law are inconsistent, the local law will be invalid to the extent of the inconsistency.

Subclause (2) provides that a local government may make a local law prohibiting anyone in their local government area from possessing particular breeds, or crossbreeds. For the purposes of clarity it should be noted that if, in the making of such a local law, a local government provides an exception from a breed prohibition (for example to exempt compliance for older animals) and the exempt animal is also captured by the definition of a *restricted* or *dangerous* or *menacing* dog, then the relevant provisions in this bill will still apply to the animal in spite of the local law.

Subclause (4) indicates the clause applies to both existing local laws and those that are made after this clause comes into force.

### **Clause 7 – Act does not affect other rights or remedies**

Clause 7 provides that, subject to clause 41 and clause 103, the Bill does not limit a civil right or remedy available outside of the Bill and that compliance with the chapter does not necessarily indicate satisfaction or breach of a civil obligation outside the Bill.

Subclause (3) provides that a breach of an obligation under the Bill does not in itself give rise to a cause of action under statute or common law.

## **Part 3                      Interpretation**

### **Division 1                Dictionary**

#### **Clause 8 – Definitions**

Clause 8 refers to the dictionary contained in schedule 2 in which particular words and phrases used in the Bill are defined.

### **Division 2                Key definitions**

Clause 9 – Who is an *owner* of a cat or dog

Clause 9(1) outlines who is the owner of a cat or dog for the purposes of the Bill, including the registered owner, the person whose property it is, a person who usually keeps it, and the parent or guardian of an owner who is a minor.

Subclause (2) provides that for the purposes of subclause (1)(c) a person does not 'usually keep' an animal merely because the person lives somewhere at which an animal is kept by another adult or if the person keeps the animal while acting as an employee and acting within the scope of his or her employment.

Under clause 9(3), a person who owns a female animal that has kittens or puppies, the person is taken to be the offspring's owner immediately after birth.

#### **Clause 10 – Who is a responsible person for a dog**

Clause 10(1) provides that a person is a responsible person for a dog if the person (or an employee acting within the scope of their employment) has immediate control or custody of the dog; or if they are the parent or guardian of a minor who has immediate control or custody of the dog; or if they occupy the place at which the dog is usually kept.

Subclause (2) provides circumstances where a person may not be a responsible person for the dog.

This definition is crucial to ensuring that dog provisions are enforced fairly. The concept of a responsible person is to reflect the time-sensitive nature of relevant dog offences such as dog attacks. A dog could be owned by a person but under the control of another person when the dog attacks. Unless this person has a reasonable excuse, the responsible person will be prosecuted for the dog offence.

### **Clause 11 – What is a cat or dog**

Clause 11 defines 'cat' and 'dog'.

### **Clause 12 – Identification devices under Act**

Clause 12 defines a permanent identification device (PID) as a microchip or other electronic device which is capable of being permanently implanted into a cat or dog and is designed to record information in a way that can be electronically retrieved.

The definition also defines a prescribed permanent identification device (PPID) as a PID that complies with the requirements of a regulation

To ensure the legislation continues to remain in line with technological advances, the term 'permanent identification devices' or 'PIDs' has been used. This term refers to a microchip or other electronic device capable of being implanted into an animal and designed to record information in a way that can be electronically retrieved.

A registration device is a device that is decided under a resolution of a relevant local government to assist in identifying a cat or dog. The main registration device is expected to be a registration tag issued to registered cats and dogs.

## **Chapter 2 Identification of cats and dogs**

### **Part 1 Prescribed permanent identification devices**

#### **Division 1 Obligation on supplier or owner of cat or dog**

##### **Clause 13 – Supplier must ensure cat or dog is implanted**

Clause 13(1) provides that a person supplying (by sale or other means, as defined in the dictionary) a cat or dog to another person must ensure it is implanted with a prescribed permanent identification device (PPID) before the change of ownership and it is an offence not to do so.

This ensures that a cat or dog is microchipped prior to changing ownership as this is a period with a high incidence of cats and dogs becoming lost and requiring reunification with the new owner.

Subclause (2) provides defences against prosecution for an offence under subclause (1).

Subclause (3) provides that, for the purposes of subclause (1), a cat or dog does not include an animal held under the *Animal Care and Protection Act 2001*.

##### **Clause 14 – Owner must ensure cat or dog is implanted**

Clause 14(1) provides that a person who is or becomes the owner of a cat or dog that is not implanted with a PPID must ensure that a PPID is implanted before the cat or dog is 12 weeks old. However if the cat or dog is 12 weeks or older on commencement of clause 14, the cat or dog need not be implanted with a PPID unless the cat or dog is supplied.

Subclause (2) provides defences against prosecution for an offence under subclause (1).

### **Clause 15 – Notice of changed identifying information**

Clause 15 provides for situations in which the identifying information about an animal changes.

Subclause (2) requires the owner to give written notice of the change to the relevant local government within seven days of the change, unless they have a reasonable excuse.

Subclause (3) requires the chief executive officer of the relevant local government to update the local government's register within seven days of receiving the information.

### **Clause 16 – Notice of changed PID information**

Clause 16 provides for situations in which the identifying information about an animal changes.

Subclause (2) requires the owner to give written notice of the change to a PID licence holder within seven days of the change unless the owner has a reasonable excuse.

The time period to advise a change of identifying information is short, but this information is crucial to the system supported by the Bill for returning lost animals to their owners. Moving house or changing owners is the time when animals are most likely to go missing and having the most recent information on record is particularly important. Unless the owners can be found as quickly as possible, the animals may be deemed 'unable to be returned' and destroyed.

## **Division 2            Supplying PIDs**

### **Clause 17 – PID that is not PPID must not be supplied**

Clause 17 provides that it is an offence for a person to supply a permanent identification device that is not a prescribed permanent identification device. The maximum penalty is 60 penalty units.

This ensures that all PIDs that are supplied to authorised implanters meet the PID requirements set out under the regulation.

### **Clause 18 – Seller must not supply PPID other than to authorised implanter**

Clause 18 provides that it is an offence for a seller (a person selling or supplying a PPID) to sell or supply a PPID to a person other than an authorised implanter. This is to ensure that only authorised implanters have access to PPIDs. Maximum penalty is 20 penalty units.

### **Clause 19 – Seller must give PID number to authorised implanter**

Clause 19 provides that it is an offence for a seller not to give the authorised implanter to whom the seller has supplied PPIDs the PID numbers associated with the PPIDs within seven days of a sale.

### **Clause 20 – Seller must give PID number to licence holder**

Clause 20 makes it an offence for a seller or supplier of a PPID to not give the name and address of the implanter and the unique PID number to all registry licence holders within seven days of a sale.

This linking provision ensures that the PID number is tracked throughout the process. This is to assist in ensuring that animals can be returned to their owners (via the implanter) should the animal go missing before the implanter has provided the details to the licensed animal register. Maximum penalty is 20 penalty units.

## **Division 3            Implanting PIDs**

### **Subdivision 1    General restriction**

#### **Clause 21 – Only authorised implanter may implant PPID**

Clause 21 provides that a person must not implant a PPID in an animal unless the person is an authorised implanter. Maximum penalty is 100 penalty units.

To protect an animal's health and well-being only authorised implanters may implant a microchip into an animal. To be authorised, an implanter

must meet the definition prescribed in schedule 2 and must not be prohibited from implanting under clauses 27 and 28.

A qualified implanter may be prohibited from implanting if the chief executive reasonably believes there are grounds to prohibit the person from implanting PPIDs in animals (for example, if the implanter fails to comply with the conditions set out under this Act).

## **Subdivision 2 Requirements for authorised implanters**

### **Clause 22 – PID that is not PPID must not be implanted**

Clause 22 makes it an offence for an authorised implanter to implant a PID that is not a PPID. Maximum penalty is 60 penalty units. The specifications for PPIDs will be prescribed under a regulation.

This clause ensures the use of quality PIDs that can be read by all scanning devices.

### **Clause 23 – Requirements for PPID**

Clause 23 provides that it is an offence for an authorised implanter not to ensure a PPID stores a record of the PID number and complies with requirements prescribed under a regulation. Maximum penalty is 40 penalty units.

### **Clause 24 – Age Minimum age for cat or dog to be implanted**

Clause 24 restricts the age at which a cat or dog can be implanted with a PPID to 8 weeks or older unless the implanter has a reasonable excuse. Maximum penalty is 60 penalty units. This limitation is designed to protect the health of very young animals.

### **Clause 25 – PID information must be given to licence holder**

Clause 25 requires an authorised implanter, within seven days after implanting a PPID in a cat or dog, to give the identifying information for the cat or dog in question to a registry licence holder. Maximum penalty is 20 penalty units.



This provision ensures that information held in the licensed PID registries is as recent as possible to assist in reuniting lost cats and dogs with their owners.

### **Clause 26 – PID information must be kept**

Clause 26 requires an authorised implanter to keep the information supplied under clause 25 for 1 year after the PPID is implanted, unless they have a reasonable excuse. Maximum penalty for non-compliance with this provision is 20 penalty units.

Subclause (3) provides an example of a reasonable excuse for the purposes of this clause.

## **Subdivision 3 Regulation of authorised implanters**

### **Clause 27 – Chief executive may suspend or prohibit**

Clause 27 provides that the chief executive, provided that they reasonably believe a ground under clause 28 exists, may prohibit an authorised implanter from implanting PIDs in cats and dogs for a period of time, i.e. suspend from implanting, or prohibit the authorised implanter from implanting PIDs indefinitely.

### **Clause 28 – Grounds for suspension or prohibition**

Clause 28 provides that giving the chief executive or a licence holder false or misleading information or a failure to comply with chapter 2, part 1 of the Bill may be grounds to prohibit a person from implanting PIDs.

### **Clause 29 – Show cause notice**

Clause 29 provides that, if the chief executive believes grounds exist to suspend or prohibit an authorised person from implanting, the chief executive must issue a show cause notice to the person.

Subclause (2) outlines the information to be contained in a show cause notice.

Subclause (3) requires the 'show cause' period to be a period of at least 21 days.

### **Clause 30 – Representations about show cause notice**

Clause 30 allows a person issued a show cause notice to make written representations to the chief executive within the show cause period to show why the proposed action should not take place. The chief executive is required to consider all representations presented in this way.

### **Clause 31 – Ending show cause process without further action**

Clause 31 provides that if, after considering all representations, the chief executive no longer believes the grounds exist to suspend or prohibit the person from implanting PIDs, the chief executive must not take any further action about the show cause notice and must advise the person that no further action will be taken.

### **Clause 32 – Suspension or prohibition**

Clause 32 applies if, after considering all representations, the chief executive still believes the grounds exist to suspend or prohibit the person from implanting PIDs, or the person has not provided any representations.

Subclause (2) provides that, if the chief executive believes action is warranted, he or she may suspend the person from implanting for no longer than the period that was stated in the show cause notice. Alternatively, if the show cause notice proposed that the person be prohibited from implanting, the chief executive may either introduce the prohibition or suspend the person for a stated period.

The chief executive must immediately advise the person of his or her decision by means of an information notice. The notice will take effect on either the day the notice is given to the person or the date stated in the information notice, whichever is later.

### **Clause 33 - Immediate suspension**

Clause 33 provides circumstances in which the chief executive may immediately suspend an implanter and the procedure for doing so.

The chief executive must give the person an information notice that suspends the person immediately the notice is given. The suspension will continue to operate for a maximum of 28 days, otherwise until the chief executive cancels it or the show cause notice is dealt with.

