

# CAT BILL 2011

## EXPLANATORY MEMORANDUM

### OVERVIEW OF THE BILL

The purpose of this Bill is to introduce measures to ultimately reduce the large number of stray cats being euthanised each year, to encourage responsible cat ownership, and to provide for better management of the unwanted impacts of cats on the community and environment.

Currently, the legislative control of domestic cats is facilitated through the adoption of local laws by local governments. However, only a small minority (19 or 13% of all local governments) have introduced cat control local laws, which leads to regulatory inconsistency across the State. This is in contrast to the Statewide consistency of other legislation in Western Australia such as the *Dog Act 1976* and *Animal Welfare Act 2002*.

The Joint Standing Committee on Delegated Legislation has also formed a view that the *Local Government Act 1995* does not provide the legislative basis for a local law to contain provisions requiring the sterilisation of cats. Further, the Committee was of the opinion that, in any case, a local law was not the appropriate legislative instrument for this purpose and has disallowed more recent attempts by local governments to introduce local laws on the basis that cat control needs to be dealt with on a State-wide basis. This has made it more difficult for local governments to address this issue themselves and reinforced the need for State legislation.

The key features of the Cat Bill are:

- a) Providing for all cats that have reached 6 months of age to be microchipped, sterilised and registered with the local government where they are usually kept;
- b) Providing for all cats to also be microchipped and sterilised prior to transfer;
- c) Providing for local governments to administer and enforce the provisions of the Bill;
- d) Providing for local governments to be able to seize cats; and
- e) Providing for local governments to create local laws for the control of cats within their district.

To allow local governments and members of the public time to prepare for its introduction, there will be a phased introduction with a long lead time. Phase 1 of the legislation will take effect from 1 November 2012, with the provisions requiring microchipping, sterilisation and registration to come into effect a year later on 1 November 2013.

## **CLAUSE NOTES**

Outlined below is a brief description of each clause of the *Cat Bill 2011*.

### **Part 1 - Preliminary**

This part contains the title of the Act, the relevant commencement provisions and definitions of the terms used within the Bill.

#### ***Clause 1 – Short title***

Clause 1 cites the short title of the Act.

#### ***Clause 2 – Commencement***

This clause provides for the commencement of the Bill. Section 1 and 2 come into operation on the day on which the Bill receives Royal Assent. The remainder of the Bill other than sections 5, 6, 14(1), 18(1), 22-24, 26-35, 41, 49, 55-60 and 86 come into effect on 1 November 2012. The remaining sections come into effect on 1 November 2013.

Prior to commencement, extensive regulations will be drafted and adequate time will also be provided to ensure that local governments and cat owners are prepared for the implementation of the legislative requirements.

#### ***Clause 3 – Terms Used***

Contains definitions of the terms used in the Act. The following are of particular significance.

***cat management facility*** means –

- a) a facility operated by a local government that is, or may be, used for keeping cats; or
- b) a facility for keeping cats that is operated by a person or body prescribed; or
- c) a facility for keeping cats that is operated by a person or body approved in writing by a local government.

Regulations will be developed to prescribe bodies including the Cat Haven and RSPCA for the purposes of (b).

***microchip*** means an identification device of a prescribed type that –

- a) is capable of being implanted in a cat; and
- b) is designed to record information in a way that can be electronically retrieved.

Regulations will be introduced to prescribe that a microchip must be designed to transmit the microchip number when scanned by an electronic reader, that it can store the microchip number, includes a manufacturer's code and complies with the relevant transponder's requirements.

**microchip database company** means –

- a) a person or body-
  - (i) that keeps a microchip database; and
  - (ii) that is prescribed as a microchip database company for the purposes or this definition;
- and
- b) in relation to a particular cat, means the microchip database company that keeps, or has agreed to keep, records containing information about that cat and its owner.

Regulations will be introduced to prescribe companies who are to be classified as a microchip database company, and at this stage this is expected to include the National Pet Register, Central Animal Records (Aust) Pty Ltd, HomesafeID Incorporated and the Australasian Animal Registry.

**microchip implanter** means –

- a) a prescribed person; or
- b) a person holding the prescribed qualifications for a microchip implanter.

It is intended that regulations will be introduced to prescribe that local government rangers who have completed a prescribed qualification can implant microchips for the purposes of this Act. This will involve an amendment to regulation 45 of the *Veterinarian Surgeons Regulations 1979* to prescribe microchipping by a microchip implanter authorised by regulations developed under this Act.

