Review of the NSW Companion Animals Laws – Submission on the Discussion Paper

What is this all about?

The NSW Government made a commitment to review the *Companion Animals Act 1998* (CA Act).

The CA Act is the legislative framework for the management of pet cats and dogs in NSW. It legislates the identification and registration requirements of companion animals and the duties and responsibilities of their owners, with the principal object being to 'provide for the effective and appropriate care and management of companion animals'.

As part of this review, the Office of Local Government (OLG) is gathering feedback on the emerging trends and issues involved in animal care and management. This is an opportunity for your input to inform future amendments to the CA Act.

It is intended that this review will ensure the legislation effectively enhances responsible pet ownership across NSW, ensuring the well-being of pets and the safety of our communities.

Who are we seeking feedback from?

Many households, communities, and institutions across NSW play a key role in animal management and ownership. If you are part of one of the following groups, we encourage you to make a submission:

- Councils
- Pet owners
- Breeders
- Industry / advocacy organisations
- Veterinarians
- Authorised identifiers
- Rehoming organisations / rescue groups
- NSW State Government agencies
- Individual members of the public

What are you being asked to do?

OLG has prepared a Discussion Paper outlining the key focus areas of the review. We are seeking your input on these matters through the questions below.

When providing your feedback, we encourage you to keep responses outcomes-focused. There is no need to suggest draft wording or clauses for the legislation.

Note: organisations with multiple teams or individuals contributing responses may wish to save a shared copy of this form and make one submission on behalf of the organisation.

Instructions on submitting your feedback are included at the end of this form.

Not all questions need to be answered.

Information of privacy and confidentiality

When you give us your feedback, OLG will be collecting some personal information about you, in particular:

- your name
- your email address
- any personal information you decide to put in the additional comments fields.

All feedback received through this consultation process may be made **publicly available**. Please let us know below if you **do not want** your name and personal details published.

As part of the consultation process, we may need to share your information with people outside OLG, including other public authorities and government agencies. We may also use your email to send you notifications about further feedback opportunities or the outcome of the consultation.

There may also be circumstances when OLG is required by law to release information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). There is a privacy policy located on OLG's website that explains how some data is automatically collected (such as your internet protocol (IP) address) whenever you visit OLG's website. The link to that policy is http://www.olg.nsw.gov.au/privacy.

Provide your feedback below

Your Details	
Question	**Response**
I would like my name and personal details to be treated as confidential:	☐ Yes, please keep my details confidential ☒ I consent to my details being shared
Name	**Tara Ward**
Name of Organisation (If applicable)	**Animal Defenders Office Inc.**
Role/position	**Managing Solicitor (volunteer)**
Postal Address	**GPO Box 2259, Canberra ACT 2601**
Telephone	**0428 416 857**
Email address	**contact@ado.org.au**

Your Details	
Which of the following best describes you?	☐ Council Metro ☐ Council Metro- fringe ☐ Council Regional ☐ Council Rural ☐ County council ☐ Joint Organisation/Regional Organisation of Councils ☐ Pet owner ☐ Breeder ☐ Industry / advocacy organisation ☐ Member of the public ☐ Veterinarian ☐ Authorised identifier ☐ Rehoming organisation / rescue group ☐ NSW State Government agency ☒ Other Community Legal Centre specialising in animal law

