

Animal Management (Cats and Dogs) Regulation 2019

Explanatory notes for SL 2019 No. 177

made under the

Animal Management (Cats and Dogs) Act 2008

General Outline

Short title

Animal Management (Cats and Dogs) Regulation 2019

Authorising law

Sections 3, 4, 12, 43W, 44, 113, 143, 155, 158, 170, 174, 197 and 210; Schedule 1, sections 2, 4 and 5; and Schedule 2, definition of Prescribed Permanent Identification Device (PPID) information and tattoo; of the *Animal Management (Cats and Dogs) Act 2008* (the Act)

Policy objectives and the reasons for them

The policy objective of the *Animal Management (Cats and Dogs) Regulation 2019* (the new Regulation) is to ensure that adequate controls are in place for the management of cats and dogs in Queensland by prescribing matters that assist in the effective administration of, and help achieve the purposes of, the Act.

The purposes of the Act are to: provide for the identification of cats and dogs, registration of dogs, and effective management of regulated dogs; promote the responsible ownership of cats and dogs; and promote the responsible breeding of dogs in Queensland.

The new Regulation will replace the *Animal Management (Cats and Dogs) Regulation 2009* (the expired Regulation) which is due to expire on 1 September 2019 under the automatic expiry provisions in part 7 of the *Statutory Instruments Act 1992*.

Achievement of policy objectives

The subordinate legislation achieves the policy objectives by including provisions largely based on those in the expired Regulation. In particular, the new Regulation, amongst other things, maintains the existing controls for regulated dogs, which create safeguards for the public, and ensures that there is consistency across the State concerning how dogs and cats are managed.

There are, however, several minor differences between the new Regulation and the expired Regulation. Changes have been made to modernise requirements and make them more consistent with other jurisdictions; implement controls for local governments to manage dogs which pose a risk to the community; and ensure that cats and dogs that have become lost can be reunited with their owners as quickly and efficiently as possible. These changes relate to identifying tags, enclosures and signs for regulated dogs, which includes declared dangerous dogs, declared menacing dogs and restricted dogs.

Consistency with policy objectives of authorising law

The new Regulation is consistent with the objectives of the Act.

Inconsistency with policy objectives of other legislation

The new Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

An alternative way of achieving the policy objective would be to replace the expired Regulation without any changes. This option would not make necessary technical corrections or address stakeholder expectations about the management of regulated dogs in Queensland.

Allowing the expired Regulation to lapse without replacing it would reduce the effectiveness of the Act. In particular, there would be a decrease in controls for regulated dogs, which could have serious implications for public safety. Requirements about dog and cat management can be administered by local government through local laws. However, there is a risk that this would result in unnecessary inconsistency among local government jurisdictions throughout Queensland and impose a significant workload on local government.

Benefits and costs of implementation

The new Regulation will benefit local government and the community by maintaining consistency and efficiency in the implementation of the Act throughout Queensland.

The new Regulation does not impose additional cost on the State Government or the general community compared to the expired Regulation. However, the new Regulation will result in minimal additional costs being imposed on local government as a result of the new requirements for regulated dog tags.

The new Regulation continues a requirement under the expired Regulation for some members of the community to upgrade components of their current regulated dog enclosures as a result of the new Regulation, which may impose additional costs. This requirement is consistent to that in the expired Regulation regarding transitional requirements for regulated dogs under former local laws. However, these requirements only apply to people who have regulated dogs, and will only come into effect once their existing enclosures no longer comply with the applicable requirements, or the regulated dogs die. The additional requirements for enclosures impose extra safety requirements for containing a regulated dog, and are, therefore, in the public interest.

Similarly, there are other costs associated with requirements under the expired Regulation that are being continued under the new Regulation, including PPIDs and associated implanter courses; ear tattooing; signage for regulated dogs; and identifying tags for regulated dogs. The costs associated with these continuing provisions are borne by PPID implanters, in the case of prescribed courses, and cat and dog owners for all other requirements. The purpose of these requirements is to ensure public safety and ensure that lost cats and dogs can be returned to their owners, which is in the public interest.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA Act). Any potential breaches are addressed below.

Legislation should have sufficient regard to rights and liberties of individuals – LSA section 4(2)(a)

Privacy

Part 7 of the new Regulation contains provisions concerning information to be contained in registers about regulated dogs maintained by local governments and exchanged between the Chief Executive Officers of local government and the Chief Executive (of the relevant department).

Whilst the provisions which establish the registers and exchange of information reside in the Act, the particular information that is to be exchanged between Chief Executive Officers of local governments and the Chief Executive is prescribed in the new Regulation, and this may potentially breach an individual's rights to privacy.

However, the privacy of individuals is protected to the extent that access to registers kept by the Chief Executive is restricted to persons who are performing functions under the Act or persons who need the information in the register about a specific dog for a particular purpose. The exchange of information is justified to ensure effective oversight and appropriate enforcement of requirements for relevant dogs in Queensland.

Legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference

Identification devices

Section 4 of the new Regulation prescribes the requirements for prescribed permanent identification devices and incorporates Australian Standards *AS 5018* and *AS 5019* as requirements with which a PPID must comply. This has the effect of placing an additional obligation on PPID importers, distributors and wholesalers because Australian Standards are not freely accessible to the public, but are available through the Standards Australia website for a small cost.

The standardisation of PPIDs used to identify cats and dogs in Queensland, although a small impost, can be justified to ensure consistency with other Australian jurisdictions. Standardisation of PPIDs will assist Queensland cats and dogs which are lost in other jurisdictions, to be reunified with their owners.

