

Cat Bill 2003

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Exclusion by other enactments and application to Commonwealth places	3
Part 2 — Ownership, Possession and Transfer of Cats		
5.	Ownership	4
6.	Conditions to be met before change of ownership	4
Part 3 — Requirements With Respect To Keeping Cats		
Division 1 — Identification		
7.	Duty of owner to provide identification — when required	6
8.	Temporary circumstances where identification not required	6
9.	Interference with identification	7
Division 2 — Permits		
10.	Provisions in this Division exhaustive - permit not to override restrictive covenants	7
11.	When permit required — duration — implied conditions	7
12.	Exemptions and application of Act to cats owned at time of commencement	8

Contents

13.	Obligation on owner to obtain permit	9
14.	Information to be included in application — fees	9
15.	Application with fee to be lodged with local government	10
16.	Refusal to issue permit — grounds	11
17.	Review of decisions with respect to permits	12
	Part 4 — Applicability of Local Laws	
18.	Consistency of local laws with this Act	15
19.	Local laws controlling or regulating cats	15
	Part 5 — Offences and Breaches	
20.	Offences not criminal	16
21.	Breaches of permits etc	16

Western Australia

LEGISLATIVE COUNCIL

(Hon Giz Watson)

Cat Bill 2003

A Bill for

An Act to regulate the ownership and keeping of cats and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Cat Act 2003*.

2. Commencement

5 This Act comes into operation 6 months from the day on which it receives the Royal Assent.

3. Interpretation

(1) In this Act unless the context otherwise requires —

10 **“local government”** is the local government constituted under the *Local Government Act 1995* within whose boundaries a cat is, or will be kept by an owner, and includes a person or body administering any part of the State, not being a Commonwealth place, that is not under the jurisdiction of a local government;

15 **“multiple dwelling”** is a building occupied wholly or primarily as a domestic residence by 2 or more persons or groups of persons where each person or group occupies a specified or ascertainable part of the building by reason of an estate or interest, applicable to that part only, that may be alienated or dealt with separately from any estate or interest that
20 applies to another part of that building, and it does not matter that more than one estate or interest vests in, or is held by, the same person;

25 **“owner”** is a natural, adult person having the property in a cat and includes a person having temporary possession of a cat at the request, or with the consent, of an owner;

“prescribed” is a matter prescribed by regulations for a purpose required or permitted to be prescribed by this Act.

30 (2) This Act is to be interpreted and applied consistently with the provisions of any other written law enacted from time to time that imposes, or authorizes or permits the imposition of

temporary restrictions on the free movement of people or animals or both within the State or within any part, or between specified parts, of the State for a purpose with respect to the preservation and maintenance of public health or safety.

5 **4. Exclusion by other enactments and application to Commonwealth places**

- 10 (1) This Act does not apply to an animal of the feline species —
- (a) whose acquisition, possession or keeping is restricted, regulated or prohibited under a written law of the Commonwealth or the State;
 - (b) which, although capable of being owned as a cat, has no owner.
- 15 (2) Subsection (1)(b) applies where a cat, when found by any person at a place or on land not subject to section 8, has no form or means of identification attached to it and that person is justified in dealing with the cat inconsistently with any provision of this Act.
- 20 (3) The application of this Act to a Commonwealth place may be the subject of an agreement made between the Governor-General and the Governor under section 6 of the *Commonwealth Places (Application of Laws) Act 1970* of the Commonwealth.. The text of any agreement and any subsequent variation is to be published in the *Gazette*.

Part 2 — Ownership, Possession and Transfer of Cats

5. Ownership

- 5 (1) A cat under this Act is a chattel but must be dealt with subject always to the provisions of this Act and any applicable written law enacted for the welfare of animals or to protect them from, or punish persons who commit, acts of cruelty or neglect.
- 10 (2) The property in a cat, whether for valuable consideration or not, may be transferred to or acquired by another person who is eligible to be an owner at the time when the property is to be transferred but the property in a cat cannot vest in 2 or more persons jointly.
- (3) The property in any cat passes absolutely despite any contrary intention, or agreement or arrangement between or among those persons involved.
- 15 (4) A minor cannot be an owner.
- (5) A cat is not capable of being placed on a chattels register, and any registration has no effect as notice to a bona fide purchaser for value.