**registered owner**, in relation to a cat, means the person in whose name the cat is registered.

**transfer**, in relation to ownership of a cat, includes –

- a) sell, trade, give away, take consideration for, transfer ownership of and offer for sale; and
- b) to reclaim from a cat management facility.

The words and expressions defined in the *Local Government Act 1995* have the same meaning as this Act, unless the contrary intention appears.

#### **Clause 4 – Terms used: owner**

This clause defines an owner in relation to the Bill, which is that an owner in relation to a cat, means any of these persons:

- a) in the case of a cat that is registered, the registered owner of the cat; or
- b) in the case of a cat that is not registered, a person who, or an owner of a business or organisation that, ordinarily keeps and cares for the cat; or
- c) if the person referred to in paragraph (b) is a child under 18 years of age, that child's parent or guardian.

If the cat is not registered but microchipped, a person whose name is recorded as the owner in the microchip database is taken to be the owner, in the absence of evidence to the contrary.

## **Part 2 – Registration, identification and sterilisation of cats**

This part sets out the requirement for all cats to be sterilised, microchipped and registered and the process by which this occurs. It also provides for the roles and responsibilities of local governments and cat owners within this process.

### **Division 1 – Registration and tagging**

#### ***Clause 5 – Cats to be registered***

Subclause (1) requires that the owner of a cat that has reached 6 months of age must register the cat with the relevant local government.

Subclause (2) provides that cats are exempt from registration if:

- a) the person has kept the cat for less than 14 days;
- b) the person has been a resident of the State for less than 14 days; or
- c) the cat belongs to a class of cats prescribed as exempt.

Regulations will be introduced to prescribe that cats are exempt from registration if they are in a facility such as the Cat Haven or RSCPA waiting to be rehomed.

Registration will be a key mechanism to ensure compliance with the legislation through the requirement for cat owners to provide evidence to a local government that the cat is microchipped and sterilised.

A maximum penalty of \$5,000 applies for failure to comply with this requirement.

#### ***Clause 6 – Cats to wear tags***

This clause requires that the owner of a cat must ensure it wears its registration tag when in a public place. This will provide a visual identification aid to determine if a cat is owned or not.

Subclause (3) provides a defence to the offence of a cat being in a public place without its registration tag where this was outside the control of the owner.

Regulations will be introduced to prescribe that cats are exempt from having to wear a registration tag if the cat is being exhibited for show purposes.

A maximum penalty of \$5,000 applies for failure to comply with this requirement.

### **Clause 7 – Interference with tag**

This clause provides that a person must not remove or interfere with a registration tag worn by a cat. This will predominantly deal with forging or placing a tag on an unregistered cat.

A maximum penalty of \$5,000 applies for a breach of these provisions.

### **Clause 8 – Application for registration**

This clause requires that the owner of a cat must apply to the local government where the cat is ordinarily kept to either grant or renew registration. Applications will be required to be accompanied by a prescribed fee and comply with other requirements as prescribed.

Regulations to be introduced will require owners to provide proof of both sterilisation and microchipping, or provide an exemption certificate from a veterinarian issued under section 14(2) or 18(2). The process of registration will provide a method to verify compliance with the requirement to microchip and sterilise under section 14 and 18 respectively.

### **Clause 9 – Registration**

Subclause (1) requires local governments to either grant or refuse a new, or renew or refuse an existing, registration of a cat on receiving an application for registration.

Subclause (2), (3) and (4) provides that a local government can refuse to grant or renew registration for the following reasons:

- a) the applicant is under 18 years of age;
- b) the cat belongs to a class of cats exempt;
- c) the cat is not microchipped and is not exempt from having to be microchipped;
- d) the cat is not sterilised and is not exempt from having to be sterilised;
- or
- e) the applicant has been convicted of an offence under this legislation, the *Dog Act 1976* or *Animal Welfare Act 2002* in the last 3 years.

Subclauses (5) and (6) provide that a local government can request documentation from an applicant to enable the local government to assess the registration application. This will predominately relate to providing a police clearance to verify whether the applicant has been convicted of an offence under the noted legislation. A local government will be able to refuse to consider the application if the information is not received in the specified time period.

Subclause (7) provides for regulations to be developed for the registration period or periods. These are expected to be one and three years, in line with the current provisions of the *Dog Act 1976*.

### ***Clause 10 – Cancellation of registration***

This clause outlines reasons why a local government may cancel the registration of a cat. It includes provisions to enable a local government to cancel a cat's registration if the owner has been convicted of 2 or more offences under the Act in the period of 12 months before cancellation. This has been introduced to provide local governments with an avenue to deal with repeat offenders.

