



# **Supplementary Agenda**

**for the**

**General Meeting of the Council**

**to be held in the**

**Council Chambers, 118 Victoria Street, St George**

**on**

**Thursday 21st December 2017**

**Commencing at 9:00am**

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# MEETING BUSINESS BY CORPORATE FUNCTION

## (CES) COMMUNITY & ENVIRONMENTAL SERVICES

ITEM	TITLE	EXECUTIVE SUMMARY	PAGE
CES10	<b><u>UPDATE FROM KING &amp; CO ON LOCAL LAWS</u></b>	<i>A legal opinion was obtained from King &amp; Co in regard to working dogs located within the designated town areas of the Balonne Shire.</i>	3

## OFFICER REPORT

TO: Council

SUBJECT: Update from King & Co on Local Laws

DATE: 19.12.17

AGENDA REF: CES10

AUTHOR: Di Francisco - Environmental Health Officer

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### Executive Summary

A legal opinion was obtained from King & Co in regard to working dogs located within the designated town areas of the Balonne Shire.

### Background

After the information session with Council on Thursday, 14 December 2017, the Director of Community & Environmental Sustainability, Mr Jamie Gorry with Council's Environmental Health Officer, Ms Di Francisco held a telephone conference with Mr James Neilson (King & Co), to discuss the decision made by Council on workings dogs and the legal implications of this decision.

The legal opinion is attached which clearly outlines that

1. Any proposed working dog (***now known as a stock dog***) kept within the designated town area **MUST** be registered. (*Refer to 3 (c) of King & Co letter*)
2. There is no scope for Council to circumvent any requirement of the Act under a local law of Council because, quite simply, under the Local Government Act 2009, section 27, if there is any inconsistency between a **local law** and a **law** made by the **State**, the law made by the State prevails to the extent of the inconsistency.
3. The registration fee of the stock dog can be fixed by Council as a cost-recovery fee under a resolution, rather than a local law, because it is a relatively simple matter to change a resolution. This fee can be set at a lower rate than current dog registration fees. (*Refer to Section 18 of King & Co letter.*)
4. Council must also be mindful if the cost recovery fee is too low (the registration of the stock dog), it may attract criticism at the political level from the community.

The amendments to each of the local laws as per the Councillor Information session are also attached. These changes represent the views of Council from the information session.

Council also needs to be mindful that discussions still need to take place in regard to the community factsheets, horses and the conditions of the keeping of horses within the designated town area.

## Link to Corporate Plan

Function	Key Program Area
<u>Strong &amp; Resilient Communities</u>	Public Health: To implement policies and programs to maintain an appropriate level of public health standards within the Shire.

### Consultation (internal/external)

Discussions have been held with Mr James Neilson, King & Co; Council's Director Community & Environmental Sustainability, Mr Jamie Gorry and Council's Environmental Health Officer, Ms Di Francisco

### Legal Implications

Animal Management (Cat & Dogs) Act 2008, Local Government Act 2009.

### Policy Implications

Nil

### Financial and Resource Implications

Council may elect to have a fixed cost recovery registration fee on all stock dogs residing within the designated town area.

### Attachments

1. King and Company - LL2 Animal Management -001.pdf [↓](#)
2. SLL2 (Animal Management) 2015.DOC [↓](#)
3. SLL1.5 (Keeping of Animals) 2015.DOC [↓](#)
4. MLL2 -(Animal Management) 2015.DOC [↓](#)

### Recommendation/s

That this report be received and the information contained in this report be workshopped at the earliest Councillor Information Workshop to be held in January 2018.

Jamie Gorry

**Director Community and Environmental Services**

Our ref: JHN:kb:AA21169

Your ref: Di Francisco

Date: 18 December 2017

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**LOCAL LAW NO. 2 (ANIMAL MANAGEMENT) 2017**

1. The purpose of this letter is to record our telephone advices of 15 December.
2. Relevantly, under the *Animal Management (Cats and Dogs) Act 2008*:
  - (a) section 14, the owner of a dog must ensure the dog is implanted with a permanent identification device (basically a microchip), but it is a defence to a prosecution for an offence against the provision to prove that the relevant dog is a working dog; and
  - (b) section 44, the owner of a dog must register the dog in the local government area in which the dog is kept, but it is a defence to a prosecution for an offence against the provision to prove that the relevant dog is a working dog; and
  - (c) by schedule 2, dictionary to the Act, relevantly, a dog is only a working dog if it is usually kept on rural land, and primarily for the purpose of droving, tending or working stock; and
  - (d) by schedule 2, dictionary to the Act, land is not rural land unless the land is used for grazing stock or cultivating crops on a commercial basis.
3. Accordingly, and against the background of our telephone discussions, we make the following observations:
  - (a) the Act (only) imposes obligations about the implanting and registration of dogs;
  - (b) those obligations do not apply to a working dog, but a dog is not a working dog for the purposes of the Act unless the dog is kept on rural land;
  - (c) any dog kept within a town area in Council's local government area (which is not rural land) cannot be a working dog and the owner of the dog must comply with the implanting and registration obligations detailed in the Act;
  - (d) the Act does not impose any obligation on anybody to keep any dog on rural land under any circumstances;
  - (e) the rural land issue only comes into play in circumstances where the owner of a dog wishes to argue that the dog is a working dog so that the owner of the dog may obtain the benefit of the exemption from the implanting and registration obligations imposed under the Act for a working dog.
4. By contrast, Council's proposed *Local Law No. 2 (Animal Management) 2017* (like every other local law about animal management of a local government in the State of Queensland), contemplates that Council may, by subordinate local law:-