Section 6 prescribes the way a dog or cat is to be tattooed. This provision replicates a former provision in the expired Regulation. The prescribed tattoo provides a standardised way of identifying de-sexed cats and dogs. The degree of interference by the requirement to tattoo desexed cats and dogs can be justified on the basis that it reduces the administrative burden on cat and dog owners and veterinarians as it does not require them to produce or keep a de-sexing certificate.

The provision also reduces the burden on local government by providing officers with an easy means of visually determining if a cat or dog has been de-sexed. This avoids a cat or dog undergoing unnecessary veterinary examination to determine whether it has been desexed.

Regulated dogs (i.e. declared dangerous dog, declared menacing dog or restricted dog)

Section 9 prescribes the information to be contained on, and the type of tag to be attached to, a relevant dog's collar. Section 10 prescribes the requirements for an enclosure for a relevant dog at a relevant place including the materials and situation of the enclosure for the size of dog. Section 11 prescribes the dimensions, quality and type of sign which must be displayed if a relevant dog is kept at a relevant place. Section 12 prescribes the information which must be displayed on a sign notifying the public that a relevant dog is kept at a relevant place.

Sections 9, 10 and 12 replicate requirements of the expired Regulation. Section 11 replicates a provision of the expired Regulation with minor clarification of size and colour of the sign.

The restrictions on ordinary activity imposed on owners of relevant dogs by the requirements of these sections is justified when considering the potential serious injury that can be inflicted, and the fear these dogs may cause to people and other animals. It is reasonable, on balance, to impose these measures to ensure that relevant dogs are under effective control and to alert the community as to their presence at a property.

Legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act - LSA, section 4(5)(e)

Section 4 incorporates Australian Standards AS 5018 and AS 5019 as requirements with which a PPID must comply and may affect the rights and liberties of PPID importers, distributors and wholesalers. These standards were also in the expired Regulation, however, the new Regulation incorporates versions of these standards from time to time, rather than the version that is in place on commencement of the new Regulation.

The potential breach of FLPs is that incorporation of Australian Standards is subdelegation. Australian Standards are documents made by entities outside of the framework of government and this may be perceived as delegating law-making powers to those entities. Additionally, the inclusion of Australian Standards may also be perceived as incorporating legislation without sufficiently subjecting the exercise of a delegated power to Parliamentary scrutiny as only the initial subordinate legislation, and versions of the Australian Standards current at commencement of the subordinate legislation, would be subject to Parliamentary review.

The incorporation of Australian Standards is common practice in State and Commonwealth legislation. The incorporation of Australian Standards in the new

Regulation is needed to ensure national consistency for regulated dog signage and the devices used to permanently identify cats and dogs throughout Australia, which helps to ensure that Queensland cats and dogs that become lost interstate are able to be easily returned to their Queensland owners.

In addition, Australian Standards are developed by Standards Australia, which is Australia's leading independent, non-government, not-for-profit standards organisation. Australian Standards are subject to periodic review and are kept up to date through the issue of amendments or new editions as necessary. It is anticipated that the Australian Standards incorporated in the subordinate legislation (*AS 1319*, *AS 5018* and *AS 5019*) will not be subject to regular change as they are from 1994 and 2001 and relate to subject matter that does not require regular version updates of the standards.

The Australian Standards incorporated into the subordinate legislation define technical specifications related to: requirements for the design and use of safety signs intended to regulate and control safety related behaviour (*AS 1319*); the structure of the radio-frequency identification code used to identify animals electronically (*AS 5018*); and, product specifications for the design, deployment and use of implanted radiofrequency transponder technology (*AS 5019*). These technical specifications are, in part, not suitable for inclusion in legislation due to their technical and detailed nature. Each Australian Standard included pertains to very specific subject matter, which has a very limited application and subsequent impact on the community.

Consultation

The Department of Agriculture and Fisheries (the department) consulted with key stakeholders between January 2019 and August 2019, including through face-to-face meetings. The department conducted a review of the expired Regulation and released a discussion paper for consultation in February 2019. A final report of the review with recommendations was distributed for comment in March 2019.

South east Queensland Councils were primarily targeted for local government consultation as these Councils hold the majority of cat and dog owners, particularly owners of regulated dogs.

The stakeholders consulted included:

- Local Government Association of Queensland
- South East Regional Animal Management Group
- Brisbane City Council
- Gold Coast City Council
- Ipswich City Council
- Logan City Council
- Queensland Racing Integrity Commission
- Australian Veterinary Association (Queensland Division)
- TAFE Queensland
- Animal Industry Resource Centre
- Microchips Australia
- Mini Microchips Australia Pty Ltd
- Dogs Queensland
- Plasvacc Pty Ltd
- RSPCA Queensland

- University of Queensland.

All the stakeholders consulted with were supportive of remaking the expired Regulation with the changes.

The department sought advice from the Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission through a Preliminary Impact Assessment. OBPR considered the department had satisfactorily met the objectives for sunset reviews as set out in the guidelines; and that the information provided by the department to the Commission demonstrated a need for continued regulatory action; and evaluated that the Regulation continued to satisfy its objectives.

OBPR considered the proposed amendments were unlikely to lead to significant adverse impacts. Given these points, OBPR advised that no further regulatory impact analysis under the guidelines was required prior to the remake of the expiring Regulation.

©The State of Queensland 2019