In these situations, local governments would then be able to seize a cat for non-compliance as it would not be registered.

### ***Clause 11 – Registration numbers, certificates and tags***

This clause outlines local government responsibilities when registering a cat, which includes allotting a registration number, providing a registration certificate, and issuing a registration tag.

### ***Clause 12 – Register of cats***

This clause provides that local governments must keep a register of cats registered in their district. Regulations will prescribe the information required to be kept, and will include the owner's name and address and the cat's breed, colour and sex.

### ***Clause 13 – Notice to be given of certain decisions made under this Subdivision***

This clause provides that a local government must advise the owner of a cat of the decision and reasons for the decision, made in regard to an application to register a cat.

If a registration application is refused, a local government must advise the person of their right to apply for a review of the decision under Part 4, Division 5.

## **Division 2 – Microchipping**

### ***Clause 14 – Cats to be microchipped***

Subclause (1) requires the owner of a cat to ensure it is microchipped by 6 months of age. Microchipping provides a permanent identification method which will assist in determining whether a cat is owned and to reunite lost cats with their owners.

Subclause (2) provides that if a certificate is provided by a veterinarian stating that microchipping may adversely affect the health and welfare of the cat, the cat is exempt from the provision.

A maximum penalty of \$5,000 applies for failure to comply with these requirements.

***Clause 15 – Microchip implanter to give information to microchip database company***

This clause requires a microchip implanter to give prescribed information to a microchip database company within 7 days of the implantation taking place. Regulations will be introduced to prescribe this information, and will include microchip number, owner name and contact details, cat's name and sex.

A maximum penalty of \$5,000 applies for failure to comply with this requirement.

***Clause 16 – Microchip database company's obligations***

This clause requires that the microchip database company is required to keep and maintain the microchip information under section 15 in its microchip database.

A maximum penalty of \$5,000 applies for failure to comply with this requirement.

***Clause 17 – Interference with microchips***

This clause requires that a person must not, without reasonable excuse, remove or interfere with a microchip implanted in a cat.

A maximum penalty of \$5,000 applies for a breach of this provision.

**Division 3 – Sterilisation**

***Clause 18 – Cats to be sterilised***

Subclause (1) requires a cat owner to ensure the cat is sterilised by a veterinarian, by 6 months of age. This will reduce the number of unwanted cats entering the cat population.

Subclause (2) provides that a cat does not need to be sterilised if

- a) a certificate is provided by a veterinarian stating it may adversely affect the health and welfare of the cat;
- b) the cat is owned by an approved breeder; or
- c) the cat belongs to a class of cats prescribed as exempt.

A maximum penalty of \$5,000 applies for failure to comply with this requirement.

***Clause 19 – Identifying as sterilised a cat that is not sterilised***

This clause creates an offence for a person who identifies a cat as sterilised when it is not.

A maximum penalty of \$5,000 applies for a breach of this provision.

**Clause 20 – Notice of sterilisation to be given to a microchip database company**

This clause requires that a veterinarian must, within seven days of sterilising a cat, advise the microchip database company that the cat is sterilised.

A maximum penalty of \$5,000 applies for failure to comply with this requirement.

**Clause 21 – Certificate of sterilisation to be given**

This clause requires that a veterinarian must issue a sterilisation certificate to the owner of the cat. With the introduction of regulations for section 8(2), this certificate is to be provided to the local government at time of registration to prove sterilisation.

A maximum penalty of \$5,000 applies if a Veterinarian fails to comply with this requirement.

**Division 4 – Transfer of ownership of cats**

**Clause 22 – Terms used**

This clause defines terms used in Division 4.

**purchaser**, of a cat, means the person to whom the cat is transferred;

**seller**, of a cat, means the person by whom the cat is transferred.

**Clause 23 – Transfer of ownership of cats**

Subclause (1) requires that a cat cannot be transferred unless it is microchipped, or a certificate exempting the cat from microchipping is issued under section 14(2). It is the seller's responsibility to ensure this provision is complied with prior to sale.

Subclause (2) requires that a cat cannot be transferred unless it is sterilised, unless the seller is satisfied that:

- a) the purchaser is an approved breeder for the purposes of section 35;
- b) an exemption from sterilisation has been granted under section 18(2)(a); or
- c) the cat belongs to a class of cats prescribed as exempt.

The seller can also provide a prepaid voucher to the purchaser to have the cat sterilised at a later date. This is only intended to be used when cats are too young to be sterilised (i.e. before a veterinarian will undertake the procedure).