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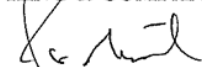
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- (a) prescribe circumstances where the keeping of animals (in this case dogs) is prohibited; and
    - (b) prescribe circumstances in which an approval is required in respect of the keeping of an animal (in this case a dog).
  5. Council is particularly interested in the implementation of prohibitions and approval requirements for dogs which are kept primarily for the purpose of droving, protecting or working stock, but the dogs are kept in town areas rather than on rural land as that expression is defined in the Act.
  6. We have defined this category of dog as a “stock dog” to avoid confusion with the use of the expression “working dog” in the Act.
  7. Against that background, we make the following observations:-
    - (a) a “stock dog” kept in a designated town area (as that expression is defined in *Subordinate Local Law No. 2 (Animal Management) 2017*) must be both implanted and registered because that is a requirement of the Act except in circumstances where the land on which the dog is kept can be properly characterised as rural land;
    - (b) the obligation identified in paragraph (a) arises under the Act and there is no scope for Council to circumvent any requirement of the Act under a local law of Council because, quite simply, under the *Local Government Act 2009*, section 27, if there is any inconsistency between a local law and a law made by the State, the law made by the State prevails to the extent of the inconsistency.
  8. The registration of a dog is a procedural matter, basically a question of filling in the required form. Council has no discretion as to whether it will accept or reject any application for registration under the Act.
  9. Council officers have raised with us the issue of the payment of the fee associated with the registration of a dog. Under the *Local Government Act 2009*, section 97, the registration fee is characterised as a “cost-recovery fee”, that is, a fee for an application for the issue or renewal of a registration under a Local Government Act (in this case the *Animal Management (Cats and Dogs) Act 2008*).
  10. Under section 97, Council may, under a local law or a resolution, fix a cost-recovery fee.
  11. As the name implies, the amount of the cost-recovery fee must not exceed the cost which Council reasonably anticipates it will incur of and incidental to the processing of the application for the registration of the dog in accordance with the requirements of the *Animal Management (Cats and Dogs) Act 2008*. The LGAQ Commentary on section 97 contains a more detailed commentary about the calculation of cost-recovery fees but it is not necessary to delve into that issue further for the purposes of this advice.
  12. For completeness, we recommend that Council fix its cost-recovery fee for dog registration under a resolution, rather than a local law, because it is a relatively simple matter to change a resolution. By contrast, changing a local law is a much more complicated process.
  13. Relevantly, the concern of Council officers is not the maximum cost-recovery fee that may be fixed in respect of dog registration, but rather the minimum cost-recovery fee that may be fixed.
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14. Importantly, and as discussed, Council may, in circumstances considered appropriate by Council, waive or partially remit a cost-recovery fee, including a dog registration fee. Both the current local laws of Council and the proposed local laws of Council give Council a specific power to exercise its discretion in this regard.
15. Normally, cost-recovery fees are fixed at the budget meeting of Council. However, cost-recovery fees need not be fixed at a budget meeting, and may be altered at any time during a financial year.
16. Note, the *Local Government Act 2009*, section 98, specifies procedural requirements for the fixing of cost-recovery fees, including a requirement to keep a register of cost-recovery fees, for example, fees for the registration of dogs. Indeed, and at a practical level, if Council wishes to waive the obligation to pay part, including a substantive part, of dog registration fees if the dog the subject of a registration is a "stock dog" then the resolution about the cost-recovery fee would need to clearly specify the circumstances in which a person would be entitled to the benefit of the waiver.
17. For completeness, Council should be careful to ensure that the level of registration fees for dogs other than stock dogs is not set at a level such that the revenue generated by registration fees for non-stock dogs is effectively underwriting the registration process for stock dogs. In other words, it may be difficult to justify a substantial increase in registration fees for non-stock dogs if the increase is imposed contemporaneously with a substantial reduction in the registration fees for stock dogs.
18. As discussed with Council officers, a substantially reduced, or negligible, registration fee for stock dogs may result in scenarios which attract criticism at a political level, for example, in a scenario where 1 non-stock dog is kept on parcel A and attracts the usual registration fee whereas 5 stock dogs are kept on parcel B, which adjoins parcel A, and the keeping of the 5 stock dogs on parcel B attracts only a negligible registration fee.
19. We have now amended, and **enclose** (electronically only) revised drafts of the following:-
  - (a) Local Law No. 2 (Animal Management) 2017;
  - (b) Subordinate Local Law No. 2 (Animal Management) 2017;
  - (c) Subordinate Local Law No. 1.5 (Keeping of Animals) 2017.
20. The amendments to each of the documents are tracked on the documents for ease of reference.
21. Please telephone the writer if wish to discuss these issues further.

Yours faithfully

**KING & COMPANY**



Contact and Partner responsible:

Contact's e-mail:

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# Subordinate Local Law No. 2 (Animal Management) 2017

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## Part 1 Preliminary

### 1 Short title

This subordinate local law may be cited as *Subordinate Local Law No. 2 (Animal Management) 2017*.

### 2 Purpose and how it is to be achieved

- (1) The purpose of this subordinate local law is to supplement *Local Law No. 2 (Animal Management) 2017*, which provides for regulation of the keeping and control of animals within the local government's area.
- (2) The purpose is to be achieved by providing for—
  - (a) the circumstances in which the keeping of animals is prohibited or requires approval; and
  - (b) requirements for keeping animals, including minimum standards, mandatory desexing, proper enclosures, koala conservation and identification; and
  - (c) the control of animals in public places; and
  - (d) matters regarding the impounding of animals and the sale or disposal of impounded animals; and
  - (e) the conditions to be complied with by persons who offer animals, or a particular species of animal, for sale; and
  - (f) the declaration of a species of animal as a declared dangerous animal and the criteria for declaration of a specific animal as a declared dangerous animal.

### 3 Authorising local law

The making of the provisions in this subordinate local law is authorised by *Local Law No. 2 (Animal Management) 2017* (the **authorising local law**).

### 4 Definitions

- (1) Particular words used in this subordinate local law have the same meaning as provided for in the authorising local law.
- (2) The dictionary in schedule 14 defines particular words used in this subordinate local law.

## Part 2 Keeping of animals

### 5 Circumstances in which keeping animals prohibited—Authorising local law, s 5(1)

For section 5(1) of the authorising local law, keeping an animal or animals mentioned in column 1 of schedule 1 is prohibited in the circumstances described in column 2 of schedule 1.

**6 Circumstances in which keeping animals requires approval—Authorising local law, s 6(1)**

For section 6(1) of the authorising local law, keeping an animal or animals of the species or breed mentioned in column 1 of schedule 2 requires approval in the circumstances described in column 2 of schedule 2.