1. Strategic framework for encouraging responsible ownership of companion animals (see Part 1 of the Discussion Paper for background information)	
Question	**Response**
Do you support the CA Act being amended to focus more on encouraging responsible pet ownership outcomes over strict compliance processes?	Yes, if the outcomes and principles are clearly and unambiguously articulated and decision-makers are provided with guidelines and other decision-making aids.
How can responsible pet ownership education be used to manage menacing or dangerous dogs?	Education could assist in situations where a dog has no known history of aggression and where keepers already take their responsibilities seriously. Greater education that dogs, and especially the breeds that feature in the 'Total dog attacks reported by NSW Councils per year' lists, can be a threat to the safety of humans and other animals, may help avoid attacks such as that which resulted in the tragic death of MJ (Coroner's Report 2021/198871). Education will not, however, be enough on its own. In the ADO's experience as a community legal centre specialising in animal law, pet keepers most at risk of not complying with dog-keeper requirements and obligations are disadvantaged members of our society including people experiencing homelessness whose animals cannot be kept confined in conventional ways, people in public housing where the condition and upkeep of fencing etc is beyond their control, and people experiencing domestic and family violence where the perpetrator is the 'official' (ie registered) keeper of the animal. It can be difficult for education campaigns to reach these people and even if they do, they lack the means to meet the onerous requirements of a dangerous dog declaration or menacing dog declaration. In our view better enforcement of existing laws regarding identification and registration of dogs would better help manage dogs who may be or already are declared menacing or dangerous. Better enforcement would include taking immediate compliance/enforcement action (eg fines/written directions) and following up soon after any initial compliance/enforcement action is taken by authorised officers.

1. Strategic framework for encouraging responsible ownership of companion animals (see Part 1 of the Discussion Paper for background information)	
How could the legislation be improved to motivate better dog owner behaviour and encourage owners to manage their dogs more responsibly? (For example, what does responsible dog control in public look like?)	In the ADO's experience, people from all demographics fail to comply with dog management laws, from microchipping and registering their dog (usually through ignorance), to keeping their dog on a leash when in public (usually deliberate). Educated, affluent dog keepers are amongst the worst offenders of the latter, with a 'my dog is the best behaved dog in the world' attitude that ignores the risks that any dog may react in unexpected ways in unexpected circumstances, and/or that the keeper's control of the dog when offlead in public is not 'effective'. Unfortunately current or future legislation on its own is powerless to prevent this kind of irresponsible behaviour. In our experience it seems that only increased enforcement action may lead to more responsible dog keeping. Members of the public could be encouraged to report people who flout the law, similar to reporting of dangerous driving, although there is usually no way of identifying the dog or keeper, beyond the general characteristics of the dog. Otherwise the ADO supports increased penalties such as that recommended in recent Coroner's Reports (eg 2021/198871 [recommendation #1]; 2022/335715 [recommendation #4]). Finally, the ADO supports the introduction of a licensing regime for all dogs or, as an interim measure, for breeds and cross-breeds on the NSW list of dog attacks (referred to above), as recommended in recent Coroner's Reports (eg 2021/198871 [recommendation #3]; 2022/335715 [recommendation #3]). This would be an effective – perhaps the only effective – way to motivate better dog keeper behaviour and encourage keepers to manage their dogs more responsibly to avoid attacks happening in the first place rather than reacting after the attack has occurred. The ADO would also support criteria for eligibility to hold a licence (eg fitness / competence) and matters to be considered in granting or refusing an application for a licence being specified in legislation (eg the CA Regulation).

1. Strategic framework for encouraging responsible ownership of companion animals (see Part 1 of the Discussion Paper for background information)	
How could the legislation be improved to motivate better cat owner behaviour and encourage owners to manage their cats more responsibly? (For example, cat containment)	To respond to this question, 'better cat owner behaviour' would need to be defined, including what the problems are. In the ADO's experience cat owner behaviour makes up a tiny proportion of the legal disputes between private citizens or between an individual and government enforcement agencies. Existing laws provide a sufficient basis for greater education and enforcement initiatives that could raise awareness about current expectations of 'better cat owner behaviour'. Any change in legislation that may adversely affect cats' health and wellbeing, such as prolonged or permanent containment, should be avoided on those grounds (ie negative impact on animal welfare).