A maximum penalty of \$5,000 applies for failure to comply with each of these requirements.



### ***Clause 24 – Notice to be given of transfer of cat***

This clause requires that the seller of a cat must, within 7 days, advise in writing, both the registering local government and the microchip database company of the purchaser's name and address, and any other information prescribed under section 12(3) and 15.

This will enable local governments to become aware of new cat owners within their district to ensure the cat is registered and complies with other relevant provisions of the Act.

A maximum penalty of \$5,000 applies for the failure of a seller to comply with this provision.

### **Division 5 – Changes to recorded information**

#### ***Clause 25 – Notice to be given of changes to recorded information***

This clause requires that the owner of a cat must, within 7 days, advise in writing, both the registering local government and microchip database company if there are any changes to details as prescribed under section 12(3) and 15.

A maximum penalty of \$5,000 applies to the owner of a cat who fails to comply with this provision.

### **Part 3 – Management of Cats**

This part sets out how cats are to be managed, including the issuance of cat control notices, seizure of a cat, and impounding of a cat at a cat management facility.

#### **Division 1 – Cat control notices**

##### ***Clause 26 – Cat control notice may be given to cat owner***

This clause allows a local government to issue a cat control notice. This will enable local governments to provide a formal notice to cat owners to direct a person to comply with a particular provision under the Act, regulations or local law. If a cat owner is non compliant with a cat control notice, local governments can then refer to the particular provision/s being breached (section 5, 14 or 18) and consider issuing an infringement notice or proceeding with court action. The issuance of infringement notices is dealt with under clause 62.

##### ***Clause 27 – Cats may be seized***

Paragraph (a) provides that an authorised person can seize a cat in any public place if the authorised person has reasonable suspicions that the cat is subject to an offence of not being microchipped, sterilised or registered as per section 5, 14 and 18.

Paragraph (b) provides that an authorised person can seize a cat in any premises at the request or consent of the owner/occupier. It also provides for seizure of a cat under a warrant, issued under Part 4, Division 3, Subdivision 3.

### ***Clause 28 – Disposing of seized cats***

This clause requires an authorised person who has seized a cat to either return it to its owner, or take it to a cat management facility. If an authorised person can easily identify the cat, either by a tag or microchip, it would be possible for the authorised person to return the cat to its owner rather than impound it.

## **Division 3 – Dealing with cats at cat management facilities**

### ***Clause 29 – Application of Division***

This clause provides that the provisions of Division 3 do not apply to cats temporarily kept in a cat management facility at the request of its owner. This refers to catteries, or other places where cat owners request a cat to be homed for a specified period of time (for reasons such as holidays or illness), which may also operate as a cat management facility for a local government.

### ***Clause 30 – Obligation to identify a cat's owner***

Subclause (1) provides that the operator of a cat management facility must make every reasonable attempt to identify the owner of a cat that enters a facility. This includes scanning the cat with a microchip scanner to determine if it is microchipped. It may also include checking for a registration or identification tag.

Subclause (2) provides that the operator of a cat management facility does not need to scan a cat if the cat behaves aggressively or there are reasonable grounds that the cat may cause a danger to the health or safety of the person attempting to scan the cat. This may include feral cats that are not used to human contact or confinement.

### ***Clause 31 – Cat owner liable to pay costs to cat management facility***

This clause requires that the owner of a cat which has been kept at a cat management facility must pay all associated costs incurred with its impounding, including the cost of removing the cat, keeping, caring, destruction and/or disposal.

Additionally, owners are liable for the cost of their cat being microchipped and sterilised as per section 33, which requires that a cat, not already microchipped or sterilised, be microchipped and sterilised prior to its release from a cat management facility.

The operator of a cat management facility can recover these costs from the owner in court.

***Clause 32 – Notice to be given to cat’s owner, if identified***

This clause requires that if the operator (the manager for the purposes of this Act) of a cat management facility determines the owner of a cat impounded at a facility, they must take all reasonable steps to ensure the owner is notified in writing that the cat has been impounded.

The owner also needs to be advised:

- a) of where the cat is being kept;
- b) that they have 7 working days to collect the cat;
- c) that the cat will be microchipped and sterilised (if not already done) unless it is proven the cat is exempt under sections 14 and 18; and
- d) that they will be liable for these costs, and impounding costs, as per section 31.

A maximum penalty of \$5,000 applies for the operator of a cat management facility for failing to comply with these requirements.