**7 Animals that must be desexed—Authorising local law, s 7**

For section 7 of the authorising local law, an animal of the species or breed mentioned in column 1 of schedule 3 must be desexed once it reaches the age specified in column 2 of schedule 3 except in the circumstances described in column 3 of schedule 3.

**8 Minimum standards for keeping animals—Authorising local law, s 8(1)**

- (1) For section 8(1) of the authorising local law, the minimum standards for the keeping of animals in a designated town area are set out in schedule 4.
- (2) For section 8(1) of the authorising local law, column 2 of schedule 5 sets out the minimum standards for keeping an animal of the species or breed mentioned in column 1 of schedule 5, in a designated town area.

**9 Identification for dogs in certain circumstances—Authorising local law, s 9**

For section 9 of the authorising local law, the identification required for a dog that is at a place other than the address stated in the registration notice for the dog is the registration device mentioned in section 12(2) of the *Animal Management (Cats and Dogs) Act 2008*.

## **Part 3 Control of animals**

**10 Public places where animals are prohibited—Authorising local law, s 10(1)**

For section 10(1) of the authorising local law, the species or breeds of animals mentioned in column 2 of schedule 6 are prohibited in the public places described in column 1 of schedule 6.

**11 Dog off-leash areas—Authorising local law, s 11(1)**

For section 11(1) of the authorising local law, the areas described in schedule 7 are designated as dog off-leash areas.

## **12 Animal faeces in public places—Authorising local law, s 13**

For section 13 of the authorising local law, no other species of animal is prescribed as an animal whose faeces must be removed from a public place and disposed of in a sanitary way.

## **13 Requirements for proper enclosures for keeping animals—Authorising local law, s 14(2)**

For section 14(2) of the authorising local law, column 2 of schedule 8 sets out the requirements for proper enclosures for an animal of the species or breed mentioned in column 1 of schedule 8.

## **14 Koala conservation—Authorising local law, s 15**

- (1) For section 15(1) of the authorising local law, schedule 9 sets out the requirements for keeping a dog on land that is within a koala area.
- (2) For section 15(4) of the authorising local law, each area described in schedule 10 is designated as a koala area.

## **15 Criteria for declared dangerous animals—Authorising local law, s 19(1)**

For section 19(1) of the authorising local law, the criteria for declaring an animal as a declared dangerous animal are set out in schedule 11.

# **Part 4                      Seizure, impounding or destruction of animals**

## **16 Place of care for impounded animals—Authorising local law, s 24**

For section 24 of the authorising local law, the place of care for animals impounded by the local government will be operated by the local government.

## **17 Animals that may be disposed of without auction or tender—Authorising local law, s 32(1)(b)**

For section 32(1)(b) of the authorising local law, the species, breeds or classes of animal that may be sold by private agreement, destroyed or disposed of in some other way are the following—

- (a) dogs; and
- (b) cats; and
- (c) other small domestic animals; and
- (d) stock.

## **18 Register of impounded animals—Authorising local law, s 33(3)**

For section 33(3) of the authorising local law, the register of impounded animals will be kept at the local government's public office.

## **Part 5 Appeals against destruction orders**

*This part in the authorising local law does not contain any matters to be provided for by subordinate local law.*

## **Part 6 Miscellaneous**

### **19 Conditions regarding sale of animals—Authorising local law, s 42(1)**

For the purposes of section 42(1) of the authorising local law, persons who offer for sale an animal of a species or breed mentioned in column 1 of schedule 12 must comply with the conditions set out in column 2 of schedule 12.

### **20 Animals excluded from application of the local law—Authorising local law, schedule**

For the purposes of the definition of “*animal*” in the schedule to the authorising local law, animals of the fish species are excluded from the application of the authorising local law.

### **21 Species that are declared dangerous animals—Authorising local law, schedule**

For the purposes of the definition of “*declared dangerous animal*” in the schedule to the authorising local law, no species of animal is declared to be a declared dangerous animal.

### **22 Prescribed period for reclaiming animals—Authorising local law, schedule**

For the purposes of the definition of “*prescribed period*” in the schedule to the authorising local law, the period within which an animal may be reclaimed is—

- (a) if the animal is a horse, cow, registered cat, registered dog or other identifiable animal—5 days; and
- (b) if the animal is an unregistered cat, unregistered dog or an animal which is not an identifiable animal—3 days.

# Schedule 1      Prohibition on keeping animals

Section 5

	Column 1 Animal	Column 2 Circumstances in which keeping of animal or animals is prohibited
1	Dog	<p>(a) 1 or more stock dogs over the age of 3 months on an allotment (other than multi-residential premises) which has an area less than 1,000m<sup>2</sup> and is in a designated town area.</p> <p>(b) 1 or more stock dogs over the age of 3 months on multi-residential premises in a designated town area.</p> <p>(c) More than 4 non-stock dogs over the age of 3 months on an allotment (other than multi-residential premises) which has an area less than 1,000m<sup>2</sup> and is in a designated town area.</p> <p>(d) More than 1 non-stock dog over the age of 3 months on multi-residential premises in a designated town area.</p> <p>(e) For an allotment (other than multi-residential premises) which has an area between 1,000m<sup>2</sup> and 4,000m<sup>2</sup> and is in a designated town area, the keeping of dogs is prohibited in each of the following circumstances—</p> <p>(i) more than 6 dogs, regardless of whether the dogs are stock dogs or non-stock dogs;</p> <p>(ii) more than 4 non-stock dogs.</p> <p>(f) For an allotment (other than multi-residential premises) which has an area between 4,001m<sup>2</sup> and 20,000m<sup>2</sup> and is in a designated town area, the keeping of dogs is prohibited in each of the following circumstances—</p> <p>(i) more than 10 dogs, regardless of whether the dogs are stock dogs or non-stock dogs;</p> <p>(ii) more than 4 non-stock dogs.</p> <p>(g) For an allotment (other than multi-residential premises) which has an area greater than 20,001m<sup>2</sup> and is in a designated town area—more than 4 non-stock dogs.</p> <p>(h) Any of the following breeds anywhere in the local government area American pit bull terrier or pit bull terrier; dogo Argentino; fila Brasileiro; Japanese tosa; Perro de Presa Canario or Presa Canario.</p>
2	Horse or cow	(a) An animal to which this item 2 applies on premises in