## **Division 4            Removing PIDs**

### **Clause 34 – PID must not be removed or otherwise interfered with**

Clause 34 provides that it is an offence for a person to remove or interfere with an implanted PID unless the person is a veterinary surgeon and the removal or interference is in the interests of protecting the cat or dog from a serious risk to their health. Maximum penalty is 100 penalty units. This clause is intended to protect the animal from harm and to guarantee the animal's identity can be confirmed.

## **Division 5            PID registry services**

### **Clause 35 – Person must not offer or provide PID registry service**

Clause 35 provides that it is an offence for a person to offer or provide a PID registry service unless the person is a registry licence holder. Maximum penalty is 100 penalty units.

Licences can only be granted by the State Government through DLGSR.

### **Clause 36 – Licence holder's obligations**

Clause 36 provides that a registry licence holder must, for each cat or dog for which the holder is providing a PID registry service, keep and maintain the identifying information for the animal and a copy of that information. Maximum penalty is 180 penalty units.

Subclause (2) provides that a license holder must, upon receiving notice of changed information for a cat or dog, electronically update that information within seven days.

The integrity of the microchipping system is dependent on the quality of the identifying information held by the registry. Keeping a copy of the registry database ensures the information is not lost in a case of computer failure.

## **Division 6            Giving identifying information**

### **Clause 37 – Authorised implanter may give identifying information to particular persons**

Clause 37 outlines the circumstances in which a person who has implanted a PPID (the **implanter**) may give out identifying information for the cat or dog to another person.

Releasing the information is acceptable only for the purposes of fulfilling the requirements of this Bill and for reuniting the cat or dog with its owner. The offence attracts a maximum penalty of 30 penalty units.

### **Clause 38 – Licence holder may give identifying information to particular persons**

Clause 38 operates in much the same manner to clause 37, but with regard to license holders providing a PID registry service.

### **Clause 39 – Relevant local government may give identifying information to particular persons**

Clause 39 outlines the circumstances in which the relevant local government can give out the identifying information. Releasing the information is acceptable only for the purposes of fulfilling the requirements of this Bill and for reuniting the cat or dog with its owner.

Unlike clauses 37 and 38, which operate in a similar manner, this clause does not prescribe a penalty as it is an obligation on a local government and non-compliance would leave a local government open to other consequences such as legal action.

## **Division 7            Pound or shelter operators**

### **Clause 40 – Operator must ensure cat or dog is scanned**

Clause 40 provides that it is an offence for a person operating a pound or shelter not to ensure a cat or dog entering the pound or shelter is scanned within three days of its entry to determine if the cat or dog is implanted with a PID. Maximum penalty is 30 penalty units.

Subclause (3) provides circumstances in which subclause (2) does not apply.

Subclause (4) provides that for the purposes of this clause, the definition of pound or shelter includes a veterinary surgery to the extent that it provides shelter for lost, homeless or stray cats or dogs.

### **Clause 41 – Protection of particular persons dealing with cat or dog**

Clause 41 provides that civil and criminal liability does not attach to anyone who deals with a cat or dog in a way that is adverse to the owner if the person scanned the cat or dog in the manner prescribed, or was unable to scan the cat or dog due to circumstances prescribed in clause 40(3) and no permanent identification device was identified. This protects pound and shelter staff from civil and criminal liability should a cat or dog be scanned, no microchip located, no owner identified and the cat or dog was then sold (as it was considered ownerless).

For protection from criminal liability to apply the person must act in relation to the cat or dog in a manner that could lawfully be done or omitted to be done by the owner. This prevents the person having criminal protection should they deal with the animal in an unlawful manner.

This is considered to breach the FLPs as a fundamental principle of the law is that everyone is equal before the law, and that a person should be fully liable for their acts or omissions.

An operator must comply with the conditions prescribed under clause 40 of the Bill before protection from civil and criminal liability applies. This ensures that a person who acts without negligence in their duties is protected.

## **Part 2                      Desexing tattoos**

### **Clause 42 – Desexed cat or dog must be tattooed**

Clause 42 provides a maximum penalty of 20 penalty units if an owner does not ensure their cat or dog is tattooed at the time it is desexed. It is also an offence for a veterinary surgeon performing the desexing if they fail to ensure the cat or dog is tattooed at time of desexing.

The owner of a desexed cat or dog does not contravene clause 42(1) if the cat or dog is, at the commencement of the Bill, not tattooed. This exemption is explicitly stated in clause 215.

Subclause (3) provides exemptions that serve as a defence against prosecution under this clause.

Subclause (4) provides the definition for *show cat or dog* for the purposes of this clause.

### **Clause 43 – Person must not tattoo an undesexed cat or dog**

Clause 43 makes it an offence for a person to tattoo a cat or dog which has not been desexed with the mark that it taken to indicate it is desexed. Maximum penalty is 100 penalty units.

This prevents any person from desexing a cat or a dog to indicate that it is desexed when the cat or dog has not undergone surgical removal of their gonads with the result being that the cat or dog is permanently incapable of reproducing.

## **Chapter 3 Registration**

### **Part 1 Particular person's obligation**

#### **Clause 44 – Registration obligation**

Clause 44 prescribes a maximum penalty of 20 penalty units if an owner of a cat or dog does not ensure the cat or dog is registered in the relevant local government (the local government in whose area the cat or dog is usually kept or proposed to be kept) within 14 days after starting to keep, or becoming the owner of the cat or dog in the relevant local government area.

Subclause (3) provides that it is a defence against prosecution under this clause if the dog is a government authority dog, if the dog is a working dog or another class of cat or dog that may be prescribed under the regulation.

Both government authority dog and working dog are defined in the schedule 2 Dictionary.

Subclause (4) provides that, for the purposes of subclause (1), cats or dogs that are less than 12 weeks old are not included.

### **Clause 45 – Cat or dog must bear identification in particular circumstances**

Clause 45 provides a maximum penalty of 20 penalty units for a person who, without reasonable excuse, keeps a registered cat or dog (other than a regulated dog, see schedule 1 item 2) at a place other than the address stated in the registration notice, without ensuring the cat or dog carries the identification prescribed under a local law.

This ensures that a cat or dog wears identification as prescribed under the relevant local government's local laws when not kept at the address stated on the registration notice for the cat or dog.

## **Part 2                      How cat or dog is registered**

### **Clause 46 – What owner must do**

Clause 46 provides that to register a cat or dog the owner must lodge a registration form (compliant with clause 47) for the cat or dog with the relevant local government for the cat or dog, along with the registration fee and if cat or dog is desexed a signed certificate from a veterinary surgeon stating the animal's reproductive status (or other evidence thereof).

### **Clause 47 – What registration form must state**

Clause 47 prescribes the information which must be included in the registration form.

Subsection (2) provides additional definitions for the purpose of this clause.

### **Clause 48 – Chief executive officer may ask for further information**

Clause 48 provides that before registering the cat or dog, the chief executive officer of the relevant local government may request further information or documentation from the owner.

Information that can be requested is information the chief executive officer reasonably requires to register the cat or dog. The owner will be provided a period of at least 14 days to provide the requested information or documentation to the chief executive officer.

### **Clause 49 – Relevant local government must give registration notice**

Clause 49 applies if an owner has complied with clause 46 for the cat or dog. It provides that within 14 days after a cat or dog has been registered the relevant local government must give a registration notice to the owner.

The registration notice must be in writing stating the same information required to be given on the registration form under clause 47, the period of registration, any conditions, be accompanied by any prescribed registration device for the cat or dog (for example, a tag) and include other information prescribed by regulation.

This can be in the form of a receipt which contains the required information and can be used as a record for the owner on their cat or dogs registration.

### **Clause 50 – Duration of registration**

Clause 50 provides that the period of registration is fixed by a resolution of the relevant local government which must not be more than three years.

### **Clause 51 – Local Government must keep registration form and information**

Clause 51 provides that a local government must keep a copy of the cat or dog registration form the owner has provided and record the information in the appropriate register within seven days of giving a registration notice.



### **Clause 52 – Registration fee must be fixed to give desexing incentive**

Clause 52 provides that a local government in fixing registration fees, must structure the fees to give the owner an incentive to desex the cat or dog, for example, by fixing a lower fee for registering a desexed cat or dog.

The desexing incentive does not apply to desexed declared dangerous or restricted dogs as the desexing of these dogs is mandatory and no incentive is required or if the local government sets a nil fee for the registration of a cat or dog, such as an assistance animal.

### **Clause 53 – Registration fee must be used for the achievement of the Act’s purposes**

Clause 53 provides that the registration fees must be used for achieving the purposes of the Bill and for administering local laws relating to the management of cat or dogs.

This enables local governments to use revenue collected through the registration of dogs and cats to fund general animal management issues such as patrolling for wandering dogs and feral cat control.

## **Part 3                      Amendment of registration**

### **Clause 54 – Amendment of registration**

Clause 54 provides that if any information on the registration notice for the cat or dog changes, the owner of the cat or dog must, within 7 days after the information changes ensure the local government is given written notice of the changed information. Maximum penalty is 5 penalty units.

The written notice is to be in the approved form and accompanied by information to enable the local government to record the changed information in the appropriate register.

Subclause (2) provides that this clause does not apply if the changed information is a change of residential address for a permit holder.

### **Clause 55 – Relevant local government must give notice of change**

Clause 55 provides that the chief executive of the relevant local government for a cat or dog may request further information with regard to notice given under clause 54(3) in the same manner prescribed under clause 48.

Subclause (4) provides that the chief executive officer must ensure that the changed information is recorded in the appropriate register within seven days after receiving written notice of the changed information, and within 14 days after receiving the written notice, must ensure the owner of the cat or dog is given a registration notice which includes the changed information mentioned under clause 54.

## **Part 4                      Renewal of registration**

### **Clause 56 – Relevant local government must give renewal notice**

Clause 56 provides that the relevant local government must give the owner of a cat or dog in the local government area a renewal notice 14 days before the period of registration in the local government elapses for the cat or dog.

Subclause (2)(b) prescribes the information which must be included in the renewal notice.

This serves as a reminder to the cat or dog owner that they must renew their cat or dog's registration including updating any changed information.

### **Clause 57 – What owner must do**

Clause 57 provides that the owner of a cat or dog must ensure the cat or dog's registration is renewed within 14 days of receiving the renewal notice. Maximum penalty is 20 penalty units.

Subclause (2) provides the activities an owner must undertake after receiving the renewal notice, including information and documentation which must be provided.

It is the responsibility of the cat or dog owner under clause 54 to ensure any change of details such as change of address details are provided to the local government.

### **Clause 58 – Relevant local government must give registration notice**

Clause 58 provides that, where an owner has complied with clause 57, the relevant local government must give the owner a registration notice and any registration device for the cat or dog within 14 days of renewal of registration.

Subclause (2) provides that the chief executive officer of a relevant local government may request additional information in the manner prescribed under clause 48. A maximum penalty of 5 penalty units applies for non-compliance.

Subclause (4)(a) provides that the chief executive officer of the relevant local government must update the appropriate register within seven days of receiving notice under 57(2) if the details for the cat or dog in question have changed.

## **Chapter 4 Regulated dogs**

### **Part 1 Preliminary**

#### **Division 1 Purpose and application of chapter**

#### **Clause 59 – Purpose of ch 4 and its achievement**

Clause 59 provides that the purpose of chapter 4 and the means by which the purpose is to be achieved.

## **Division 2            Interpretation**

### **Clause 60 – What is a *regulated dog***

Clause 60 provides the definition for a regulated dog, which includes restricted dogs; and declared dangerous and declared menacing dogs.

### **Clause 61 – What is a *declared dangerous dog***

Clause 61 provides the definition for a declared dangerous dog.