1. Strategic framework for encouraging responsible ownership of companion animals (see Part 1 of the Discussion Paper for background information)	
Are there other matters that should be considered?	Other issues that could be considered are: ▪ Enshrining the principle that dog and cat keepers will be held to account in cases of breaches of control requirements (eg dogs at large without a carer), rather than 'punishing' the animals (eg by destroying them), and penalties could include measures such as pet ownership bans and hefty fines. ▪ Mandatory pet insurance, with waivers and/or government assistance for government concession card holders and students. ▪ Providing greater discretion to decision-makers to determine who is the 'owner' of a companion animal. For example: o Guidelines on what it means to 'ordinarily keep' an animal (eg the Court in *Meimaropoulos v Cheum* [2014] NSWDC 26 identified ownership of the property on which the animal resided, material contributions to the animal's wellbeing, and the treatment of those animals as family pets). o Recent changes to the Family Law Act (*Family Law Amendment Act 2024*) on the issue of dealing with animals in property disputes could be used as a guideline to what may constitute ownership as determined on a case-by-case basis. ▪ Making changes to residential tenancy laws: o Bring NSW tenancy laws into line with Victoria, the ACT and the NT in terms of allowing pets in rental premises and requiring the landlord to apply for an order from a tribunal if the landlord wishes to refuse consent. o Ban clauses in tenancy agreements that require an animal to be kept permanently outdoors or limit it to situations where both tenant and landlord agree or by order of a tribunal. ▪ Consider expanding the definition of 'companion animal' to include other common 'pets' such as rabbits, guinea pigs, ferrets, and horses kept as companion animals.

2. Compliance and enforcement role of councils (see Part 2 of the Discussion Paper for background information)	
Question	**Response**
What changes to NSW laws, regulations, codes or guidelines could be provided to councils and other enforcement authorities to better support responsible pet ownership?	Support for tenants in public housing: • Including property maintenance and enhanced security of premises. Training assistance: • Vouchers for low-income and other disadvantaged people for a behaviour assessment and/or training session for their dog the first time the dog comes to the attention of a council or equivalent enforcement agency. Mandatory updates to ownership databases: • Breeders must be required to update the ownership details of a dog or cat before the new keeper takes delivery of the animal. Too often this does not occur, leading to distressing circumstances where the animal is separated from the new keeper and the new keeper cannot trace the animal as the animal is not in the new keeper's name.

How could NSW laws, regulations, codes or guidelines be improved to support councils to better manage dangerous and restricted dogs?

- Remove the blanket ban on transferring ownership of a declared dangerous dog (**DDD**) or declared menacing dog (**DMD**) or proposed DDD/DMD (CA Act ss 52A, 52B). NSW is the only jurisdiction that has such a ban. It is inflexible and often results in unjustified and unreasonable outcomes such as the destruction of a dog whose prospects of rehabilitation are good but whose keeper cannot or does not wish to take on the responsibility of training the dog, or where a regulator (eg a council) will not allow a dog to be returned to a specific keeper, but could contemplate releasing the DDD/DMD to a different keeper or rescue organisation. All of these situations have presented themselves to the ADO, and we are continually frustrated by this inflexible and unjust prohibition on the transfer of ownership of DDDs/DMDs in NSW. All other States and the ACT (NT does not appear to have state-based dog control legislation) allow the transfer of these dogs with suitable checks and balances eg advising the prospective keeper in writing that the dog is a DDD/DMD (Victoria, Queensland, SA, WA), or requiring approval from a senior executive in the relevant authority (eg council) and a written application from prospective keepers (Tasmania). It is time that NSW removes this ban and provides Councils and decision-makers with the flexibility to deal with matters on a case-by-case basis in accordance with key principles such as maintaining public safety and protecting animal welfare.
- Keep the ability to revoke a dangerous/menacing dog declaration after 12 months (CA Act s 39). This is an excellent part of the current regulatory framework and in the ADO's view must be carried over into any updated framework. It provides flexibility to councils where a DDD/DMD is young and readily able to be trained and rehabilitated into a 'good citizen' dog.
- Remove the mandatory enclosure requirement (CA Act s 51(1)(c)) to allow decision-makers to impose it on a case-by-case basis and with moderations where appropriate. People in rental premises and public housing, or people experiencing homelessness, or domestic and family violence victim-survivors can all be unfairly disadvantaged by the mandatory requirement for enclosures. Removing the specifications for the enclosures from legislation (CA Reg s 32) would also provide flexibility to decision-makers to consider alternative proposals.
- Legislate minimum visiting rights for keepers of seized dogs. While this goes against the general principle of moving away from rules, the