		<p>the St George residential area unless the keeping of the animal on the premises is authorised under the conditions of a vet care approval for the animal.</p> <p>(b) An animal to which this item 2 applies on premises in a rural town area unless the keeping of the animal on the premises is authorised under the conditions of a vet care approval for the animal.</p> <p>(c) An animal to which this item 2 applies on premises in a rural town area unless the keeping of the animal on the premises is authorised under the conditions of a drought care approval.</p>
3	Donkey, bull, ox, camel, deer	<p>(a) An animal to which this item 3 applies on premises in the St George residential area.</p> <p>(b) An animal to which this item 3 applies on premises in a rural town area.</p>
4	Goat	<p>(a) A goat on premises in the St George residential area unless the keeping of the goat on the premises is authorised under the conditions of a vet care approval for the goat.</p> <p>(b) A goat on premises in a rural town area unless the keeping of the goat on the premises is authorised under the conditions of a vet care approval for the goat.</p>
5	Sheep, alpaca and llama	<p>(a) An animal to which this item 5 applies on premises in the St George residential area unless the keeping of the animal on the premises is authorised under the conditions of a vet care approval for the animal.</p> <p>(b) An animal to which this item 5 applies on premises in a rural town area unless the keeping of the animal on the premises is authorised under the conditions of a vet care approval for the animal.</p>
6	Ostrich, emu, peacock, guinea fowl	<p>(a) A bird to which this item 6 applies on premises in the St George residential area.</p> <p>(b) A bird to which this item 6 applies on premises in a rural town area.</p>
7	Rooster	<p>(a) A rooster on premises in the St George residential area.</p> <p>(b) A rooster on premises in a rural town area.</p>
8	Chickens	<p>(a) More than 12 chickens on premises (other than multi-residential premises) in the St George residential area.</p> <p>(b) More than 12 chickens on premises (other than multi-residential premises) in a rural town area.</p> <p>(c) A chicken on multi-residential premises in the St</p>

		<p>George residential area.</p> <p>(d) A chicken on multi-residential premises in a rural town area.</p> <p>(e) More than 24 chickens on premises in a rural residential area.</p>
9	Duck or turkey	<p>(a) More than 6 birds to which this item 9 applies on premises (other than multi-residential premises) in the St George residential area.</p> <p>(b) A bird to which this item 9 applies on multi-residential premises in the St George residential area.</p> <p>(c) More than 6 birds to which this item 9 applies on premises (other than multi-residential premises) in a rural town area.</p> <p>(d) A bird to which this item 9 applies on multi-residential premises in a rural town area.</p> <p>(e) More than 12 birds to which this item 9 applies on premises in a rural residential area.</p>
10	Cat	More than 1 cat over the age of 3 months on multi-residential premises in a designated town area.
11	Goose	<p>(a) A goose on premises (including multi-residential premises) in the St George residential area.</p> <p>(b) A goose on premises (including multi-residential premises) in a rural town area.</p> <p>(c) More than 6 geese on premises in a rural residential area.</p>
12	Pig (including a miniature pig)	<p>(a) A pig on premises in the St George residential area.</p> <p>(b) A pig on premises in a rural town area.</p>
13	Bees (as defined in the <i>Biosecurity Act 2014</i> , schedule 4)	1 or more bees on premises (including multi-residential premises) in the St George residential area.

A prohibition prescribed in this schedule does not apply to the keeping of an animal or animals on premises if—

- (a) the animal or animals were kept on the premises before the commencement of the authorising local law; and
- (b) the keeping of the animal or animals on the premises immediately before the commencement of the authorising local law did not contravene any provision of a local law of the local government that was repealed contemporaneously with the making of the authorising local law.





## Schedule 2 Requirement for approval to keep animal

### Section 6

	Column 1 Species or breed of animal	Column 2 Circumstances in which keeping of animal or animals requires approval <sup>1</sup>
1	Dog	<p>(a) 1 or more stock dogs over the age of 3 months on premises (other than multi-residential premises) in a designated town area.</p> <p>(b) Subject to paragraph (a), more than 2 dogs over the age of 3 months, regardless of whether the dogs are stock dogs or non-stock dogs, on premises (other than multi-residential premises) in a designated town area.</p>
2	Horse or cow	<p>(a) The keeping of an animal to which this item 2 applies on premises in the St George residential area for the primary purpose of care by a veterinary surgeon (a vet care approval).</p> <p>(b) The keeping of an animal to which this item 2 applies on premises in a rural town area for the primary purpose of care by a veterinary surgeon (a vet care approval).</p> <p>(c) The keeping of an animal to which this item 2 applies on premises in a rural town area for drought mitigation purposes (a drought care approval).</p>
3	Goat	<p>(a) The keeping of a goat on premises in the St George residential area for the primary purpose of care by a veterinary surgeon (a vet care approval).</p> <p>(b) The keeping of a goat on premises in a rural town area for the primary purpose of care by a veterinary surgeon (a vet care approval).</p>
4	Sheep, alpaca and llama	<p>(a) The keeping of an animal to which this item 4 applies on premises in the St George residential area for the primary purpose of care by a veterinary surgeon (a vet care approval).</p> <p>(b) The keeping of an animal to which this item 4 applies on premises in a rural town area for the primary purpose of</p>

<sup>1</sup> See *Local Law No.1 (Administration) 2017* and *Subordinate Local Law No.1.5 (Keeping of Animals) 2017* in relation to the requirements and processes for approvals (e.g. form of application for approval, documents and materials that must accompany applications, criteria for granting approval, conditions that must be imposed on approvals, conditions that will ordinarily be imposed on approvals, term of approval, third party certification of applications).

		care by a veterinary surgeon (a vet care approval).
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## Schedule 3 Requirement to desex animal

Section 7

	<b>Column 1</b> <b>Species or breed</b> <b>of animal</b>	<b>Column 2</b> <b>Age at which animal must be</b> <b>desexed</b>	<b>Column 3</b> <b>Exemptions to the</b> <b>requirement for desexing</b>
	No species or breed of animal mentioned.		