*A declared dangerous dog* is the higher of two classifications for dogs to be declared on the basis of their behaviour. The intention of the classification is to identify dogs which either seriously attack a person or animal or behave in such a manner that by failing to control these dogs may result in a serious attack or perhaps a fatality.

### **Clause 62 – What is a *declared menacing dog***

Clause 62 provides the definition for a declared menacing dog.

Local governments may, under clause 89, identify and declare two categories of behaviour in dogs: menacing and dangerous. Menacing is the less serious of the two categories and is aimed at identifying and mitigating aggressive behaviour in a dog before a serious attack occurs.

### **Clause 63 – What is a *restricted dog***

Clause 63 provides that a restricted dog is a dog of a breed prohibited from importation into Australia under the *Customs Act 1901* (Cwlth). Breeds currently prohibited under Commonwealth legislation are the dogo Argentino; fila Brasileiro; Japanese tosa; American pit bull terrier (or pit bull terrier); and Perro de Presa Canario (or Presa Canario).

Clause 63(2) provides that a dog is also a restricted dog if the dog is the subject of a restricted dog declaration. Including a dog that is currently the subject of a restricted dog declaration, such as a dog that was declared to be a restricted dog under the LGA, section 1193E immediately before the commencement of this Bill (see clause 217).

### **Clause 64 – When a regulated dog is under *effective control***

Clause 64 provides the circumstances in which a regulated dog is deemed to be under effective control.

The effective control provisions of this Bill do not repeal local governments' local laws on effective control of dogs in general. This definition only applies to dogs which have been declared as regulated dogs under this chapter. It is crucial that a regulated dog is controlled in such a manner that it does not pose a risk or threat to the wider community.

## **Part 2                      General restrictions and prohibitions**

### **Division 1                Application of part**

#### **Clause 65 – Application of pt 2**

Clause 65 provides that this part does not apply to a local government in relation to a regulated dog if the dog has been surrendered to it.

Subclause (2) provides that clause 66 does not apply to another person for an act if the act was to surrender the dog to the relevant local government.

### **Division 2                General prohibitions**

#### **Clause 66 – Prohibition on supply of restricted dog**

Clause 66 prescribes the penalty for supplying a restricted dog or proposed restricted dog and circumstances in which the penalty does not apply. The offence has a maximum penalty of 150 penalty units in view of the Commonwealth policy of prohibiting restricted breeds of dogs from importation into Australia.

Subclause (2) provides the definition of *proposed restricted dog* for the purposes of this clause.

The policy intent behind this provision is to minimise the population size of these dogs in the community.

### **Clause 67 – Prohibition on supply of declared dangerous dog or menacing dog**

Clause 67 provides a maximum penalty is 150 penalty units to a person (relevant person) who supplies a declared dangerous dog or declared menacing dog to someone else unless the relevant person gives the person a notice stating the dog is a designated dog or the relevant person has a reasonable excuse.

It is not in the public interest for a dog which may be declared by a local government to be sold or transferred to another person to avoid an obligation under this Bill. A declared dangerous or declared menacing dog may be transferred however, if all parties to the transaction are aware of the requirements under the Bill. This will cover situations where a person will not be able to comply with the keeping conditions and wishes to transfer ownership of the declared dog to a family member.

### **Clause 68 – Abandonment prohibited**

Clause 68 provides that an owner or person responsible for, a regulated dog must not abandon the regulated dog without reasonable excuse and prescribes a maximum penalty of 300 penalty units for doing so.

As regulated dogs pose varying threats to the community, their abandonment may create a very real and present danger to the community. The offence recognises the seriousness of the threat to community safety.

Subsection (2) clarifies the definition of *abandon* for the purposes of this clause.

## **Division 3                      Restricted dogs and declared dangerous dogs only**

### **Clause 69 – Prohibition on breeding**

Clause 69 prohibits the breeding of declared dangerous or restricted dogs and the giving or taking of possession of such animals for breeding

purposes. A maximum penalty of 150 penalty units is prescribed for doing so.

As dangerous dogs will be declared on the basis of having seriously attacked or posing a serious threat to community health or safety, the policy intent is to ensure that through the prohibition on breeding of declared dangerous or restricted dogs the behaviour that resulted in the dog being declared dangerous or restricted cannot potentially be passed on to offspring. The breeding prohibition will, through attrition, reduce the population of the breeds of dogs prohibited from importation by the Commonwealth Government.

### **Clause 70 – Compulsory desexing of declared dangerous dog or restricted dog**

Clause 70(1) provides that the owner of a declared dangerous or restricted dog must ensure it is desexed within a prescribed period of time and prescribes the penalty for failure to comply.

As dangerous dogs will be declared on the basis of having seriously attacked or posing a serious threat to community health or safety, the requirement to desex will eliminate the possibility of a declared dangerous dog or restricted dog's behaviour being passed on to offspring.

The policy intent is that by compulsory desexing, combined with remedial training by the dog's owner, the chances of a declared dangerous dog re-offending will be reduced.

Subclause (2) prescribes desexing requirements where a temporary health condition has prevented the dog from being desexed within the timeframe required by subclause (1). A maximum penalty of 150 penalty units is prescribed for failure to comply.

## **Division 4            Restricted dogs only**

### **Clause 71 – Permit required for restricted dog**

Clause 71 provides that a person must not, without reasonable excuse, own or be responsible for a restricted dog unless they obtain a permit from the relevant local government. Maximum penalty is 75 penalty units.

Owners of restricted dogs have an obligation to possess a permit for the dog and comply with strict keeping and control conditions to ensure their dogs do not pose a threat to community health or safety.

## **Part 3                      Restricted dog permits**

### **Division 1                Obtaining permit for restricted dog**

#### **Subdivision 1        Permit applications**

##### **Clause 72 – Who may apply for permit**

Clause 72 provides that an adult may apply to the relevant local government to keep a restricted dog at a stated place, provided that the place has a detached house where a person usually lives. The intent of this clause is to prevent the keeping of restricted dogs in multi-residential complexes and their use as guard dogs on commercial premises. The provision is necessary to protect public health and safety and the welfare of individual dogs.

Subclause (3) provides that permit applications may be made to keep more than one restricted dog at the same place if the keeping of multiple dogs, restricted or otherwise, is permitted under the local law of the relevant local government.

An owner of a restricted dog has a legislative obligation to apply for a permit. Failure to do so attracts heavy penalties.

##### **Clause 73 – Requirements for application**

Clause 73 provides the requirements for a restricted dog permit application. In addition to relevant identification and other information about the animal, the application must also include the address of the place for which the application is made and the type of each structure at that place. This requirement will enable the relevant local government to ascertain the existence of a detached house at the place, as required under clause 72.



To allow identification of the dog, permit applications must also be accompanied by a recent colour photo and be supported by enough other information to allow local government to decide the application.

### **Clause 74 – Inquiries into application for permit**

Clause 74 provides that the relevant local government may, by written notice to the applicant, seek further information or documents relevant to the application after a permit application has been made.

It is important that when a local government is deciding whether or not to grant an application, it has all the relevant details to make an informed decision. Having regard to these details will ensure the community safety is maintained and permits are only granted to applicants who are able to meet their obligations under the Bill.

### **Clause 75 – Deciding application**

Clause 75 outlines that the relevant local government must grant or refuse an application within 21 days of either the making of the application or when all necessary information to decide the application has been received.

Subclause (2) provides circumstances in which the relevant local government must refuse an application.

Subclause (4) provides that a regulation may provide other grounds for refusal. For example, a regulation may be made to provide that persons convicted of an offence under the Bill must be refused a permit.

Subclause (5) provides that in granting and application, the relevant local government may impose conditions provided for under a regulation made under clause 80(2).

### **Clause 76 – Criteria for decision**

Clause 76 prescribes certain criteria which the relevant local government must consider in deciding a permit application. Additional criteria may be prescribed under regulation.

When making a decision, the local government needs to be satisfied that the owner of the restricted dog will be able to ensure compliance with the conditions of the permit.

This ensures that a permit has been decided that has regard to the health and safety of the community.

## **Subdivision 2 Action after decision on application**

### **Clause 77 – Grant of application**

Clause 77 provides that the relevant local government must issue a permit in the approved form to an applicant as soon as practicable after the decision to grant an application is made.

### **Clause 78 – Duration of permit**

Clause 78 prescribes the period of time for which a permit is valid. The permit expires 1 year after the day the permit holder is issued the permit, this allows the relevant local government to consider all of the information (including any new information) in the granting of the permit annually.

### **Clause 79 – Notice of refusal of permit application**

Clause 79 provides that the relevant local government must, after deciding to refuse an application, give the applicant a notice for the decision as soon as practicable. The notice should be in the form of an information notice as defined in the schedule 2 Dictionary.

## **Division 2 Permit conditions**

### **Clause 80 – Operation of div 2**

Clause 80 provides that division 2 imposes conditions on individual restricted dog permits. All conditions will be enforceable by local governments with penalty infringement notices.

Clause 80(2) provides that additional conditions which are more onerous or of a higher standard than those in division 2 may be prescribed by regulation for each restricted dog permit.

### **Clause 81 – Obligation to comply with permit conditions**

Clause 81 prescribes the penalties for failure to comply with restricted dog permit conditions under schedule 1, for both a permit holder and a person responsible for the animal. It is critical that once a dog is declared, that the owner of the dog ensure all conditions are met. Maximum penalty for not complying with permit conditions is 75 penalty units.

Compliance with the permit or declaration condition will ensure the chance of the dog escaping its enclosure and re-offending are minimised. It will also ensure the general public are warned that a declared dog is on the premises.

## **Division 3           Renewal of permit**

### **Clause 82 – When permit may be renewed**

Clause 82 provides that a restricted dog permit holder may apply to the relevant local government to renew the permit.

Clause 82(2) provides circumstances in which a renewal application cannot be made.

It is incumbent upon the owner of a restricted dog to ensure a permit renewal application is lodged.

### **Clause 83 – Requirements for renewal application**

Clause 83 provides the requirements for a renewal application.

### **Clause 84 – Deciding renewal application**

Clause 84 prescribes the conditions which the relevant local government must follow in deciding whether to grant or refuse a renewal application, including circumstances in which the application must be refused and notification of the applicant regarding the decision.

Clause 84(4) provides that in making its decision, the relevant local government must take into account the criteria outlined in clause 76 and may seek further documents and information in line with clause 74.

### **Clause 85 – Duration of renewed permit**

Clause 85 prescribes that the period of time for which a renewed permit is valid is 1 year after the day the permit holder is issued the renewed permit.

## **Division 4           Amendment of permits**

### **Clause 86 – Application for change of place for permit**

Clause 86 provides that a restricted dog permit holder may apply to the relevant local government to alter the place for which the permit has been issued, so long as the new place remains within the relevant local government area and complies with necessary requirements, as if it were a permit application.

### **Clause 87 – Amendment by relevant local government**

Clause 87 provides the circumstances in which a relevant local government may amend a restricted dog permit. However, an amendment cannot be inconsistent with a permit condition or impose a condition on the permit other than a permit condition.

## **Division 5           Miscellaneous**

### **Clause 88 – No transfer of restricted dog permit**

Clause 88 provides that a restricted dog permit cannot be transferred.

## **Part 4               Regulated dog declarations**

### **Division 1           Making regulated dog declarations**

#### **Clause 89 – Power to make declaration**

Clause 89 provides that a local government may declare a dog to be dangerous, menacing or restricted in compliance with the requirements of Part 4.