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	ADO's experience is that keepers are often seriously distressed by councils that seem (to the keeper) arbitrarily to limit or cease visiting options which in turn causes more distress and trauma to keepers who are already separated from their beloved companion animal. • Expand seizure powers in response to a complaint about a dog attack. Recent Coroner's Reports have highlighted that one measure that may assist Councils and may reduce the incidence of dog attacks is to allow authorised officers to seize dogs in response to a complaint of a dog attack and to keep the dog impounded while the complaint is investigated. The ACT's *Domestic Animals Act 2000* contains a power to seize on these grounds: s 56A 'Seizure of dogs—investigation of complaints about attacking, harassing or menacing dogs'. In limited circumstances, such as when the attack causes the death of or serious injury to a person, the power to seize *must* be exercised (s 56A(2)(a)). In any other case the power is discretionary (s 56A(2)(b)). • However, if seizure powers were expanded to allow dogs to be seized while complaints are investigated (as in the ACT), investigation periods should be capped eg 28 days. Otherwise the ability to seize an animal and then keep them impounded indefinitely during investigations is unfair and distressing to the animal, the keeper and the broader family of the dog (eg keeper's children etc). • Alternatively the ADO would support the Coroner's suggestion that consideration be given to requiring keepers to muzzle their dogs inside and outside their house after a Notice of Intention to Declare Menacing/Dangerous is issued (Coroner's Report 2021/198871 at [113]).

2. Compliance and enforcement role of councils (see Part 2 of the Discussion Paper for background information)	
Are the current enforcement provisions under the Act (including penalties for offences - see Appendix B of the discussion paper) appropriate? If not, what enforcement provisions should be changed?	Recent Coroner's Reports have questioned whether maximum penalties for an owner of a dog who does not take all reasonable precautions to prevent a dog escaping the property on which the dog is kept are adequate (eg 2020/97395). Any increase in penalties would need to take into account when the dog keeper lives in public or rental housing and making alterations to the premises is beyond their control. Disqualification periods in the event of a dog attack should be increased. There should be better liaison between council authorised officers and enforcement agencies under POCTA Act (ie the RSPCA) in cases of potential animal welfare. The RSPCA's intervention may have averted the final fatal attack in matter of Mrs Ada Holland (Coroner's Report 2020/97395 at [54ff]), as there were ongoing animal welfare concerns regarding the dogs who fatally attacked Mrs Holland but no record of a complaint being made to an enforcement agency on animal welfare grounds.
Are there other compliance and enforcement matters that should be considered?	There may be a lack of follow-up compliance action after complaints of dog attacks or roaming dogs (eg Coroner's Report 2020/97395 at [166]). The requirement for authorised officers to check whether recommended measures re security of premises and registration (etc) of dogs have been implemented should be mandatory.

3. Companion animal population and rehoming (see Part 3 of the Discussion Paper for background information)	
Question	**Response**