***Clause 33 – Operator of a cat management facility may have cat microchipped and sterilised***

This clause provides that before a cat is reclaimed or transferred, the operator of a cat management facility can take any action to have an impounded cat microchipped and sterilised, if the operator reasonably believes they are required to be microchipped or sterilised as per section 14 and 18.

***Clause 34 – Dealing with unidentified and unclaimed cats***

Subclause (1) provides that a cat which cannot be identified within 3 working days (which may be due to the absence of a microchip, registration tag or identification tag), or that is not reclaimed by its owner within the specified period (no less than 7 working days from the notice being given under section 32), can be transferred or destroyed.

Subclause (2) provides that if a cat is feral, diseased or dangerous and is behaving in a manner likely to cause injury to a person, other animal or itself, it can be destroyed at any time.

**Division 4 – Breeding of Cats**

***Clause 35 – Only approved cat breeders may breed cats***

This clause provides that a person must be an approved cat breeder to breed cats.

If a person is convicted of breeding cats without approval, a court can order that person to have any, or all, of their cats sterilised. The court is required to provide a copy of the order to the relevant local government.

A maximum penalty of \$5,000 applies if a person breeds cats without approval.

It is not intended to restrict approved cat breeders to only those who operate on a commercial basis. Any cat owner who proposes to breed cats will be able to apply to their local government for approval and this will be determined under section 37.

### ***Clause 36 – Application for approval to breed cats***

This clause requires the owner of a cat to apply to their local government for the grant or renewal of an approval to breed cats.

Regulations will be introduced to prescribe the form, fee and other requirements to be complied with. The fee and renewal period will be annual.

### ***Clause 37 – Approval to breed cats***

Subclause (1) requires a local government to either grant or refuse a new, or renew or refuse an existing, application made for approval to breed cats.

Subclause (2) provides that a local government can refuse to grant or renew registration for the following reasons:

- a) the applicant is under 18 years of age;
- b) the applicant has no or insufficient facilities to breed cats in a safe and ethical way;
- c) the applicant has no or unsuitable premises where cats can be bred in a safe and ethical way;
- d) the applicant has been convicted of an offence under this legislation, the *Dog Act 1976* or *Animal Welfare Act 2002* in the last 3 years;
- e) the applicant is not a fit and proper person to breed cats; and
- f) such other circumstances as prescribed.

Subclauses (3) and (4) provide that a local government can request documentation from an applicant to enable the local government to assess the registration application, and that a local government can refuse to consider the application if the information is not received in the specified time period. It is expected that local governments would require documentation such as a police clearance to verify whether the applicant has been convicted of an offence under the specified legislation, a character reference and/or photos of the premises where the cats are to be bred.

Subclause (5) provides that a local government cannot refuse to grant or renew an approval to breed cats if the applicant belongs to a class of persons prescribed. Regulations will be developed to prescribe relevant classes of persons, and may include those persons who are current registered members of cat breed organisations including the Cat Owners Association of Western Australia (COAWA).

Subclause (6) provides for regulations to be developed for the approval period or periods. This is expected to be one year.

**Clause 38 – Cancellation of approval to breed cats**

This clause provides for a local government to cancel an approval to breed if anything from section 37(2) applies.

**Clause 39 – Certificate to be given to approved cat breeder**

This clause requires that a local government is to give an approved cat breeder a certificate stating that they are an approved breeder. Regulations will be introduced to prescribe a form.

**Clause 40 – Notice to be given of certain decisions made under this Subdivision**

This clause provides that a local government must advise the applicant of the decision, including the reason for the decision, made in regard to becoming an approved breeder. A local government must also advise an applicant who is refused that they can request a review of the decision under Part 4 Division 5.

**Division 5 – Miscellaneous**

**Clause 41 – Cats not to be offered as prizes**

This clause provides that a cat cannot be offered as a prize in a raffle or similar.

**Part 4 – Administration and enforcement**

This part sets out local government's responsibilities in administering and enforcing the legislation. It also refers to delegations, the appointment and powers of authorised persons, the issuance of warrants and infringement notices, objections and reviews, and legal proceedings.

**Division 1 – Administration**

**Clause 42 – Administration by local governments**

This clause provides that a local government is to administer its local laws and all other things necessary to perform the functions of the Act. It is intended that the executive functions of the *Local Government Act 1995* apply to local governments in administering this Act.

***Clause 43 – Places to be regarded as within district***

This clause provides for the Governor to give approval for areas not in a district, to be subject to a specific local law.

**Division 2 – Delegations**

***Clause 44 – Delegation by local government***

This clause provides for a local government to delegate any of its powers or the discharge of any of its duties to the CEO.