## Schedule 4      Minimum standards for keeping animals generally

### Section 8(1)

1. A person who keeps an animal on premises must —
  - (a) ensure that the animal is adequately identified so that the owner's name, address and telephone number are readily ascertainable; and
  - (b) ensure that waste waters from enclosures are drained in a nuisance free manner and that run-off is kept off adjoining premises or as otherwise directed by an authorised person; and
  - (c) ensure that excreta, food scraps and other material that is, or is likely to become, offensive is collected at least daily and, if not immediately removed from the premises, is kept in a waste container of a kind approved by an authorised person; and
  - (d) ensure that any enclosure in which the animal is kept is properly maintained in—
    - (i) a clean and sanitary condition; and
    - (ii) an aesthetically acceptable condition; and
  - (e) take all reasonable steps to prevent the animal from making a noise or disturbance that causes a nuisance or disturbance to the occupiers of—
    - (i) adjoining premises; or
    - (ii) premises in the vicinity of the land on which the animal is ordinarily kept; and
  - (f) ensure that the area available to the animal kept on the premises is appropriately sized so that the animal can be effectively and comfortably kept; and
  - (g) if the animal is a dog—ensure that the keeping of the dog on the premises does not cause an animal noise nuisance.
2. For the purposes of section 1(g), a dog causes an animal noise nuisance if, in the opinion of an authorised person, it makes a noise which —
  - (a) occurs more than once; and
  - (b) disrupts or inhibits an activity ordinarily carried out on adjoining or nearby residential premises.

*Example for section 2(b) —*

The barking of a dog which disrupts a person—

- (a) holding a conversation; or
- (b) watching television; or
- (c) listening to a radio or recorded material; or
- (d) sleeping.

In order for a nuisance under this section 2 to occur, it is not necessary that the degree of interference from the barking is such as to be continuous, or to make it practically impossible to—

- (a) hold a conversation; or
- (b) watch television; or
- (c) listen to a radio or recorded material at ordinary volumes; or
- (d) fall or stay asleep.

Any occurrence by which a person is woken from sleep, or by which a person is distracted or annoyed during the course of carrying out some other ordinary activity, in a way which would not occur in the absence of the dog barking, is a disruption to or an inhibition of an activity ordinarily carried out on residential premises. It is not necessary that the barking totally drowns out the sound of the conversation, television, radio or recorded material. It is sufficient if attention is merely diverted from this sound by the barking of the dog. It is not necessary that it be a repeated or ongoing interruption of sleep or that it be the total shattering of sleep.

3. Also, for the purposes of section 1(g), a dog causes an animal noise nuisance if the dog makes a noise that is excessive in all the circumstances, and a dog makes a noise that is excessive in all the circumstances if—
  - (a) the noise is made for more than a total of 6 minutes in any hour from 7.00a.m. to 10.00p.m. on any day; or
  - (b) the noise is made for more than a total of 3 minutes in any 30 minute period on any day after 10.00p.m. or before 7.00a.m.
4. The criteria an authorised person must consider when deciding whether a dog makes a noise which disrupts or inhibits an activity ordinarily carried out on adjoining or nearby residential premises include whether the local government has received more than 1 complaint of a contravention of section 1(g).

## Schedule 5 Minimum standards for keeping particular animals

Section 8(2)

	Column 1 Species or breed of animal	Column 2 Minimum standards for keeping animals
1	Greyhound	Each owner of, and responsible person for, a greyhound must ensure that the dog is kept— (a) without nuisance; and (b) if a code of practice for the keeping of greyhounds has been approved by the Greyhound Racing Authority of Queensland—in accordance with the requirements of the code of practice.
2	Horse, donkey, cow, bull, ox, deer and other domesticated animals of a similar size and sheep, goat, pig and other animals of a similar size	Each owner of, and responsible person for, an animal specified in column 1, item 2 which is kept on premises must ensure that any enclosure in which the animal is kept is not located within a radius of 10m of— (a) a residence on adjoining premises; or (b) a place used for the manufacture, preparation or storage of food intended for human consumption other than a domestic kitchen used solely for domestic purposes by the owner or responsible person for the animal; or (c) a place used for the storage of food (other than food kept in hermetically sealed packages).
3	Budgerigar, canary and other birds of a similar size and cockatiel and other birds of a similar size and cockatoo, galah and other birds of a similar size	Each owner of, and responsible person for, a bird specified in column 1, item 3 must ensure that— (a) the bird is kept without nuisance; and (b) the bird is contained within an enclosed cage or aviary; and (c) the bird's food is kept in a properly sealed, vermin proof container; and (d) the cage or aviary in which the bird is kept is thoroughly cleaned at least once each week; and (e) if a code of practice for the keeping of birds of a relevant species has been approved by the local government—the bird is kept in accordance with the

		requirements of the code of practice.
4	Pigeons	<p>Each owner of, and responsible person for, pigeons which are kept on premises must ensure that—</p> <ul style="list-style-type: none"> <li>(a) the pigeons are kept without nuisance; and</li> <li>(b) the pigeons contained within an enclosed cage or aviary; and</li> <li>(c) the pigeon's food is kept in a properly sealed, vermin proof container; and</li> <li>(d) the cage or aviary in which the pigeons are kept is— <ul style="list-style-type: none"> <li>(i) thoroughly cleaned at least once each week; and</li> <li>(ii) located at the rear of, and behind, any residence situated on the premises; and</li> </ul> </li> <li>(e) if a code of practice for the keeping of pigeons has been approved by the local government—the pigeons are kept in accordance with the requirements of the code of practice.</li> </ul>
5	Bees (as defined in the <i>Biosecurity Act 2014</i> , schedule 4)	<p>Each owner of, and responsible person for, bees which are kept on premises must ensure that—</p> <ul style="list-style-type: none"> <li>(a) the bees are kept without nuisance; and</li> <li>(b) any beehive constructed for the purpose of keeping the bees is not located within a radius of 10m of— <ul style="list-style-type: none"> <li>(i) a residence on adjoining premises; or</li> <li>(ii) a place used for the manufacture, preparation or storage of food intended for human consumption other than a domestic kitchen used solely for domestic purposes by the owner or responsible person for the bees; or</li> <li>(iii) a place used for the storage of food (other than food kept in hermetically sealed packages); and</li> </ul> </li> <li>(c) each beehive constructed for the purpose of keeping bees is adequately identified so that the owner's name, address and telephone number are readily ascertainable; and</li> <li>(d) if a code of practice for the keeping of bees has been approved by the local government — the bees are kept in accordance with the requirements of the code of practice.</li> </ul>
6	Duck, drake, goose, turkey, rooster, peacock, peahen,	Each owner of, and responsible person for, a bird identified in column 1 item 6 which is kept on premises must ensure that—