6. Conditions to be met before change of ownership

- 20 (1) Before or at the time the physical possession of a cat is transferred under an arrangement to change owners —
- (a) the relinquishing owner must ensure that the identification information required under section 7(1) relates to the succeeding owner;
- 25 (b) the succeeding owner must provide the relinquishing owner —
- (i) with proof of having applied for a permit if that will be required as a result of relocation;
- (ii) if the cat is less than 5 months old, with a statement made for the purposes of section
- 30 13(2)(a).

- 5
- (2) A relinquishing owner who parts with, or a succeeding owner who takes, physical possession under subsection (1), and who does so in breach of an obligation imposed by subsection (1)(a) or (b) commits an offence and on conviction, as part of or in substitution for any penalty that may be imposed, be ordered to pay an amount sufficient to meet the costs that will be or have been incurred in rectifying that breach.
- 10
- (3) It is a defence for a person charged with an offence under subsection (2) to show that he or she was acting on behalf, and in the absence, of an owner who was a party to the agreement for the change in ownership.
- 15
- (4) In subsection (1) a person's intent or purpose may be inferred from the factual circumstances in which physical possession was transferred. Whether the property in the cat passed at the same or some other time is not a relevant consideration.
- (5) A contravention of subsection (1) does not affect the validity or effectiveness of any transfer of the property, or any rights or interests that a person acquires or surrenders as an owner.

Part 3 — Requirements With Respect To Keeping Cats

Division 1 — Identification

7. Duty of owner to provide identification — when required

- 5 (1) An owner has a continuing duty to ensure that the owner's name, and current address or telephone number, is clearly marked on a collar or other device worn or attached to a cat from the time it is 5 months old.
- (2) An owner complies with subsection (1) by providing the information in a microchip implanted in the cat.
- 10 (3) This section applies after the lapse of 28 days from the day on which the cat was first kept at the address that is the current address under subsection (1).
- (4) Any contravention of this section is an offence and continues for each day on which the owner is in breach of the duty imposed by subsection (1).
- 15 (5) A person is not civilly or criminally liable for anything done in good faith in relation to a cat that is not identified or cannot be identified visually.

8. Temporary circumstances where identification not required

- 20 (1) Section 7 does not apply during a period of not more than 3 consecutive months, if a cat is held or kept exclusively —
- (a) by the RSPCA or another prescribed animal welfare organization;
- (b) in an approved pound;
- 25 (c) in a pet shop;
- (d) at a veterinary surgery.
- (2) If a cat is held or kept in any of the places described in subsection (1) beyond the expiry of the period of 3 months, the person exercising operational control or management of that

place becomes an owner under section 7 in relation to that cat from the time of expiry until its permanent removal from that place.

- 5 (3) The rights of an owner (if any) with respect to a cat are suspended for so long as this section applies to the cat.

9. Interference with identification

- (1) A person commits an offence who removes the means by which, or obliterates or makes illegible the information provided under section 7.
- 10 (2) It is a defence if the person charged with an offence under subsection (1) shows that what was done was lawful or justifiable under the circumstances as they were at the time.

Division 2 — Permits

15 **10. Provisions in this Division exhaustive - permit not to override restrictive covenants**

- (1) Except as section 11 provides, a permit is not required.
- (2) A permit does not suspend or in any way interfere with an agreement or instrument that prohibits or restricts the introduction or keeping of cats on land described in the agreement or instrument and does not authorize an owner to act in breach of such a provision.
- 20

11. When permit required — duration — implied conditions

- (1) A permit to keep a cat on any land is required if —
- 25 (a) the cat is not desexed;
- (b) more than 2 cats will be kept on a permanent basis;
- (c) the cat will be kept in a multiple dwelling.
- (2) A permit may authorize keeping 2 cats under subsection (1)(a) but only in a case where one or both is to be used for breeding.

- 3) Each cat to be included in a permit under subsection (1)(b) must be desexed at the time of making the application.
- 4) A local government may issue a permit for a period calculated from the date of first issue or fix a day on which all permits expire and a subsequent day by which an expired permit must be renewed.
- 5
- 5) The maximum period for which a permit may be issued under subsection (4) is 18 months, and not less than 14 days must elapse between the date on which all permits expire and the date by which an expired permit must be renewed.
- 10
- 6) A permit is issued subject to the condition that the owner will surrender a permit during its currency if the cat dies, or there is a substantive change in the circumstances for which the permit was issued.
- 15
- 7) A local government may require an owner, on giving not less than 24 hours' notice, to allow a person named in the notice and who produces to the owner evidence of the person's identity and authority to act on behalf of the local government, to inspect the land and building where a cat is kept under a permit and is to rectify, if required, any default or breach of the permit's conditions identified by the person carrying out the inspection.
- 20