The delegation is to be in writing and is to be made by an absolute majority of council.

***Clause 45 – Delegation by CEO of local government***

This clause provides that a CEO may delegate any power or duties, including those delegated to them by the council of the local government, to an employee of the local government. The delegation needs to be in writing, and is subject to any conditions imposed by the CEO or council.

Subclause (6) provides for specific powers that cannot be delegated to an authorised person which include:

- section 63 (content of infringement notice);
- section 64 (extension of time on payment of an infringement notice);
- and
- section 65 (withdrawal of an infringement notice).

This is to ensure that only the CEO is authorised to extend the period of time a modified penalty is to be paid, or to authorise withdrawal of an infringement notice, and not the issuing officer.

***Clause 46 – Other matters relevant to delegations under this Division***

This clause provides for other matters relevant to delegations, including the period of time a delegation has effect, and that the decision to amend or revoke a delegation is to be made by absolute majority of council.

***Clause 47 – Register of, and review of, delegations***

This clause provides that the CEO of a local government must keep a register of delegations, and that, at least once during each financial year, the delegations are reviewed.

## **Division 3 – Authorised Persons**

### ***Clause 48 – Authorised persons***

Subclause (1) provides that a local government is to appoint in writing, persons or a class of persons, as authorised persons to perform particular functions under the Act. It is expected that this will generally include local government rangers, private sector feral cat control operators and organisations that may provide ranger services.

Subclause (2) provides that only a person employed by a local government can be appointed to issue infringement notices under section 62.

Subclause (3) provides that a local government can place conditions on the appointment of any authorised person. For example, a local government may choose to restrict areas where an authorised person can seize cats. This will be of particular importance when authorising employees of feral cat control companies, as local governments may restrict the location that they are allowed to seize cats such as to a particular reserve or tract of land.

Subclause (4) provides that a local government can, at any time, cancel or vary an authorisation or condition on authorisation.

Subclause (5) provides that a local government is to give each authorised person a certificate stating their appointment.

Subclause (6) provides that an authorised person must:

- a) carry the certificate issued under section 48(5) at all times they are exercising their powers;
- b) produce the certificate at the reasonable request of any person; and
- c) return the certificate if they cease to be an authorised person.

A maximum penalty of \$5,000 applies for failure to comply with subsection (6).

### ***Clause 49 – Authorised person may cause a cat to be destroyed***

This clause provides that an authorised person can cause a cat to be destroyed in a humane manner if:

- a) the person believes on reasonable grounds the cat is feral, diseased or dangerous and it has caused or given, or is likely to cause or give, serious injury or serious illness, to a person, another animal or itself;
- b) at the request of the owner of the cat; or
- c) in circumstances, if any prescribed.

Regulations may be introduced to include feral cats as a prescribed circumstance. This would allow feral cat control companies to destroy feral cats in the wild, rather than having to bring them to a cat management facility.

This clause also provides that the owner of a cat destroyed under this section is liable for the costs of destruction and disposal and that a local government may recover the costs in court.

***Clause 50 – Persons found committing breach of Act to give name on demand***

This clause requires that a person who has committed, or is suspected of committing a breach against the Act, is to provide their name, address and date of birth to an authorised person if requested.

A maximum penalty of \$5,000 applies for failure to comply with this requirement.

***Clause 51 – Power to enter premises***

Subclause (1) provides that an authorised person can enter a premise:

- a) with consent of the person who is, or appears to be, the owner or occupier;
- b) with a notice issued under section 51(2); or
- c) via a warrant issued under subdivision 3.

Subclause (2) provides that an authorised person can issue a notice in writing to enter premises. The notice is to state the reason why the person wishes to enter the premises and that the owner or occupier can object to entry. A notice is intended to be used as an official request to enter premises, without the more formal action of organising a warrant.

Subclause (3) provides for the period of time a notice to enter has effect.

Subclause (4) provides that entry under this section is in addition to and not in derogation of any power of entry conferred by any other law.

Subclause (5) provides that entry can be made with such assistance and equipment as are necessary for the purpose of the visit.

***Clause 52 – General powers of authorised persons***

This clause states what an authorised person can do in undertaking their functions, including:

- a) set traps in any public place or any premises lawfully entered;
- b) examine a cat to determine if a cat is the subject of an offence against the Act; and
- c) in any premises lawfully entered, as reasonably necessary to investigate or collect evidence of an offence, examine copy or take extracts from any documents, take photographs or video or direct a person to answer questions.

***Clause 53 – Act does not derogate from powers of police officers***

This clause provides that nothing in this Act derogates from the powers of an authorised person who is also a police officer.