A dangerous dog declaration may be made for a dog that has seriously attacked or acted in a way that caused fear to a person or animal. Seriously attacked means the dog has attacked causing bodily harm, grievous bodily harm or death.

A menacing dog declaration may be made for a dog that has attacked and caused fear to a person or animal in a way other than that prescribed for a dangerous dog under subclause (2).

A restricted dog declaration may be made only if the dog is of a breed prohibited from importation into Australia under the *Customs Act 1901* (Cwlth).

Local Governments have a discretionary power to declare dogs to be dangerous, menacing or restricted. These three classifications allow a much more effective regime to manage and control dangerous dogs in Queensland.

### **Clause 90 – Notice of proposed declaration**

Clause 90 provides that local governments must give written notice to a dog owner before making a declaration and prescribes the requirements for the notice.

Queensland has many inconsistencies in its dangerous dog laws. Some local governments have a dangerous dog declaration system that is not reviewable internally. The notice of proposed declaration is the first in a string of steps that will ensure the owners of dogs accused of being dangerous, menacing or restricted, have the opportunity to respond to the allegations.

### **Clause 91 – Proposed declaration notice does not limit other powers**

Clause 91 provides that the proposed declaration notice does not limit an authorised person's powers under chapter 5 of the Bill or a regulation.

While the process of declaration is occurring, it is conceivable that a dog may be involved in an incident during this time period. If a dog is involved in another incident while a declaration process is underway, the local government is not prevented from invoking entry and seizure powers to make the area safe. The local government has the option of retaining the dog at an impound facility for evidence while the declaration process is

underway. The declaration process may be amended in response to the further behaviour demonstrated by the dog.

### **Clause 92 – Withdrawing proposed declaration notice**

Clause 92 provides that a proposed declaration notice may be withdrawn by a local government by giving written notice to the dog owner.

### **Clause 93 – Owner’s obligations if proposed declaration notice in force**

Clause 93 prescribes the penalty for owners of and persons responsible for dangerous and restricted dogs if they fail to comply with the requirements of schedule 1, clause 3 (muzzling and effective control in public). This clause only applies if a proposed declaration notice is in force and ceases to apply if the notice is withdrawn. Maximum penalty is 75 penalty units.

To ensure public safety a dog the subject of a proposed declaration notice must be muzzled in public and under effective control at all times. If the declaration process is aborted, nothing is lost, however a dangerous dog declaration is proceeded with then the dog has been kept under effective control and prevented from biting people since the time of the alleged first incident.

### **Clause 94 – Making declaration**

Clause 94 provides that a local government must consider any written representations or evidence it receives during the period given under clause 90 (Notice of proposed declaration).

Clause 94(2) provides that, if after considering representations or evidence the local government is satisfied that the dog is a regulated dog under clause 89, it must make the declaration about the dog.

### **Clause 95 – Notice and taking effect of declaration**

Clause 95 provides that a local government, after making a decision to declare a dog to be a regulated dog, must give a dog owner a declaration notice. The notice must include information about the declaration and the keeping and control conditions with which the owner must comply. If the dog has been impounded, the notice must include the impound number given by the local government to the dog.

## **Part 5                      Application of permit conditions for declared dangerous and menacing dogs.**

### **Clause 96 – Operation of pt 2**

Clause 96 provides that chapter 4, part 5 provides conditions on a declared dangerous or declared menacing dog. A local government can state that a condition does not take effect until a stated day on an information notice about a declared dangerous and declared menacing dog, however, the stated day can not be more than 21 days after the owner is issued with an information notice.

### **Clause 97 – Declared dangerous dogs**

Clause 97 provides that a relevant person for a declared dangerous dog must ensure schedule 1, clauses 2 – 6 are complied with in relation to the dangerous dog.

Conditions include: identification; compulsory desexing and effective control; enclosure; public notice; and place where dog is kept requirements.

### **Clause 98 – Declared menacing dogs**

Clause 98 provides that a relevant person for a declared dangerous dog must ensure schedule 1, subclauses 2 and 4 – 6 are complied with in relation to the menacing dog.

Conditions include: identification; effective control; enclosure; public notice and place where dog is kept requirements.

## **Part 6                      Miscellaneous provisions**

### **Clause 99 – Failure to decide application taken to be refusal**

Clause 99 provides that an application should be taken to have been refused if a local government has not made a decision within the time period required under chapter 4, part 3 of the Bill.

### **Clause 100 – Surrender of regulated dog**

Clause 100 provides conditions for the surrender and subsequent treatment of a regulated dog. It is not in the public interest for declared dogs to be rehoused. All declared dogs surrendered to an animal shelter or pound must be destroyed.

### **Clause 101 – Defence for regulated dog owner**

Clause 101 provides defences available to the owner of a regulated dog for offences under chapter 4. It is a defence for an owner to prove that another person was also the owner at the time the incident in question occurred and that the other owner has been convicted of the same offence or another offence constituted by the act or omission, and has since met or paid any penalty imposed for the conviction.

### **Clause 102 – Recovery of seizure or destruction costs**

Clause 102 provides the circumstances in which a local government may recover costs for the seizure or destruction of a regulated dog.

If a dog has been surrendered to the local government it is considered that any cost should not be claimed for costs incurred following the surrender of the dog.

### **Clause 103 – Cost of regulated dog enclosure – dividing fence**

Clause 103 prescribes the relationship between the Bill and the *Dividing Fences Act 1953* with regard to the cost of regulated dog enclosures.

Subclause 103(3) provides that, in cases where the fence is to be built by a person who leases a place where the regulated dog is permitted to be kept, the *Residential Tenancies Act 1994*, chapter 3, part 5, division 1 will apply instead of the *Dividing Fences Act 1953* section 20.



## **Chapter 5 Investigation, monitoring and enforcement**

### **Part 1 Authorised persons**

#### **Clause 104 – Appointment and qualifications**

Clause 104(1) provides that a chief executive officer of a local government may appoint a local government employee or a person prescribed under a regulation as an authorised person. Clause 104(2) provides that the chief executive officer must also be satisfied the person is qualified for appointment because the person has the necessary expertise or experience to carry out the job.

The role of the authorised person under this Bill is important and is vital to ensuring the community safety from regulated dogs. Care must be taken by the CEO when appointing people to this important position that they possess the character and skill sets to allow them to fairly and impartially enforce this Bill.

#### **Clause 105 – Appointment conditions and limit on powers**

Clause 105 provides that an authorised person's appointment may be subject to conditions stated in an instrument of appointment, a notice signed by the chief executive of the local government or a regulation. These conditions may limit an authorised person's powers under the Bill.

#### **Clause 106 – Issue of identity card**

Clause 106 provides that a chief executive officer must issue an identity card for each authorised person. This identity card must identify the person as an authorised person under the Act and contain a photo of the authorised person, a copy of the authorised person's signature and an expiry date for the card.

Subclause 106(3) provides that this clause does not prevent the issue of a single identity card to a person for the purposes of this Bill and for other purposes.

Due to the extensive powers an authorised person has under this Bill, it is necessary that an authorised person can identify himself or herself through the use of an identity card.

### **Clause 107 – Production or display of identity card**

Clause 107 provides the manner in which an authorised person must produce and display the identity card to another person when exercising a power under this Bill in relation to that person. The authorised person must produce their identity card before exercising powers, and must keep the identity card displayed so that it is clearly visible to the other person when exercising the power.

Subclause 107(2) provides that where compliance with subclause 107(1) requirements is not practicable, an authorised person must produce the identity card for inspection by the other person at the first reasonable opportunity.

Subclause 107(3) provides that an authorised person does not exercise a power for the purpose of this clause if they have merely entered a place as mentioned in clause 111(1)(b) or (4).

It is important that authorised persons, wherever practicable, are readily identifiable to the public, particularly if they exercise entry and seizure powers under this Bill.

### **Clause 108 – When authorised person ceases to hold office**

Clause 108(1) outlines circumstances when an authorised person ceases to hold office.

Subclause 108(2) provides that the circumstances in sub-clause (1) are not an exhaustive list of the means by which an authorised person may cease to hold office.

Subclause 108(3) defines the term *condition of office* for this clause.

### **Clause 109 – Resignation**

Clause 109 provides that an authorised person may resign by providing signed notice to the chief executive of the local government which appointed them.

### **Clause 110 – Return of identity card**

Clause 110 provides that unless the authorised person has a reasonable excuse, he/she must return their identity card to the chief executive officer of the local government who appointed them, within 21 days of ceasing to be an authorised person.

A maximum penalty of 10 penalty units applies for failure to comply with this requirement.

## **Part 2                    Entry to places**

### **Division 1                Powers of entry**

#### **Clause 111 – General power to enter places**

Clause 111 provides the circumstances when an authorised person may enter a place. Subclause 111(4) clarifies that for the purpose of asking an occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant:

- enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- enter part of the place that the authorised person reasonably considers members of the public would ordinarily be allowed to enter when they wish to contact the occupier.

Authorised persons must have the ability to enter a property and contact the occupier of property for the effective administration of this Bill.

#### **Clause 112 – Additional entry powers for particular dogs**

Clause 112 provides additional entry powers for authorised persons where it is reasonably suspected a dog has behaved in a manner that indicates it is a risk to community health and safety or a restricted dog is being kept without a permit. This power may be exercised if any delay in entering a place will result in a risk to community health or safety or a dog being concealed or moved to avoid compliance with chapter 5. Further, in order to exercise this power, a person may enter and stay at the place, if the

occupier may have received a compliance notice and entry is made at a time that is stated in the notice for the purposes of checking compliance with the notice.

Provisions that confer power to enter premises and stay without a warrant may offend fundamental legislative principles. These powers are necessary in certain circumstances to ensure enforcement of the legislation and ensure that public health and safety is protected. In exercising the power to enter a place under clause 112 an authorised person can use necessary and reasonable force only where the place is not being used as a residence and entry is only for the seizure of a dog. As the identification of restricted dogs is difficult, seizure of restricted dogs using reasonable and necessary force will only be available to an authorised person by way of a warrant or if the alleged restricted dog has behaved dangerously or menacingly.

In exercising this power an authorised person must follow certain procedural requirements such as producing an identity card, and telling the occupier the purpose of the entry and that it is permitted without the occupier's consent or a warrant. If an authorised person enters or proposes to enter, a place under this section, safeguards are provided in clause 123 (General powers after entering places).

### **Clause 113 – Approval of inspection program authorising entry**

Clause 113 provides that a local government may pass a resolution approving an inspection program to allow an authorised person to enter a place and monitor compliance with the Act. An approved inspection program must be either selective (certain defined places) or systematic (all places of a particular type).

Subclause 113(5) prescribes what an approved inspection program must state and provides a number of safeguards for persons and places to be subject to inspection under a program.

### **Clause 114 – Notice of proposed inspection program**

Clause 114 requires a local government to give notice of a proposed inspection program by publishing a notice in a local newspaper and on the local government's website, at least 14 days, but no more than 28 days, before commencement of the program.

A notice must state that a copy of the proposed inspection program is available for inspection at the public office and available for purchase.

## **Clause 115 – Access to program**

Clause 115 requires a local government to make a copy of the approved inspection program available for purchase and keep a copy of the program open for inspection at the local government's public office from the date of publication of the notice until the end of the program.

## **Division 2      Entry procedures**

### **Subdivision 1    Consent**

#### **Clause 116 – Entry with consent**

Clause 116 prescribes the procedure and conditions an authorised person must follow when asking an occupier of a place for consent to enter the place.

Before asking for consent the authorised person must tell the occupier the purpose of the entry and that the occupier is not required to give consent.