	ostrich and poultry	<ul style="list-style-type: none"> <li>(a) the bird is kept without nuisance; and</li> <li>(b) the bird is contained within an enclosure; and</li> <li>(c) the bird's food is kept in a properly sealed, vermin proof container; and</li> <li>(d) the enclosure in which the bird is kept is— <ul style="list-style-type: none"> <li>(i) thoroughly cleaned at least once each week; and</li> <li>(ii) located at the rear of, and behind, any residence situated on the premises; and</li> </ul> </li> <li>(e) the enclosure in which the bird is kept is not located within a radius of 10m of— <ul style="list-style-type: none"> <li>(i) a residence on adjoining premises; or</li> <li>(ii) a place used for the manufacture, preparation or storage of food intended for human consumption other than a domestic kitchen used solely for domestic purposes by the owner or responsible person for the bird; or</li> <li>(iii) a place used for the storage of food (other than food kept in hermetically sealed packages); and</li> </ul> </li> <li>(f) the enclosure in which the bird is kept is not located less than 1 m from the side or rear boundaries of the premises.</li> </ul>
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## Schedule 6      Prohibition of animals in public places

Section 10

	<b>Column 1</b> <b>Public place</b>	<b>Column 2</b> <b>Species or breed of animals prohibited</b>
1	Each local government swimming pool in the local government area.	Dog
2	Each aerodrome in the local government area.	Dog

## **Schedule 7      Dog off-leash areas**

### **Section 11**

No dog off-leash area designated.

## Schedule 8 Requirements for proper enclosures for animals

Section 13

	Column 1 Species or breed of animal	Column 2 Requirements for proper enclosures
1	All animals regardless of species or breed	<p>(1) A proper enclosure is an area of the land on which the animal is kept, appropriately sized so as to be capable of effectively and comfortably housing the animal.</p> <p>(2) The area must be suitably fenced—</p> <ul style="list-style-type: none"> <li>(a) appropriate to the species and breed of the animal to be enclosed; and</li> <li>(b) so as to effectively enclose the animal on the land on which it is kept at all times.</li> </ul> <p>(3) For the purposes of this item 1 <i>suitably fenced</i> means enclosed by a fence —</p> <ul style="list-style-type: none"> <li>(a) constructed of materials which are of sufficient strength to prevent the animal from escaping over, under or through the fence; and</li> <li>(b) of a height which is sufficient to prevent the animal jumping or climbing over the fence; and</li> <li>(c) where the animal has the ability to dig — which includes a barrier installed directly below the fence to prevent the animal digging its way out; and</li> <li>(d) where the animal has the ability to climb — designed and constructed in such a way as to prevent the animal from climbing over the fence; and</li> <li>(e) of which all gates are kept closed and latched except when in immediate use by a person entering or leaving the land on which the animal is kept.</li> </ul>
2	Horse	<p>A proper enclosure for the keeping of a horse must, in addition to the requirements specified in item 1 —</p> <ul style="list-style-type: none"> <li>(a) effectively enclose the horse so that the horse can not reach over or through the fence to adjoining land or any public place; and</li> <li>(b) where the animal is a stallion or a mare in season—the enclosure must be constructed within an additional or second suitable and adequate fence or enclosure that is provided at the land on</li> </ul>

		which the animal is kept to a standard approved by an authorised person.
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## **Schedule 9      Requirements for keeping a dog in a koala area**

Section 14(1)

No requirements prescribed.

## **Schedule 10      Koala areas<sup>2</sup>**

Section 14(2)

No area designated.

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<sup>2</sup> “Koala areas” under section 15(4) of the authorising local law comprise the areas designated in this schedule plus “koala habitat areas” designated by a State planning instrument or a conservation plan made under the *Nature Conservation Act 1992*.

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## **Schedule 11      Criteria for declared dangerous animals**

### **Section 15**

There is a high likelihood of the animal causing injury to a person or animal or damage to property, taking into account—

- (a) its prior history of attacking or causing fear to persons or animals or damaging property; and
- (b) the extent of injury or damage that could potentially be inflicted by an animal of its size and species or breed.