### **Clause 54 – Obstruction**

This clause provides that a person must not delay, threaten, obstruct or otherwise hinder an authorised person.

A maximum penalty of \$5,000 applies for a breach of this provision.

### **Clause 55 – Grounds for a search warrant**

This clause provides for a justice to issue a warrant to enter premises. The warrant application is to be supported by evidence on oath that there are reasonable grounds for suspecting there is a breach, or that entry to the premises is required to investigate the suspected offence. This clause links with clause 51.

### **Clause 56 – Grounds for a warrant to seize cat**

This clause provides for a justice to issue a warrant to seize a cat or cats. The warrant application is to be supported by evidence on oath that there are reasonable grounds for suspecting the cat or cats are the subject of an offence against the Act.

### **Clause 57 – Application for warrant**

This clause provides for the process for applying for a warrant to enter a premise or seize a cat. Section 13 of the *Criminal Investigation Act 2006* applies in respect of an application.

### **Clause 58 – Form of warrant**

This clause requires the warrant to be in a prescribed form. Regulations will be introduced to prescribe the form.

### **Clause 59 – Effect of warrant**

This clause provides that a warrant comes into force when issued by a justice.

### **Clause 60 – Execution of warrant**

This clause provides that a warrant can be executed by:

- a) the authorised person to whom it is issued;
- b) a person specified on the warrant; and
- c) by any other authorised person.

## **Division 4 – Infringement notices**

### **Clause 61 – Terms used**

This clause defines terms used in Division 4

**local government** means the local government that could, or an employee of which could, prosecute for the offence concerned;

**prescribed** means prescribed by a local law, or if the alleged offence is against a regulation or this Act, prescribed by regulations or by a local law.

#### ***Clause 62 – Giving an infringement notice***

This clause provides that an authorised person can issue an infringement notice for an offence against the Act, or a regulation or local law made under the Act, within 28 days after the alleged offence.

A local government can only prescribe an offence in a local law if a prosecution can be commenced by a local government and the offence is minor and straightforward.

#### ***Clause 63 – Content of infringement notice***

This clause provides for the form of an infringement notice and the modified penalty.

Regulations will be introduced to prescribe the form and penalty amount, which cannot exceed 10% of the maximum penalty for that offence.

#### ***Clause 64 – Extension of time***

This clause provides that a CEO of a local government can grant extensions for the payment of a modified penalty.

#### ***Clause 65 – Withdrawal of notice***

This clause provides that a CEO can withdraw an infringement notice within one year after it has been issued.

Regulations will be introduced to prescribe the form which states the modified penalty has been withdrawn.

#### ***Clause 66 – Benefit of paying modified penalty***

This clause provides that if a modified penalty is paid, it is not an admission for any civil or criminal proceedings.

#### ***Clause 67 – Application of penalties collected***

This clause provides that a modified penalty is to be dealt with as if it were a fine imposed by a court.

## **Division 5 – Objections and review**

### ***Clause 68 – When this division applies***

This clause provides that the following sections of the Act can be subject to a review:

- a) refuse to grant or renew registration of a cat under section 9;
- b) cancel the registration of a cat under section 10;
- c) refuse to approve or renew the approval of a person to breed cats under section 37; or
- d) cancel the approval of a person to breed cats under section 38.

### ***Clause 69 – Objection may be lodged***

This clause provides that a person given notice of a decision under section 13 (refusal to register) or 40 (refusal to approve as cat breeder) can apply for a review of the decision. The objection is to be made in the prescribed form in the prescribed manner to the local government within 28 days after the right of objection arose (i.e. 28 days after the decision).

Regulations will be introduced to prescribe the form and the process.

### ***Clause 70 – Dealing with objection***

Subclause (1) outlines that an objection is to be dealt with by the council or a committee authorised by council to deal with it.

Subclause (2) provides that a committee cannot deal with an objection against a decision that it made or a decision that council made.

Subclause (3) provides that the person who made the objection is to be given reasonable opportunity to make submissions on how to dispose of the objection (disposal options under subclause 4).

Subclause (4) provides the options for disposing of an objection, are

- a) dismissing the objection;
- b) varying the decision objected to; or
- c) revoking the decision, with or without substituting it for another decision or referring the matter to another committee or person.

Subclause (5) requires the local government to ensure the person who made the objection is given notice in writing of the disposal decision and the reasons for the decision.