12. Exemptions and application of Act to cats owned at time of commencement

- (1) Section 11 does not apply to a cat —
- 25
- (a) on land being used —
- (i) by the RSPCA or another prescribed animal welfare organization;
- (ii) as an approved pound;
- (iii) as a pet shop;
- 30
- (iv) as a veterinary surgery;
- (v) as a cattery;

- (vi) for a prescribed purpose,
if the cat is kept on the land in the ordinary course of
business of a person or body described in subparagraph
(i)-(vi);
- 5 (b) that is alive when this Act comes into operation and for
which a permit would otherwise be required.
- (2) Subsection (1)(b) lapses on the day 5 years from the day on
which this Act comes into operation and a cat that was exempt
then becomes subject to this Act.
- 10 (3) In subsection (1) “**business**” includes providing goods or
services by a person or body without an intention to make a
profit or by a registered charity.

13. Obligation on owner to obtain permit

- 15 (1) An owner has the primary obligation to apply for a permit when
so required under section 11.
- (2) An owner discharges the obligation under subsection (1) and is
not to suffer any penalty or detriment where it is shown that by
reason of the owner’s absence, illness, incapacity, or for any
similar reason, another person agreed to act on the owner’s
20 behalf.
- (3) A permit may be issued to have effect at a future time for the
purposes of section 6(1)(b)(i), (ii).
- (4) A permit applies to the cat described in an application and
cannot be transferred to another cat or issued in relation to land
25 or land answering a particular description.

14. Information to be included in application — fees

- (1) An application for a permit is to be submitted in the prescribed
form and a separate form may be prescribed for each ground in
section 11(1)(a)-(c).

- (2) The application is to contain —
- (a) the owner’s name, address and other contact details, as they are provided under section 4(1);
 - 5 (b) if made under section 6(1)(b), the same information with respect to the person who will become the owner as that required of an owner by paragraph (a);
 - (c) the cat’s breed (if any), name, age, gender, and may include a description or photograph;
 - 10 (d) the zoning designation of the land where the cat will be kept;
 - (e) information as may be prescribed that will assist determining an application in a timely manner.
- (3) Where more than one form of application is prescribed under subsection (1), the rate at which a fee is imposed by a local government may differ depending on the form of application but in no case is the rate of a fee to exceed that which enables full cost recovery of administering applications for permits.

15. Application with fee to be lodged with local government

- (1) An application is to be lodged at an office maintained by the local government.
- 20
- (2) If the local government having jurisdiction under subsection (1) is not constituted under the *Local Government Act 1995*, an application is to be lodged with the department of the State Public Service or other person or body administering the land on which the cat is, or will be, kept or with a designated local government where there is an agreement in existence made under subsection (3).
- 25
- (3) A local government may agree to accept and process applications for permits where subsection (2) applies and, unless expressly agreed otherwise, a decision made to issue or refuse to issue a permit, including a decision made after a review under section 17, binds the department, person or body as the case may be.
- 30

- (4) The fee tendered with an application is revenue of the local government and is subject to any written law or rule of law with respect to the collection, custody, and disposition of moneys by a local government.

5 **16. Refusal to issue permit — grounds**

- (1) A permit cannot be refused merely for a want of form in the application if it otherwise complies with the requirements of section 14.
- (2) A permit cannot be refused by reason only of the zoning of the land on which the cat is being, or will be, kept.
- 10 (3) A person convicted of an offence involving cruelty to an animal or who is banned from owning an animal by order of a court must not apply for, and is ineligible to have issued, any permit for a purpose under this Act before the expiry of 5 years from the date of conviction or imposition of the ban regardless of whether or not the person has acquired and is caring for an animal meantime.
- 15 (4) A permit cannot be refused on any but one or more of the following grounds —
- 20 (a) the unsuitability of the natural environment for a cat or one of the type or breed to which the application relates;
- (b) the proximity of habitats of native fauna known to be the prey of cats;
- 25 (c) the number of cats in the surrounding area is already such as to be a primary cause of significant degradation of, or a principal source of measurable deleterious effects being suffered by, the natural environment;
- 30 (d) the degree of interference a cat, whether alone or in concert with others, may cause to the quality of life of persons in residence in the immediate neighbourhood having regard to such matters as

dominant land use, the number and types of domestic residences, population densities, geographic and topographic profiles.