## Schedule 12      Conditions for sale of animals

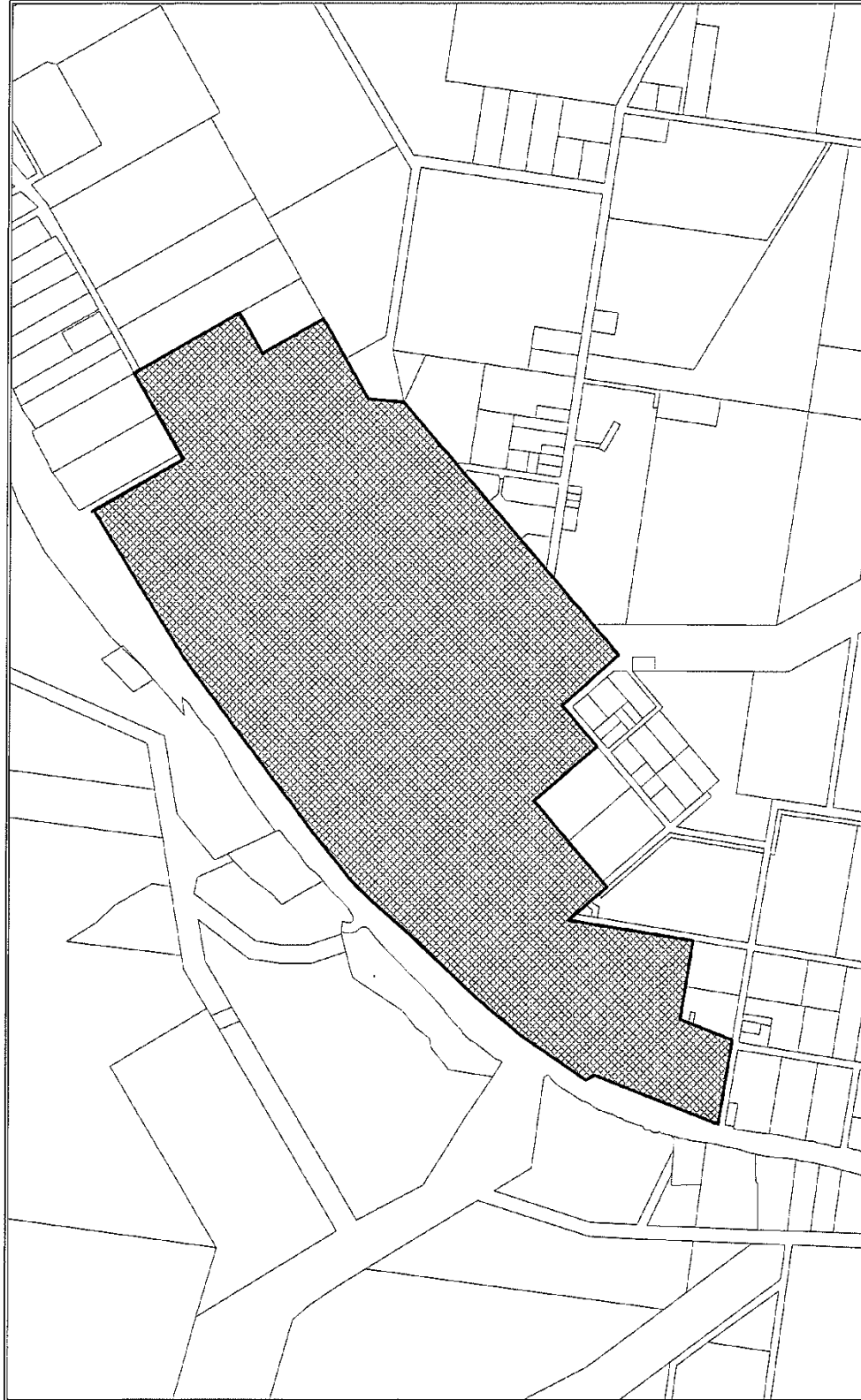
Section 19

	<b>Column 1</b> <b>Species or breed of animal</b>	<b>Column 2</b> <b>Conditions that must be complied with when offering animal for sale</b>
	No species or breed of animal mentioned.	No conditions set out.

## **Schedule 13    Town Area Maps**

### Section 4





**LOCAL LAWS - ST GEORGE RESIDENTIAL AREA**  
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**St George Residential Area**  


Disclaimer: This map is a representation of the Balonne Shire Council's best knowledge and belief. It is not a guarantee of accuracy. The Balonne Shire Council is not responsible for any errors or omissions. The Balonne Shire Council is not responsible for any damages or losses resulting from the use of this map. The Balonne Shire Council is not responsible for any damages or losses resulting from the use of this map. The Balonne Shire Council is not responsible for any damages or losses resulting from the use of this map.

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## Schedule 14 Dictionary

### Section 4

**aerodrome** has the meaning given in *Local Law No. 6 (Aerodromes) 2017*.

**allotment** means a single parcel of land, or several contiguous parcels of land where all of the contiguous parcels of land are in —

- (a) the same ownership; or
- (b) the same occupation.

**Animal Management Act** see *Animal Management (Cats and Dogs) Act 2008*.

**assistance dog** has the meaning given in the *Guide, Hearing and Assistance Dogs Act 2009*.

**building** has the meaning given in the *Building Act 1975*.

**cat**—

- (a) has the meaning given in section 11 of the Animal Management Act; and
- (b) includes a kitten regardless of age.

**designated town area** means each of the following—

- (a) the St George residential area;
- (b) each rural town area;
- (c) the rural residential area.

**destroy**, an animal, includes causing it to be destroyed.

**dog**—

- (a) has the meaning given in section 11 of the Animal Management Act; and
- (b) includes a puppy regardless of age.

**domestic purposes** means the purposes of—

- (a) human consumption; or
- (b) food preparation; or
- (c) washing; or
- (d) other normal domestic duties.

**drought care approval**—

- (a) see schedule 1 and schedule 2;
- (b) means an approval to keep a cow or a horse in a rural town area for drought mitigation purposes.

**guide dog** has the meaning given in the *Guide, Hearing and Assistance Dogs Act 2009*.

**handler** has the meaning given in the *Guide, Hearing and Assistance Dogs Act 2009*.

**hearing dog** has the meaning given in the *Guide, Hearing and Assistance Dogs Act 2009*.

**horse** includes a pony and a miniature horse.

**identifiable animal** means an animal—

- (a) wearing an identifying tag issued by the local government; or
- (b) otherwise identified so that the local government is able to ascertain the owner of the animal.

**keep** (an animal)—

- (a) includes board, breed and train; and
- (b) in the absence of evidence to the contrary, a person is presumed to keep an animal on land if the person —
  - (i) feeds and cares for the animal on the land; and
  - (ii) the animal is observed by an authorised person on the land on more than 1 occasion during a month.

**land** has the meaning given in the *Planning Act 2016*.

**local government swimming pool** has the meaning given in *Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2017*.

**multi-residential premises** means —

- (a) a residence which forms part of a group of 2 or more residences in circumstances where 2 or more of the residences of the group are directly adjacent to each other and share—
  - (i) a common wall; or
  - (ii) a ceiling in circumstances where 1 residence is directly under the floor of another residence; and
- (b) a residence situated on a lot which forms part of a community titles scheme as defined in the *Body Corporate and Community Management Act 1997*.

*Examples of multi-residential premises —*

Flats, boarding houses, tenement buildings, home units, townhouses and duplexes.

**non-residential premises** means premises other than residential premises.

**non-stock dog** means a dog other than a stock dog.

**occupier**, of premises—

- (a) means the person who has the control or management of the premises; and
- (b) includes the owner of the premises where there is no person in apparent occupation of the premises.