### ***Clause 71 – Review of decisions***

This clause provides that a person given notice of a decision under section 13 or 40, can lodge an appeal against a decision to the State Administrative Tribunal if:

- a) they have not lodged an objection to the decision; or

- b) they lodged an objection to the decision but 35 days after lodgement no notice has been given in writing of how the local government decided to dispose of the objection.

A person who has been given a decision on their objection can still apply within 42 days to the State Administrative Tribunal if still aggrieved.

### ***Clause 72 – Suspension of effect of some decisions***

This clause provides that if an objection or request to review is lodged, the effect of the decision is suspended.

## **Division 6 – Legal proceedings**

### ***Clause 73 – Prosecutions***

Subclause (1) provides that the following persons are authorised to commence a prosecution for an offence against the Act:

- a) a person acting in the course of their duties as an employee of a local government; or
- b) a person who is authorised to do so by a local government.

Subclause (2) provides that the following persons are authorised to commence a prosecution for an offence against a local law:

- a) a person acting in the course of their duties as an employee of a local government that made the local law; or
- b) a person authorised to do so by the local government that made the local law.

Subclause (3) provides that unless given to the contrary, proof is not required in proceedings that the prosecutor is authorised to commence the prosecution or that the signature on the prosecution notice alleging the offence is the signature of the person.

### ***Clause 74 – Additional court orders***

This clause provides that a court can impose orders in addition to a penalty to a person convicted of an offence against the Act. This includes banning a person from keeping a cat and requiring that cat be immediately sterilised and/or microchipped.

A copy of the order is to be provided to the local government where the person resides.

### ***Clause 75 – Evidentiary matters***

This clause provides for evidentiary matters in the case of proceedings.

## **Part 5 – Subsidiary legislation**

This part sets out the provisions for the development of regulations and local laws.

### **Division 1 –Regulations**

#### ***Clause 76 – General regulations***

This clause provides for the Governor to make regulations for the purposes of the Act.

#### ***Clause 77 – Regulations that operate as local laws***

This clause provides that the Governor may make regulations which operate as if they were a local law for each district. The regulations may deal with any matter in respect of which local laws may be made under Part 5, Division 2.

#### ***Clause 78 – Provisions about regulations***

This clause provides that regulations made under section 76 or 77 may:

- a) adopt any text that could be adopted by a local law;
- b) provide that contravention of regulations can be an offence with associated penalties including a minimum fine; and
- c) prescribe the method the fines are to be paid, collected or recovered.

### **Division 2 – Local laws**

#### ***Clause 79 – Local laws***

This clause provides that local governments can make local laws under this Act. A local law does not apply outside the local government's district unless it is made to apply outside under section 80.

Local laws can be made as to one or more of the following:

- a) the registration of cats;
- b) removing and impounding cats;
- c) keeping, transferring and disposing of cats kept at cat management facilities;
- d) the humane destruction of cats;
- e) cats creating a nuisance;
- f) specifying places where cats are prohibited absolutely;
- g) requiring that in specified areas a portion of the premises on which a cat is kept must be enclosed in a manner capable of confining cats;
- h) limiting the number of cats that may be kept at premises, or premises of a particular type;
- i) the establishment, maintenance, licensing, regulation, construction, use, record keeping and inspection of cat management facilities;
- j) the regulation of approved cat breeders, including record keeping and inspection;
- k) fees and charges payable in respect of any matter under the Act.

***Clause 80 – Places outside district***

This clause provides that a local government can make a local law that applies outside their district if approved by the Governor.

A local government cannot make a local law which applies to a part of the State which is in the district of another local government, or which a local government has made a local law concerning the same subject matter.

***Clause 81 – Inconsistency with written laws***

This clause provides that a local law made under this Act is inoperative to the extent of any inconsistencies with this or another Act.

***Clause 82 – Local laws may adopt codes etc.***

This clause provides for what local governments can adopt as a local law, being a model local law, local law of another local government or any code, rules, specifications or standard issued by Standards Australia or other body.

***Clause 83 – Model local laws***

This clause provides that the Governor can prepare and publish in the *Government Gazette* model local laws.

***Clause 84 – Creating offences and prescribing penalties***

This clause provides that a local law may contain offences and penalties up to \$5,000.

**Part 6 – Miscellaneous**

***Clause 85 – False or misleading information***

This clause provides that a person must not give false or misleading information.

A maximum penalty of \$5,000 applies for failure to comply with this requirement.

***Clause 86 – Review of Act***

This clause requires that the Act is reviewed every 5 years, and that in the course of the review, the Minister must consider the need for the continuation of the Act and any other relevant matters regarding its operation and effectiveness.