Subclause 116(6) provides that, should an issue arise in a proceeding regarding whether an occupier consented to entry, and a copy of the relevant acknowledgement of consent is not available, the onus of proof falls on the authorised person (or an agent thereof) to prove the occupier consented.

Subclauses 116(7) and 116(8) provide conditions in relation to an authorised person's right to stay on the property.

### **Subdivision 2    Warrants**

#### **Clause 117 – Application for warrant**

Clause 117 provides that an authorised person may apply to a magistrate for a warrant for a place and prescribes the application process.

### **Clause 118 – Issue of warrant**

Clause 118 permits a magistrate to issue a warrant for a place if there are reasonable grounds for suspecting there is evidence of an offence against this Bill and the evidence is at the place, or will be at the place within the next 7 days. Subclause 118(2) prescribes the contents of the warrant.

### **Clause 119 – Application by electronic communication and duplicate warrant**

Clause 119 provides for an application for a warrant to be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person considers it necessary due to urgent circumstances or other special circumstances, such as remote location.

Subclauses 119(2) to subclause 119(9) outlines the procedural requirements for the application and the issue of a magistrate's warrant in these cases of urgent or special circumstances.

Subclause 119(10) provides the definition for a *relevant magistrates court* for the purposes of this clause.

As this legislation will have state-wide application, it is important that the process for obtaining a warrant be stipulated and streamlined to allow for circumstances where a magistrate may not regularly visit rural and remote communities. It is also critical that this process ensures strong protections are maintained for private property rights.

### **Clause 120 – Defect in relation to a warrant**

Clause 120 provides that a warrant is not invalidated by a defect in the warrant, or in compliance with clauses 117, 118 or 119 unless the defect affects the substance of the warrant in a material particular.

### **Clause 121 – Warrants—procedure before entry**

Clause 121 provides the procedure to be followed by an authorised person entering a place pursuant to a warrant.

Subclause 121(2) prescribes certain things an authorised person must do, or make a reasonable attempt to do, before entering a place. This includes identifying themselves to an occupier by way of producing an identity card or another document of appointment; providing a copy of the warrant;

informing the occupier of their power to enter under the warrant; and giving the occupier an opportunity to allow immediate entry to the authorised person without using force.

Subclause 121(3) provides that an authorised officer need not comply with the conditions stipulated in subclause 121(2) if he or she believes that entry is required to ensure that execution of the warrant is not frustrated.

A provision that confers power to enter premises without explanation of the warrant procedure may offend fundamental legislative principles. This power is necessary in the circumstances to ensure enforcement of the legislation and public health and safety is protected.

### **Subdivision 3    Entry under other powers other than for public places**

#### **Clause 122 – Procedure for other entries**

Clause 122 provides steps the authorised person must undertake before entering a place under subclause 111(1) other than (a) or (c) and clause 112, including production of an identity card, telling the purpose of the entry and telling the occupier they are able to enter the place under this Bill without the occupiers consent.

## **Part 3                    Powers on Entry**

#### **Clause 123 – General powers after entering places**

Clause 123 provides the powers of an authorised person who has entered a place under chapter 5, part 2 of the Bill.

An authorised person who has entered a place under part 2 may search any part of the place the authorised person is authorised to search and may inspect, test or photograph anything in or on the place, copy a document in or on the place and take samples from the place.

Subclause 123(2) provides that this clause does not apply to an authorised person who enters a place under section 111(4) to obtain the occupier's

agreement unless the agreement is given or the entry is otherwise authorised.

### **Clause 124 – Power to require reasonable help**

Clause 124 requires a person to give reasonable help to the authorised person if it is requested under subclause 123(1)(f) unless the person has a reasonable excuse. A maximum penalty of 8 penalty units is prescribed for non-compliance.

Subclause 124(2) provides that a person may refuse to comply with a request to give information or provide a document if doing so would incriminate them. However, if the person is required to keep a document under this Bill subclause 124(2) does not apply.

A provision that requires a person to comply with a request for assistance from an authorised person to search and gather information at a person's place may offend fundamental legislative principles. These powers are necessary in the circumstances to ensure enforcement of the legislation and public health and safety is protected.

### **Clause 125 – Seizure powers for dogs**

Clause 125 gives an authorised person power to seize a dog if:

- the person reasonably believes the dog has attacked, threatened to attack or acted in a way that causes fear to an animal or person or is, or may be, a risk to community healthy or safety; or
- the dog is a restricted dog for which a permit has been refused, or no restricted dog permit has been issued and there is a risk a dog may be concealed or moved to avoid the requirements of chapter 5; or
- the dog is the subject of a compliance notice and the authorised person reasonably believes the notice has not been complied with; or
- the dog is in a public place and is not under anyone's effective control.

The use of reasonable and necessary force to seize a dog does not apply to a restricted dog. However, if the dog has behaved dangerously or menacingly, it can be seized under the dangerous and menacing dogs provisions.



## **Part 4                      Seized Dogs**

### **Clause 126 – Application of pt 4**

Clause 126 provides that chapter 5, part 4 applies if an authorised person has seized a dog under clause 125 or a warrant.

### **Clause 127 – Power to destroy seized regulated dog**

Clause 127(2) gives an authorised person power to immediately destroy a seized regulated dog, without notice, if the authorised person reasonably believes the dog is dangerous and the authorised person cannot control the dog, or an owner of the dog has ask for it to be destroyed. This power is necessary in the circumstances to ensure community health and safety is protected.

Subclause 127(3) provides for the destruction of a dog three days after seizure if:

- the authorised person is unable to find an owner for the dog; and
- the dog was not seized under section 125(1)(b)(i) (i.e. a permit application to keep the restricted dog has been refused); and
- the dog is not the subject of a regulated dog declaration by the relevant local government.

Clause 127(4) provides that if subclause 127(3) does not apply an authorised person may make a destruction order stating destruction order stating that the person proposes to destroy the dog 14 days after the order is served on the registered owner of the dog or if there is no registered owner, the person who owns or is responsible for the dog. However, a dog can not be destroyed if a review or appeal process is underway.

Provisions permitting the destruction of a dog may offend fundamental legislative principles. However, clause 127 provides for a notification procedure and permits an appeal against the destruction order.

### **Clause 128 – Receipt for dog in particular circumstances**

Clause 128 requires an authorised person to issue a receipt for a dog (which has been seized under clause 125) to the registered owner or the person who had immediate custody or control of the dog.

### **Clause 129 – Access to seized dog**

Clause 129 provides that where an authorised person has seized a dog, the owner of the dog must be allowed to inspect the dog at any reasonable time. The inspection must be provided free of charge. If however, a person has threatened to forcibly remove their dog from an impounding facility, the local government is not obliged to allow access to the seized dog.

### **Clause 130 – Return of dog if not regulated dog**

Clause 130 provides that if a dog was seized based on a reasonable suspicion that the dog was a regulated dog or would be declared a regulated dog based on its behaviour, and the authorised person becomes satisfied the dog is not or will not be declared a regulated dog, the person must return the dog as soon as practicable to any owner or other person entitled to possession of it.

### **Clause 131 – Return of regulated dog to registered owner**

Clause 131 provides for the return within 14 days of a seized dog if the dog has, or appears to have a registered owner unless:

- the owner has surrendered the dog;
- a destruction order has been made for the dog;
- the dog is required as evidence for a proceeding for an offence involving the dog;
- the owner, or person responsible for the dog, has not complied with a permit or keeping condition for the dog;

The dog is to be returned as soon as practicable if, following an appeal, an order is no longer in force, the dog's retention as evidence is no longer required, or all keeping conditions for the dog are complied with.

## **Part 5                      Compliance notices for regulated dog offences**

### **Clause 132 – Power to give compliance notice**

Clause 132 prescribes the requirements for the issue of a compliance notice by an authorised officer who reasonably believes an owner or, or a responsible person for, a declared dog has committed, is committing or is about to commit an offence against chapter 4 of the Act.

An authorised person may issue a compliance notice requiring the owner or responsible person to stop committing or not commit the offence or to remedy the matter. The compliance notice may also state an authorised person's intention to enter a premises to check compliance with the notice or the notice may instruct how it may be shown that the recommended action has been taken.

### **Clause 133 – Requirements for giving notice**

Clause 133(1) prescribes the matters to be stated in the compliance notice. Clause 133(2) provides for situations where a compliance notice may be given orally. A provision that waives a requirement for written notice to comply with a direction may offend fundamental legislative principles. The power is necessary in the circumstances to ensure enforcement of the legislation and public health and safety is protected.

Clause 133(2) contains a number of safeguards to the exercise of this power. An oral compliance notice may only be given when the authorised officer reasonably believes that the commission of the offence needs to be stopped, or action needs to be taken, urgently; or it is not practicable in the circumstances to immediately provide a notice in writing. Further, the authorised person must warn the owner or responsible person that, without reasonable excuse, it is an offence for them not to comply with the notice.

Clause 133(3) provides that where an oral compliance notice is given, an authorised person must provide a written compliance notice as soon as practicable.

### **Clause 134 – Failure to comply with notice**

Clause 134 prescribes a maximum penalty of 75 penalty units for non-compliance, without reasonable excuse, with a compliance notice.

Clause 134(2) provides that a person has a reasonable excuse if he or she had not committed, was not committing or was not about to commit, the offence in the notice. In addition to the fine, an authorised person is at liberty to enter and seize the dog if the public health and safety is compromised by failing to comply with the compliance notice.

## **Part 6                      Miscellaneous provisions**

### **Clause 135 – References in ch 5 to *local government and authorised person***

Clause 135 clarifies that for the purposes of Chapter 5, any reference to an authorised person is to an authorised person appointed by the local government, and for an authorised person, any reference to a local government is to the local government that appointed the authorised person.

### **Clause 136 – Impersonating authorised person**

Clause 136 provides that it is an offence to pretend to be an authorised person. A maximum penalty of 50 penalty units is prescribed for this offence.

This clause reflects the importance the State Government places on the role of an authorised person under the Act. This statutory position exercises strong powers which enhance community health and safety, and as such it is a very serious offence if a person impersonates an authorised person. The penalty provided is consistent with a similar offence in section 289 of the *Land Protection (Pest and Stock Route Management) Act 2002*.

### **Clause 137 – Obstruction of authorised person**

Clause 137 reflects the importance the State places on providing the necessary support to Authorised persons to undertake their role. Clause 137 creates an offence for a person to obstruct an authorised person in the exercise of their powers unless the person has a reasonable excuse. This offence specifically includes (not is not limited to) assaulting or threatening the authorised person.

### **Clause 138 – Authorised person may ask police officer for help in exercising particular powers**

Clause 138(1) provides that an authorised person is declared to be a public official for the *Police Powers and Responsibilities Act 2000* when exercising a power under the following provisions of the Bill:

- clause 111(1)(h) – an authorised person enters a property under an approved inspection program at any reasonable time of the day or night;
- clause 112 – an authorised person is exercising additional entry powers in relation to a dog;
- clause 123 – an authorised person is exercising general powers after entering a place;
- clause 125– an authorised person has entered a place, reasonably suspects that a dog has behaved in a manner which compromises community health and safety and is exercising powers to seize the dog.

Subclause (2) provides that when asked by an authorised person, a police officer may exercise the power under the relevant provision with the help, and using the force, that is reasonable in the circumstances as soon as is reasonably practicable.

Subclause (3) states that when a police officer gives help under this section, it is taken to be a response to a request by a public official under section 16(3) *Police Powers and Responsibilities Act 2000*.