What more could be done to reduce stray and homeless cats and dogs in NSW?	Desexing assistance: • Low-income and other disadvantaged people could be eligible for free or heavily-discounted desexing for their dog or cat. • Education campaign on how desexing is good for the animal and good for the species. There is a lot of misinformation about how desexing changes the behaviour of animals and is 'bad' for them. • Removing the requirement for a permit for keeping an undesexed cat over 4 months of age (CA Act s 11B). This permit unfairly penalises small rescue organisations and individual rescuers who rescue street cats. Banning online advertisements for companion animals: • The ability to purchase animals via online platforms such as Gumtree encourages irresponsible breeding and keeping of animals, and these animals can end up in fatal dog attacks (Coroner's Report 2021/198871). There are little to no checks and balances on the purchase of an animal online, allowing irresponsible breeding and purchasing of the animals. Requiring breeders to update pet databases before transferring possession of a purchased puppy or kitten to a new keeper. Introducing a licensing regime for dog owners to increase the likelihood of responsible keepers having a dog. Legalise and facilitate Trap Neuter Release Programs: • Programs for humanely controlling the population of free-living, abandoned or wild cats, such as 'Trap Neuter Release' (TNR) programs, should be facilitated rather than proscribed. TNR programs are reported as at the very least keeping population numbers stable, while potentially lowering cat numbers, and even being more effective than lethal measures such as trap-and-kill. • Legislative barriers to TNR should be removed. For example in NSW a person releasing cats as part of a TNR program could be charged with the offences of abandoning and/or unlawfully liberating the animals under animal welfare or biodiversity conservation laws. • Legislation based on the Animal Welfare (Population Control Programs) Bill 2014 should be introduced to the NSW Parliament to facilitate these non-lethal and effective population-control programs.

3. Companion animal population and rehoming (see Part 3 of the Discussion Paper for background information)	
What changes can be made to NSW laws, regulations, codes or guidelines to reduce the number of companion animals entering the pound and rehoming system in the first place?	**Breeding restrictions** Regulate and reduce or cap the numbers of purpose-bred dogs and cats. Require all dog/cat breeders to be licensed as in the ACT: *Domestic Animals Act 2000* Part 3, Div 3.1 'Controlling breeding'; it is an offence to breed a litter from a dog or cat without holding a breeding licence (s 72(1)); maximum penalty of $8,000 (which should be increased). **Ban on selling animals in pet shops** NSW should ban the sale of live animals in pet shops other than animals from rescue shelters. This measure would reduce the numbers of animals bred for sale, bought 'on impulse', and/or potentially abandoned.
For companion animals needing to enter the 'pound' system, what could be done to increase rehoming?	Section 64B(2) of the CA Act should be amended to include an obligation for a pound to identify the anticipated euthanasia date (or an approximate date range of 3-4 days) of an animal. Rescue groups have informed the ADO that animals flagged for rehoming can be placed lower on the groups' waitlists where the imminent likelihood of euthanasia is not disclosed. Transparency in relation to euthanasia dates would assist in rescue groups' triaging efforts and prevent the unnecessary deaths of rehomeable animals. Government and council pounds should be required to undertake all necessary veterinary treatment on an animal before transferring an animal to a rehoming organisation under s 64B.

3. Companion animal population and rehoming (see Part 3 of the Discussion Paper for background information)	
Are there other dog and cat population and rehoming matters that should be considered?	▪ The ADO submits that community organisations that look after rescued, orphaned, injured and unwanted companion animals should be regarded as key stakeholders in dog and cat population management. These community groups have genuine no-kill policies and a network of dedicated foster carers and other volunteers. Governments should recognise the contribution to dog and cat welfare and population control made by these unfunded, grassroots and volunteer-based entities. ▪ Greater support should be provided to these groups, including exemptions to regulatory requirements such as permits for undesexed cats for cat and kitten foster carers and those who would be involved in TNR programs ▪ The definition of 'rehoming organisation' in the CA Act (s 5) could be broadened in consultation with the rescue sector to relieve already overburdened rehoming organisations and to spread the rehoming burden as far and as equitably as possible. ▪ A council's failure to comply with ss 64(5) and 64B of the CA Act can directly lead to preventable and inhumane deaths of companion animals. Given the serious consequences of a council's noncompliance, breaches of these provisions ought to attract a hefty penalty for corporations.

Please send your completed submission form, via:

- Mail to C/- Office of Local Government, Locked Bag 3015, Nowra, NSW 2541; or
- Email to: ca.review@olg.nsw.gov.au
- Online via: https://www.olg.nsw.gov.au/councils/policy-and-legislation/acts-and-regulations/companion-animals-act-review