- 5 (5) Notice given to an applicant for a permit that it has been refused must state the ground or grounds in subsection (4) relied on in making that decision.

17. Review of decisions with respect to permits

- 10 (1) Each local government is to maintain a panel of 2 or more of its councillors (a “referee”) any one of whom is authorized, on application of the relevant owner, to review —
- 15 (a) a refusal to grant or renew a permit;
 - (b) a finding under section 11(7) that an owner has defaulted or is in breach of a permit’s conditions, or, if the default or breach is admitted, that the requirements imposed to remedy the default or breach are unduly onerous, or have the character of a penalty, or the period within which to remedy the default or breach is unreasonably short;
- 20 (2) If a referee, having commenced a review, is unable for any reason to complete it, another referee is to conduct a review as if it were the original review.
- (3) A referee may make a determination on a question of law, or mixed question of fact and law, if such a determination is a necessary and unavoidable incident in disposing of the review.
- 25 (4) A referee —
- 30 (a) must be given access to all documents and other materials that were considered by, or influenced the person who made the decision or imposed the requirement;
 - (b) may require the person who made the decision or imposed the requirement to explain the grounds on which it was made;

(c) is to provide the owner with a reasonable opportunity to state the reasons, orally or in writing, prompting the request for a review.

(5) Where a referee forms the opinion that —

5 (a) a permit or renewal of a permit was refused because the weight given to certain matters disclosed in the application was either disproportionate or insufficient, or was based on an inappropriate or inflexible application of guidelines or policies, or was
10 discriminatory;

(b) a finding or requirement under section 11(7), if acted upon or enforced, would act as a penalty with little or no educative or deterrent effect, or the default or breach, given the owner's previous record of compliance, was
15 the result of inadvertence rather than intention, or that a ground in subsection (1)(b) relied on by the owner can be sustained,

the application is to be remitted for reassessment with such directions as the referee thinks fit.

20 (6) Except as provided in subsection (5), a referee is to affirm the decision.

(7) The owner requesting the review is to be informed of a decision —

25 (a) made under subsection (6); or

(b) where subsection (5)(a) applies, that the application for a permit or a renewal is to be reassessed and, subsequently, the decision after reassessment, and in a case under subsection (5)(b), the decision either to uphold the finding or requirement in its original form or
30 as modified on reassessment, or vacating the finding or requirement entirely.

- (8) A decision made following a reassessment is not liable to be quashed or avoided because it was made by a person, otherwise authorized to make such decisions, who did not make the decision, finding or requirement that was reviewed.

Part 4 — Applicability of Local Laws

18. Consistency of local laws with this Act

5 Where it is not possible to reconcile the operation or effect of a provision of this Act with that of a local law, the operation or effect of the local law is suspended.

19. Local laws controlling or regulating cats

Subject to section 16, local laws —

- 10 (a) may impose conditions that an owner must comply with before a permit may be issued or renewed, or that are to apply during the currency of a permit, or whose breach entitles the local government to cancel the permit or impose further conditions;
- 15 (b) may regulate matters with respect to the seizure, impounding, detention, disposal, and destruction of cats whether or not in a particular case the cat is subject to this Act;
- 20 (c) must identify each service that this Act requires a local government to provide or that is instituted for a purpose under this Act, and state the amount of any fee that is to be charged for that service;
- 25 (d) may prohibit at all times or at various times the entry on to, or presence of a cat on specified land as a means of conserving, or preventing deterioration of, the environment;
- 30 (e) must extend the provisions of section 14, with such modifications as may be required but without any diminution of the rights and entitlements conferred by that section, so as to apply to any decision made by or on behalf of the local government in performing a function under a local law made for a purpose, or in reliance on a provision, of this Act.

Part 5 — Offences and Breaches

20. Offences not criminal

- 5 (1) A person convicted of an offence under this Act is not to be regarded for any purpose as having committed a criminal offence but is guilty of an offence of a civil kind.
- (2) The standard of proof required to prove a charge of an offence against this Act is the standard required in a civil action.
- Penalty: Summary conviction \$5 000.
- For each day of a continuing offence \$50.

10 **21. Breaches of permits etc**

 Unless there is express contrary provision made in relation to breaches of a specified term or condition with respect to a permit or any other matter that may be regulated under this Act, a breach of any term, condition, or requirement does not avoid
15 or affect the continuing operation, effect, or requirement to comply with the provisions of the permit or other document but may provide grounds for revocation, or refusal to renew, or imposition of a monetary penalty.