Subclause (4) requires an authorised person, to the extent that it is reasonably practicable, explain to the police officer the powers he/she has under the relevant provision of the Bill and the reasons these powers are being exercised. This is another check and balance to ensure Authorised persons exercise their strong powers appropriately.

Subclause (5) provides that an authorised person's failure to provide an explanation to a police officer under subclause (4) does not affect the validity of the exercise of the power. This clause ensures that should an emergency require prompt action then there is no requirement for the Authorised person to exercise his/her obligations under sub clause (4), however after the emergency incident has been resolved, the Authorised person should fully inform the policy officer of what powers the Authorised person has and why they were exercised.

The effective management of dangerous, menacing and restricted dogs often requires authorised persons to work with police officers in exercising their duties. Police officers should be protected when assisting authorised persons exercising powers under this act.

### **Clause 139– Power to require name and address**

Clause 139 provides that an authorised person may require a person to provide their name and residential address if one of the criteria specified in subclause (1) is satisfied. One of the objectives of this legislation is to encourage responsible dog ownership. Requiring a cat or dog owner to provide their personal details ensures they can be held accountable for the actions of their cat or dog.

### **Clause 140– Failure to comply with personal details requirement**

Clause 140 (1) creates an offence for failing to provide personal details to an authorised person unless the person has a reasonable excuse. A maximum penalty of 50 penalty units is prescribed.

### **Clause 141 – Authorised person to give notice of damage**

Clause 141 requires an authorised person to give notice to an owner if the authorised person, or a person authorised by the person, causes damage during the exercise of a power under chapter 4 or chapter 5.

Clause 141(3) provides that if it is not possible to give notice to the owner, the authorised person must securely leave the notice in a conspicuous position at the place where the damage occurred.

### **Clause 142 – Compensation**

Clause 142 provides for a person, who incurs loss or expense as a result of the exercise of purported exercise of a power under chapter 5, to claim compensation. A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the compensation order.

## **Chapter 6    PID registry licences**

### **Part 1            How licence is obtained**

#### **Clause 143 – Application for licence**

Clause 143 provides that a person may apply to the chief executive for a PID registry licence. The application must be in the approved form and be accompanied by the fee prescribed under a regulation.

#### **Clause 144 – What the application must state**

Clause 144 lists the details that must be provided when applying for a PID registry licence. The details include name, relevant addresses and qualifications relevant to offering the PID registry service.

#### **Clause 145 – Consideration of application**

Clause 145 requires the chief executive to consider the application and decide to either grant or refuse the application for a PID registry licence.

#### **Clause 146– Criteria for granting application**

Clause 146 provides that the chief executive may only grant the PID registry licence if the chief executive is satisfied that the applicant is a suitable person to hold a licence. The intent of this clause is to ensure that licenses are only issued to applicants who can demonstrate their ability to comply with stringent minimum criteria to ensure the integrity and privacy of personal information held on Queensland residents.

#### **Clause 147 – Suitability of person to be licence holder**

Clause 147 sets out matters the chief executive may consider when considering whether the person is suitable to be a PID registry licence holder. The matters include whether the person has had a conviction for a relevant offence that is not a spent conviction, if the person has had a previous licence suspended or cancelled or if the person has been refused a licence application previously.

Under this clause, consideration can also be given to the other information included in the approved form and anything else relevant to the applicant's ability to conduct business as a PID registry licence holder.

### **Clause 148 – Inquiries into application for licence**

Clause 148 provides that the chief executive may make inquiries that will help in deciding on the suitability of the applicant.

The chief executive may also ask for more information from the applicant but must do so within 28 days of receiving the application and must allow at least 28 days for the applicant to provide the information. The chief executive may require that the information be verified by a statutory declaration.

If the applicant does not provide the information requested by the chief executive within the given time, the application is taken to be withdrawn.

### **Clause 149 – Decision on application for licence**

Clause 149 provides that, if the chief executive decides to grant a licence, the chief executive must issue a PID registry licence to the applicant.

If the chief executive decides to impose conditions on the licence or not grant the licence, the chief executive must give the applicant an information notice setting out the reasons for the decision that an appeal can be made against the decision, and the process for initiating an appeal.

### **Clause 150 – Failure to decide application for licence**

Clause 150 provides that, if the chief executive fails to make a decision about an application within 28 days after the application is received, the failure is taken to be a decision by the chief executive to refuse to grant the application.

If the chief executive requests additional information from the applicant and the chief executive fails to make a decision about the application within 28 days after the additional information is received, the application is taken to have been refused.

However, in both of these circumstances, the applicant is entitled to receive an information notice from the chief executive setting out the reasons for the decision, that an appeal can be made against the decision, and the process for initiating an appeal.



### **Clause 151 – Duration of licence**

Clause 151 specifies that a PID registry licence—

- comes into force on the day it is issued or renewed and
- remains in force for a time specified by the chief executive in the licence, which must not be more than three years from the issue or renewal of the licence.

## **Part 2 Provisions of licence**

### **Clause 152 – Mandatory conditions on licences**

Clause 152 sets out the conditions to which a PID registry licence is subject.

Clause 152 (a) states the licence holder must comply with this Act,

Clause 152 (b) states that the licence holder must display the licence or a copy of the licence at the holder's principal place of business.

### **Clause 153 – Licence holder must comply with licence conditions**

Clause 153 provides that it is an offence if the holder of a PID registry licence contravenes a condition on the licence. The maximum penalty is 100 penalty units. A penalty may be imposed even if the licence is also suspended or cancelled because of the contravention. The seriousness of the penalty reflects the importance being placed on the licensee to ensure the PID Registry is operated to a high standard and ensures privacy of the information contained in the PID Registry.

### **Clause 154 – Form of licence**

Clause 154 lists the licence details that must be stated on a licence.

## **Part 3                      Renewal of licences**

### **Clause 155 – Application for renewal of licence**

Clause 155 outlines how an application for a renewal of registration must be made and what it must contain.

The renewal application must be made at least 28 days before the previous licence ends. The application must be in the approved form, be signed by the applicant and be accompanied by the prescribed fee.

The chief executive must make a decision whether or not to renew the licence, having regard to the matters outlined in clause 147.

If the chief executive decides not to renew the licence, the applicant must be given an information notice setting out the reasons for the decision that an appeal can be made against the decision, and the process for initiating an appeal.

### **Clause 156 – Inquiries into application for renewal of licence**

Under clause 156, the chief executive may require the applicant to provide further information or documentation to help in deciding whether to grant a renewal application. The applicant must be given at least 28 days in which to provide the information or documentation.

If the applicant does not supply the required information or documentation within the time provided, the applicant is taken to have withdrawn the application.

### **Clause 157 – Licence taken to be in force while renewal application is considered**

Clause 157 provides that, if a licence holder applies for a licence renewal and a decision has not been made by the date the applicant's previous licence is scheduled to expire, the previous licence is taken to continue in force from the day it would have ended until either the application for renewal is granted or, if the application is refused, until an information notice for the decision is given to the applicant.

This provision ensures that, should there be a delay in making a final decision about a renewal, a gap does not occur between the expiry of the original licence and the commencement of the renewed licence.

## **Part 4                      Amendment of licences**

### **Clause 158 – Application for amendment of licence**

Clause 158(1) provides that a PID licence holder may apply to the chief executive for an amendment of the licence, including an amendment of any condition imposed by the chief executive.

Clause 158(6) states that a licence may be amended by endorsing the existing licence with the details of the amendment or by cancelling the original licence and issuing another.

Clause 158(2) states that the application must be in the approved form, must be signed by or for the applicant, and must be accompanied by the prescribed fee.

Under clauses 158(3) to (5), the chief executive must decide to amend or refuse to amend the licence, or impose a condition on the amended licence. If the chief executive decides to refuse to amend the licence or impose conditions on the amended licence, the chief executive must immediately give the applicant an information notice setting out the reasons for the decision that an appeal can be made against the decision, and the process for initiating an appeal.

### **Clause 159 – Inquiries into application for amendment**

Clause 159 provides that the chief executive may require the applicant to provide further information or documentation to help in making a decision about the application for amendment. The applicant must be given at least 28 days in which to provide the information or documentation.

If the applicant does not provide the required information within the given time, the applicant is taken to have withdrawn the application.

## **Part 5                      Suspension or cancellation of licences**

### **Clause 160 – Chief executive may impose suspension or cancel.**

Clause 160 provides that the chief executive may suspend or cancel a licence if satisfied that that a ground under Clause 161 exists.

### **Clause 161 – Grounds for suspension or cancellation**

Clause 161 sets out the circumstances that form grounds for the suspension or cancellation of a PID registry licence. Grounds include that the licence holder has done something that means he or she is no longer considered a suitable person to hold a licence; the holder has contravened a condition of the licence; or the licence was granted on the basis of a materially false or misleading representation or declaration.

Clause 161(2) provides that the chief executive may have regard to the matters set out in clause 147 (Suitability of person to be licence holder) to decide whether a person is a suitable person to hold a licence.

### **Clause 162 – Show cause notice**

Clause 162 provides that where the chief executive believes there are grounds to suspend or cancel a licence, the chief executive must give a show cause notice to the holder of the licence. The show cause notice must include the proposed action that the chief executive is taking under this subdivision, the grounds and associated circumstances for the proposed action and, if relevant, the proposed suspension period. In the interests of natural justice, the show cause notice should also invite the holder to, within 21 days after receiving the show cause notice, show why the proposed action should not be taken.

### **Clause 163 – Representations about show cause notices**

Clause 163 provides that a holder of an animal registry licence may make written representations about the show cause notice and the chief executive must consider all representations.

### **Clause 164 – Ending show cause process without further action**

Clause 164 provides that the chief executive must not take any further action about the show cause notice if, after considering the holder's representations, the chief executive no longer believes a ground exists to suspend or cancel the licence.

The chief executive must give the holder a notice that no further action is to be taken about the show cause notice.

### **Clause 165 – Suspension or cancellation**

Clause 165 provides the circumstances in which the chief executive may suspend or cancel a holder's licence.

If the chief executive considers the holder's representations made under clause 163 and still believes a ground exists or there are no accepted representations from the holder the chief executive may suspend or cancel the licence as proposed in the show cause notice.

The chief executive must immediately give an information notice for the decision to the holder.

### **Clause 166 – Immediate suspension**

Clause 166 provides the circumstances in which the chief executive may immediately suspend a holder's licence.

For the suspension to take effect, the holder of the licence must be given an information notice about the decision made by the chief executive as well as a show cause notice. The suspension commences as soon as the notices are given and remains in place until the earliest of the following circumstances is satisfied: the chief executive cancels the remaining period of the suspension; the show cause notice is finally dealt with; 28 days have passed since the notices were given to the holder.

If a licence holder has returned their licence to the chief executive, the chief executive must return the licence to the holder as soon as practicable if; the chief executive cancels the remaining suspension period, a decision is made regarding the show cause notice to lift the suspension or not cancel the licence or 28 days passes since the information and show cause notices were given to the holder.

### **Clause 167 – Return of suspended or cancelled licence to chief executive**

Clause 167 provides that where the chief executive has cancelled or suspended a licence, the licence holder must return the licence to the chief executive within 7 days after receiving the information notice, unless the holder has a reasonable excuse. The maximum penalty is 20 units.

### **Clause 168 – Effect of suspension or cancellation of licence**

Clause 168 provides that if the PID Registry licence is suspended or cancelled or otherwise ends, the holder must give the chief executive all records kept and maintained for the purpose of the PID registry service provided by the holder within 5 days of the termination of the licence.

## **Part 6                      Other provisions about licences**

### **Clause 169 – Surrender of licence**

Clause 169 provides that a licence holder may surrender the licence by notice, accompanied by the holder's licence, to the chief executive. Surrendering of the licence is deemed to take effect on the later of the following – the day the notice is given or the day stated in the notice.

### **Clause 170 – Application for replacement of licence**

Clause 170 enables a licence holder to apply for replacement of a certificate of the holder's licence, if the licence has been damaged, destroyed, lost or stolen. The licence holder must make the application to the chief executive and include the circumstances in which the licence was damaged, destroyed, lost or stolen as well as the fee for replacement as prescribed under a regulation.

### **Clause 171 – Decision about application for replacement of licence**

Clause 171 provides that the chief executive must consider the application for replacement of a holder's licence and either grant or refuse the application. If the chief executive decides to refuse to grant the application

the chief executive must immediately give the applicant an information notice for the decision.

## **Chapter 7 Registers**

### **Part 1 Registers kept by chief executive**

#### **Clause 172 – Chief executive must keep registers**

Clause 172 provides that the chief executive must keep a State-wide register of the regulated dogs in Queensland and that it should contain information provided by the chief executive officers of the local governments. The development of a regulated dog register is to ensure regulated dogs can be tracked throughout the State. Local governments will have authority to access the register, update the register and run reports from the register.

The chief executive must keep a register of PID register licence holders which contains the information required to be stated on the licence under clause 154 (Form of licence).

#### **Clause 173 – Who may inspect registers**

Clause 173 outlines those persons who are permitted to inspect the register. The persons listed are persons with a particular role in maintaining the integrity of the register or who have a role in performing functions under this Act.

Public information contained within the register may be inspected free of charge at the Department's head office during normal business hours or a person may receive a copy of the information available to them after paying a prescribed fee.

### **Clause 174 – Chief executive officer must give information**

Clause 174 provides that the chief executive officer of each local government must provide the chief executive with specified details of regulated dogs in the relevant local government area.

### **Clause 175 – Chief executive officer must give information about owner**

Clause 175 provides that the chief executive officer of each local government must provide the chief executive with specified details of changes in the circumstances of owners of regulated dogs in the relevant local government area, such as a change of address, within 7 days of receiving the information.

### **Clause 176 – Chief executive may ask for confirmation of particular information**

Clause 176 provides that the chief executive may ask the chief executive officer of each local government with a written statement as to whether information held by the State-wide register is still accurate and that the chief executive officer must respond within 28 days of receiving the request.

Clause 176(2) provides that the request must be in writing and may be made only once each 12 months.

## **Part 2                      Registers kept by local government**

### **Clause 177 – Registers comprising cat and dog registry**

Clause 177 provides that a local government must maintain a general register of cats and dogs, if another register is prescribed under a regulation, the local government must also maintain that register. The registries are collectively called the cat and dog registry of the local government.



### **Clause 178 – General register**

Clause 178 provides that the chief executive officer of each local government must ensure the register includes: registration information under Clause 49 (Relevant local government must give registration notice) about the cat or dog. Information on declared dangerous dogs and declared menacing dogs required to be stated in the register includes, if the dog is a regulated dog, the number recorded on its collar or its identification tag, and other information the local government considers appropriate.

### **Clause 179 - Public access to registers**

Clause 179 provides that each local government must keep its cat and dog registry open to inspection, however, information outlined in clause 47 about the owner of a cat or dog is not open to public inspection.

## **Chapter 8      Reviews and appeals**

### **Part 1              Review of decisions**

#### **Clause 180 – Appeal process starts with review**

Clause 180 provides that a person who has been given an original decision must, in the first instance, apply for a review of the original decision.

The inclusion of a review process preserves the principles of natural justice and allows for questions of fact to be resolved without instituting legal proceedings. This provision also provides an opportunity for local governments to have far greater control over and awareness of how their officers are enforcing the various provisions of this Act.

#### **Clause 181 – Who may apply for review**

Clause 181 provides that an interested person for an original decision may apply to the:

- chief executive officer for a review of a local government decision, or
- chief executive of the administering department for a decision made under chapter 2, part 1, division 3, subdivision 2, or chapter 6.

An interested person is a person who has been given, or is entitled to be given, an information notice or if the decision relates to a cat or dog—the owner of, or responsible person for, the cat or dog.

### **Clause 182 – Requirements for making PID review application**

Clause 182(1) sets out the requirements for making a PID review application. These include the requirement that the PID review application must be submitted on an approved form, must contain enough information for the chief executive to make a decision and must be submitted within 14 days of the applicant being given the original decision.

Clause 182(2) enables the chief executive to extend the time for making the PID review application.

### **Clause 183 – Requirement for making general review application**

Clause 183 operates in the same manner as clause 182, but is concerned with non-PID review applications.

### **Clause 184 – Stay of operation of original decision**

Clause 184 provides that all decisions must be reviewed within the local government before making an appeal to the Magistrates Court. The local government review (clause 184(1)) does not stay the original decision. However, clause 184(2) allows the appellant to appeal immediately to the court to stay the decision while the local government review is in progress. Clause 184(3) allows the stay to remain in place throughout the review and a subsequent appeal to the court (if any). Clause 184(6) states that the stay must cease when the local government review is decided or after any later period the court allows for the appellant to appeal the local government decision. An example is a decision that a dog must be destroyed: the dog would not be destroyed until the appeal process had been exhausted.

### **Clause 185 – PID review decision**

Clause 185 provides that the chief executive officer must conduct the review of the original decision and make a decision to confirm, amend, or substitute the original decision within 20 days of receiving the PID review application from the interested person.

To ensure that the review decision is not influenced by the original decider, the review application cannot be dealt with by the person who made the original decision or a person holding an equal or less senior office.

If the original decision is made by the chief executive officer, he or she does not have to comply with clause 185(2) because the chief executive officer is the most senior officer employed by the local government and consequently no other officer fits within the requirements of clause 185.

### **Clause 186 – Other review decisions**

Clause 186 operates in the same manner as clause 185 but is concerned with the making of a review decisions relating to an original decision of a local government.

### **Clause 187 – Notice of PID decision or review decision**

Clause 187 provides that the chief executive of a relevant local government or the chief executive must give the applicant the review decision within 10 days of making the review decision.

The review decision must state the reasons for the decision; that the applicant has 14 days following the review decision to appeal against the decision with the Magistrates Court; how to appeal; and that the applicant may apply to the court for a stay of the decision.

If the chief executive officer of the relevant local government or the chief executive does not provide the applicant with the review decision within 10 days of making the decision, the review decision is taken to confirm the original decision.

## **Part 2                      Appeals**

### **Clause 188 – Who may appeal**

Clause 188 provides that a person who is given a review decision under chapter 8, part 1 of the Bill may appeal against the decision to a Magistrates Court.

### **Clause 189 – Starting appeal**

Clause 189 sets out the requirements for starting an appeal in the Magistrates Court.

The purpose of including a judicial appeal process through the Magistrates Court is to allow the applicant to appeal the review decision based on a question of law or a question of fact.

### **Clause 190 – Stay of operation of review notice**

Clause 190 provides that the Magistrates Court may grant a stay of a review notice to secure the effectiveness of the appeal. The stay may be granted on conditions the Magistrates Court considers appropriate.

Clause 190(3) provides for conditions of a stay if the dog is the subject of a regulated dog declaration, such as muzzling and effective control requirements and prohibition on supply.

Ensuring that these conditions remain during the review and appeal process enhances community safety until an outcome of the review and appeal process is determined.

Clause 190(4) provides that a court can not grant a stay beyond the time taken by the court to decide the appeal.

Clause 190(5) provides that an appeal against a decision in a review notice affects the decision, or the carrying out of the decision, only if it is stayed. If the original or review notice is not stayed during the review and appeal process all conditions in the notice remain applicable to the applicant.

### **Clause 191 – Hearing procedures**

Clause 191 provides for the hearing procedures for the Magistrates Court in deciding an appeal.

### **Clause 192 – Court’s powers on appeal**

Clause 192 outlines the Magistrates Court’s powers on appeal.

### **Clause 193 – Appeal to District Court**

Clause 193 provides that a decision of the Magistrates Court can be appealed in the District Court, but only in relation to a question of law.

## **Chapter 9      Miscellaneous provisions**

### **Part 1              General offence**

#### **Clause 194 – Particular persons must ensure dog does not attack or cause fear**

Clause 194 provides that a relevant person for a dog must take reasonable steps to ensure that the dog does not attack or cause fear in a person or another animal. The maximum penalty of 300 penalty points reflects the seriousness of situations in which a dog causes severe damage to, or kills, a person.

This offence is intended to ensure that a relevant person for a dog which has behaved dangerously or menacingly, who has chosen to surrender the dog rather than keep it under strict keeping and control conditions, is held accountable for the actions of the dog.

#### **Clause 195 – Defences**

Clause 195 provides a number of specific defences to an offence under clause 194.

The defences contained within clause 195 allow the defendant to prove if their dog attacked or acted in a way that caused fear to the person or animal in certain situations including provocation, hunting on private property, if the dog was a working dog acting within its role or the dog was a

government authority dog and the offence happened when the dog was acting within the scope of their role.

### **Clause 196 – Prohibition on allowing or encouraging dog to attack or cause fear**

Clause 196 provides that it is an offence for a person to allow or encourage an animal to attack or cause fear in a person or another animal. The intent of this clause is to ensure that dogs are not used as weapons. This does not preclude dogs being trained for legitimate purposes outlined in clause 195. The maximum penalty for such an offence is 300 penalty points.

## **Part 2                      Greyhounds**

### **Clause 197 – Muzzling decommissioned greyhounds in public places**

Clause 197 provides a decommissioned greyhound may be in a public place without it being muzzled, despite any local law. The dog must not be a declared dangerous or menacing dog and it must have successfully completed a program prescribed under a regulation.

Such a program would include the Greyhound Queensland's Greyhound Adoption Program (GAP) training. Under GAP, greyhounds are microchipped, desexed, and obedience trained and after completion wear specially designed collars to indicate that they have undergone the program and been certified. The completion of a program of this nature addresses the public safety concerns relevant to this legislative scheme.

## **Part 3                      Legal provisions**

### **Division 1                Evidence generally**

#### **Clause 198 – Evidentiary value of copies**

Clause 198 provides that a copy of a document that is claimed to be made under the authority of a local government or its mayor and claimed to be

verified by the mayor or authorised by an employee of the local government is taken to be a document made under the local government's authority as long as there is no evidence to the contrary.

A copy of a document in a proceeding is considered as if it is the original document.

### **Clause 199 – Evidentiary value of certificates**

Clause 199 provides that a certificate claimed to be signed by the chief executive officer of a local government containing information on or from a local government record is evidence in a proceeding of the matters contained in the certificate.

## **Division 2            Evidence for proceedings**

### **Clause 200 - Application of div 2**

Clause 200 provides that this division (division 2 – evidence for proceeding under Act) applies to proceedings in relation to this Act.

### **Clause 201 – Appointments and authority**

Clause 201 provides a presumption on the appointment of an authorised person and their powers under chapter 5 unless, with reasonable notice, a party to the proceeding requires proof of either the appointment of an authorised person or their powers under this chapter and chapter 5.

The purpose of this clause is to only require a local government to prove the appointment of a person and their powers if reasonable notice is given of this requirement.

### **Clause 202 – Veterinary surgeon certificates**

Clause 202 provides that a certificate claimed to be signed by a veterinary surgeon stating that a dog is of a breed mentioned in clause 63(1) is considered evidence of the matter.

The purpose of clause 202 is to allow a local government to rely on the expert opinion from a veterinary surgeon on the breed of the dog.

### **Clause 203 – Other evidentiary aids**

Clause 203 provides for the application of clause 198 (Evidentiary value of copies) for a proceeding about an offence under this Act. The provision is necessary to ensure that the matters listed in this clause are taken to be a record of a local government within the meaning of clause 198 and therefore admissible as evidence in a proceeding under this Act.

## **Division 3            Other provisions**

### **Clause 204 – False or misleading information**

Clause 204 provides that it is an offence for a person to give information that the person knows to be false or misleading (either orally or in a document) to the chief executive, the chief executive officer of a local government, an authorised person, an authorised implanter or a registry licence holder.

A maximum penalty of 100 penalty units applies.

## **Part 4                    Delegation of powers**

### **Clause 205 – Delegation by chief executive**

Clause 205 provides that the chief executive of the department has the authority to delegate the chief executive's powers under this Act to an officer of the department who has the qualifications, experience and standing appropriate to exercise the power.

### **Clause 206 – Delegation by chief executive officer**

Clause 206 provides that the chief executive officer of a local government has the authority to delegate the chief executive officer's powers under this Act to an officer of the relevant local government who has the qualifications, experience and standing appropriate to the exercise of the power.



## **Part 5                      Miscellaneous**

### **Clause 207 – References to right to enter**

Clause 207 provides that a right to enter a place under this Act includes the right to leave and re-enter the place from time to time and remain on the place for the time necessary to achieve the purpose of entry.

### **Clause 208 – Payment of penalties for offences against particular provisions**

Clause 208 provides that any penalties imposed by a court for offences under chapter 4 or clause 134 (failure to comply with notice) of the Act must be paid to a local government decided by the court, despite the *Local Government Act 1993* and the *Acts Interpretation Act 1954*.

### **Clause 209 – Approval of forms**

Clause 209 provides that the chief executive of the department and the chief executive officer of a local government may approve forms as specified under this Act.

### **Clause 210 – Regulation-making power**

Clause 210 provides that the Governor in Council may make regulations as specified under this Act about the issues outlined in clause 210(2).

Clause 210 also provides that a regulation may prescribe a penalty of no more than 20 penalty units for contravention of a regulation.

## **Chapter 10    Transitional provisions**

### **Clause 211 - Deferral for particular local governments**

Clause 211 provides that, on 1 July 2009, the Act will commence for local governments located in south-east Queensland, being Brisbane City Council, Gold Coast, Ipswich, Lockyer Valley, Moreton Bay, Redland, Scenic Rim, Somerset, Sunshine Coast, and Toowoomba.

Provisions relating to the management of menacing, dangerous and restricted dogs will commence on 1 July 2009 for all local governments, but those relating to registration and microchipping of cats and dogs will commence by proclamation for local governments other than south-east Queensland local governments when the local governments have developed their resources to be in a position to carry out their responsibilities under the Act.

### **Clause 212 – Restricted dog register**

Clause 212 provides that local governments are required to keep a restricted dog register. SEQ councils are required to keep a restricted dog register as part of their general register as outlined in clause 178.

### **Clause 213 – Cats and dogs implanted before commencement**

Clause 213 provides that clause 37 applies, from the commencement of this clause, to a person who, before the commencement of this clause, implanted a PID in a cat or a dog and has kept, or keeps, any identifying information for the cat or dog.

### **Clause 214 – Regulated dogs must be implanted with a PPID**

Clause 214 provides the owner of a regulated dog must ensure the dog is implanted with a PPID within 14 days after the commencement of this section, unless they have a reasonable excuse for non-compliance. Clause 214(2) provides that it is a defence to a prosecution for an offence under this clause if there is a signed veterinary surgeon's certificate, or other evidence, stating that the dog is implanted with a PID or that implanting the dog with a PPID is likely to be a serious risk to its health. The maximum penalty prescribed for non-compliance is 75 penalty units.

### **Clause 215 – Desexed cat or dog at commencement need not be tattooed for desexing**

Clause 215 provides that the owner of a cat or dog that was desexed at the commencement of chapter 2, part 2 does not contravene clause 42 (1) if the cat or dog is not tattooed for desexing.

### **Clause 216 – Cat or dog not registered at commencement**

Clause 216 provides that the owner of a cat or dog that is unregistered at the commencement of this Act must register the cat or dog within a specified timeframe after the commencement of the Act. This clause applies to cats or dogs that are required to be registered under clause 44 of this Act.

### **Clause 217 – Restricted dog under Local Government Act 1993**

Clause 217 provides that a dog that was a restricted dog under LGA section 1193E before the commencement of this Act is taken to be a restricted dog under clause 63 (What is a restricted dog). This includes a cross-breed that was declared to be a restricted dog or was granted a restricted dog permit under the LGA.

### **Clause 218 – Permit applications**

Clause 218 provides that if a permit application was made under LGA section 1193Q but was not finally decided before the commencement of this Act, the application is taken to be a permit application under clause 72 (Who may apply for permit). Consequently, consideration of the application will continue under clause 72.

### **Clause 219 – Restricted dog register kept under Local Government Act 1993 continues**

Clause 219 provides that a restricted dog register kept under section 1193ZN of the LGA before the commencement of this Act is considered to be a restricted dog register under clause 212 (Restricted dog register) of this Act. This will ensure the obligation for local governments to maintain these registers continues under this Act.

### **Clause 220 – Person given or entitled to be given information notice**

Clause 220 provides that a person who was entitled to appeal against a decision as mentioned in section 1193ZZH of the LGA, but has not commenced an appeal under section 1193ZZI of the LGA before the commencement of this Act, may apply for a review of the decision under chapter 8 of this Act as if the appeal had been made under this Act.

### **Clause 221 – Registration of dog or cat continues**

Clause 221 provides that a restricted dog registered under the LGA before the commencement of this section, or any cat or dog registered under a local law before the commencement of this section, is taken to be registered under chapter 3.

## **Chapter 11 Amendment of other Acts**

### **Part 1 Amendment of City of Brisbane Act 1924**

#### **Clause 222 – Act amended in pt 1**

Clause 222 provides that part 1 amends the *City of Brisbane Act 1924*.

#### **Clause 223 – Amendment of s 3A (Application of the Local Government Act)**

Clause 223 omits the eleventh dot point from the *City of Brisbane Act 1924*, section 3A(2). Section 3A(2) lists provisions of the *LGA* that apply to Brisbane City Council and the eleventh dot point refers to the *LGA* chapter 17A. The omission of the reference is consequential to the relocation of chapter 17A to this Act.

### **Part 2 Amendment of Local Government Act 1993**

#### **Clause 224 – Act amended in pt 2**

Clause 224 provides that part 2 amends the *Local Government Act 1993*.

**Clause 225 – Amendment of s 9 (Act applies only so far as expressly provided)**

Clause 225 omits from section 9(2) of the LGA, the eleventh dot point that provided for the application of chapter 17A of the LGA to Brisbane City Council. Chapter 17A of the LGA is being relocated to this Bill.

**Clause 226 – Amendment of s 31 (Inconsistency with State law)**

Clause 226 omits section 31(2) which referred to section 1193D. Section 1193D is part of chapter 17A which is being relocated to this Bill.

**Clause 227 – Amendment of s 441C (Definitions for div 3)**

Clause 227 amends section 441C to clarify that the application of the caretaker period arrangements to not apply to a by-election.

**Clause 228 – Omission of ch 15, pt 5, div 10 (Special provision for local laws about dogs)**

Clause 228 amends the LGA by omitting chapter 15, part 5, division 10 (Special provision for local laws about dogs). The provisions of chapter 15, part 5, division 10 have been reviewed and inserted into this Bill. The omission of chapter 15, part 5, division 10 at the same time this Bill comes into force will ensure that legislation relating to dangerous dog entry and seizure provisions will remain continuously in force.

**Clause 229 – Omission of ch 17A (Regulation of restricted dogs)**

Clause 229 amends the LGA by omitting chapter 17A (Restricted dogs). The provisions of chapter 17A have been reviewed and inserted into this Bill. The omission of chapter 17A at the same time this Act comes into force will ensure that legislation relating to restricted dogs will remain continuously in force.

**Clause 230 – Amendment of sch 2 (Dictionary)**

Clause 230 amends the LGA by omitting a number of definitions that relate to chapter 17A of the LGA. Following the omission of chapter 17A these definitions are no longer necessary for purposes of the LGA. The omitted definitions have been reviewed and inserted into this Bill.

## **Schedule 1      Permit conditions and conditions applying to declared dangerous and menacing dogs**

### **Item 1 – Definitions for sch 1**

Item 1 provides a definition for relevant dog, relevant person and relevant place as related to schedule 1.

### **Item 2 – Identification**

Item 2 provides that a relevant dog must be implanted with a PPID, wear a collar with an identifying tag at all times and that the tag must be of the type, and contain the information, prescribed under regulation. In ensuring community safety it is important that a relevant dog can be quickly and easily identified.

### **Item 3 – Muzzling and effective control in public**

Item 3 provides that a relevant dog must be muzzled and under the effective control of an adult when in a public place unless it is enclosed in a vehicle in such a way that any part of it is prevented from being outside the vehicle.

Relevant dogs have demonstrated a propensity to behave dangerously, or are presumed inherently dangerous, and therefore they must wear a muzzle that does not allow them to bite a person or other animal.

### **Item 4 – Enclosure**

Item 4 provides the conditions for a relevant dog enclosure.

It is important that all relevant dogs are contained in appropriate enclosures and that the enclosures have self-closing gates, are child proof and are constructed in accordance with a regulation. This will ensure a relevant dog cannot get under, over or through the enclosure walls and most importantly will prevent children from entering the enclosure of a relevant dog.

### **Item 5 – Public Notice**

Item 5 provides for the placement of signs to notify persons of the presence of a relevant dog at all entrances to the relevant place for a relevant dog.

The precise nature of the sign will be prescribed under a regulation.

It is important that the general public are aware of where relevant dogs are being kept and signs will ensure people can avoid entering places where relevant dogs are kept.

### **Item 6 – Place where relevant dog is usually kept**

Item 6 provides that a relevant dog must not be usually kept at a place other than the relevant place for that dog.

### **Item 7 – Notice of other restricted dog permit for dog**

Item 7 provides that a permit holder must immediately give the relevant local government written notice if another restricted dog permit is obtained for an existing restricted dog. This provision applies where there is a change in the address for the relevant place where the restricted dog is kept which places the dog outside the relevant local government area.

### **Item 8 – Notice of change of address**

Item 8 provides that a restricted dog permit holder must notify the relevant local government within seven days of any change of residential address. If the new residential address is in another local government area, the owner or permit holder must also notify the other local government.

While the time period is short, this information is crucial for returning lost animals to their owners. Moving house or changing owners is the time when animals are most likely to go missing and unless the owners can be found quickly, the animals may be deemed 'unable to be returned'.

This provision only relates to the owner or permit holder's residential address and not to the relevant place, though these places may be the same.

## **Schedule 2 Dictionary**

Schedule 2 defines the terms used within this Bill.

The definition of *working dog* is intended to be very limited. It applies only to dogs that are used to work with other animals, such as sheep or cattle, on a rural property and are not usually taken into urban areas.

The term is not intended to include dogs that are used as hunting dogs or pig dogs, nor is it intended to cover security or guard dogs. These dogs must be registered and microchipped.

While dogs defined as working dogs are exempt from mandatory registration and microchipping, this does not mean they are not permitted to be registered or microchipped. For example, an owner may decide it is in his or her interests to have a valuable working dog microchipped in order to prove its identity and ownership should it be stolen.

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