**premises** means any land, building or structure and includes any part thereof.

**primary producer**—

- (a) means a person primarily engaged in the occupation of a—
  - (i) dairy farmer; or
  - (ii) wheat, maize, or cereal grower; or
  - (iii) fruit grower; or

- (iv) grazier; or
- (v) farmer, whether engaged in general or mixed farming, cotton, potato or vegetable growing, or poultry or pig raising; and
- (b) includes a person engaged in primary production.

**registered** has the meaning given in the *Animal Management (Cats and Dogs) Act 2008*.

**residence** means a building, or part of a building, that is—

- (a) fixed to land; and
- (b) a self-contained unit used by, or intended for the exclusive residential use of, one household.

**residential premises** means premises used, or intended to be used, predominantly as a place of residence.

**rural residential area**, for the town of St George, means each area which is identified in a planning scheme map for St George in the planning scheme of the local government as a rural zone—

- (a) but limited to the rural residential precinct; and
- (b) excluding the area within the rural zone identified as rural.

**rural town area**—

- (a) for the town of Bollon means each area which is identified in a planning scheme map in the planning scheme of the local government as a town zone—
  - (i) but limited to the village precinct; and
  - (ii) excluding the open space and recreation precinct;
- (b) for the town of Dirranbandi means each area which is identified in a planning scheme map in the planning scheme of the local government as a town zone—
  - (i) but limited to the commercial precinct, the industrial precinct and the residential precinct; and
  - (ii) excluding the open space and recreation precinct;
- (c) for the town of Hebel means each area which is identified in a planning scheme map in the planning scheme of the local government as a town zone—
  - (i) but limited to the village precinct; and
  - (ii) excluding the open space and recreation precinct;
- (d) for the town of Mungindi means each area which is identified in a planning scheme map in the planning scheme of the local government as a town zone—
  - (i) but limited to the village precinct; and
  - (ii) excluding the open space and recreation precinct;
- (e) for the town of Nindigully means the area identified as the “Nindigully town area” on the plan of Nindigully in schedule 13;

- (f) for the town of Thallon means each area which is identified in a planning scheme map in the planning scheme of the local government as a town zone—
  - (i) but limited to the village precinct; and
  - (ii) excluding the open space and recreation precinct.

**stallion** means an uncastrated adult male horse.

**St George residential area** means the area identified as the “St George residential area” on the plan of St George in schedule 13.

**stock** has the meaning given in the *Animal Management (Cats and Dogs) Act 2008*.

**stock dog** means a dog usually kept or proposed to be kept—

- (a) by an owner who is a primary producer, or a person engaged or employed by a primary producer; and
- (b) primarily for the purposes of—
  - (i) droving, protecting, tending or working, stock; or
  - (ii) being trained in droving, protecting, tending or working, stock.

**structure** has the meaning given in the *Local Government Act 2009*.

**vehicle** has the meaning given in the *Transport Operations (Road Use Management) Act 1995*.

**vet care approval** —

- (a) see schedule 1 and schedule 2;
- (b) means an approval for the keeping of a prescribed animal on premises in the St George residential area or a rural town area for the primary purpose of facilitating the care and treatment of the animal by a veterinary surgeon; and
- (c) for the purposes of this definition, an animal is a prescribed animal if the animal is a horse, cow, goat, sheep, alpaca or llama.

**veterinary surgeon** means a person registered as a veterinary surgeon under the *Veterinary Surgeons Act 1936*.

This and the preceding 30 pages bearing my initials is a certified copy of *Subordinate Local Law No. 2 (Animal Management) 2017* made in accordance with the provisions of the *Local Government Act 2009* by Balonne Shire Council by resolution dated the                      day of                      (*insert the date of the relevant resolution of Council*) 2017.

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Chief Executive Officer

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# Subordinate Local Law No. 1.5 (Keeping of Animals) 2017

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## Part 1 Preliminary

### 1 Short title

This subordinate local law may be cited as *Subordinate Local Law No. 1.5 (Keeping of Animals) 2017*.

### 2 Purpose and how it is to be achieved

- (1) The purpose of this subordinate local law is to supplement *Local Law No. 1 (Administration) 2017* which provides for a legal and procedural framework for the administration, implementation and enforcement of the local government's local laws, subordinate local laws and other regulatory powers, and for miscellaneous administrative matters.
- (2) The purpose is to be achieved by providing for—
  - (a) various matters regarding the granting of approvals for prescribed activities; and
  - (b) further specification of the definitions relevant to various prescribed activities.
- (3) In particular, the purpose of this subordinate local law is to supplement the legal and procedural framework for the prescribed activity named in schedule 1, section 1.

### 3 Authorising local law

The making of the provisions in this subordinate local law is authorised by *Local Law No. 1 (Administration) 2017* (the **authorising local law**).

### 4 Definitions

- (1) Particular words used in this subordinate local law have the same meaning as provided for in the authorising local law.
- (2) The dictionary in schedule 3 defines particular words used in this subordinate local law.

## Part 2 Approval for prescribed activity

### 5 Matters regarding the prescribed activity—Authorising local law, ss 6(3), (4), 8(2)(a), 9(1)(d), 10(3), 12, 13(a), 14(1)(a)

- (1) Schedule 1—
  - (a) names a prescribed activity in section 1; and
  - (b) prescribes the matters specified in this section for the prescribed activity.

- (2) For section 6(3) of the authorising local law, it is declared that section 6(2) of the authorising local law does not apply to the particular activities stated in section 2 of schedule 1.
- (3) For section 6(4) of the authorising local law, it is declared that the prescribed activity named in section 1 of schedule 1 is a category 1 activity.
- (4) For section 8(2)(a) of the authorising local law, the documents and materials that must accompany an application for approval for the prescribed activity are stated in section 3 of schedule 1.
- (5) For section 9(1)(d) of the authorising local law, the local government may only grant an approval for the prescribed activity if it is satisfied the proposed operation and management of the activity would be consistent with the additional criteria prescribed in section 4 of schedule 1.
- (6) For section 10(3) of the authorising local law, the conditions that must be imposed on an approval for the prescribed activity are stated in section 5 of schedule 1.
- (7) For section 10(3) of the authorising local law, the conditions that will ordinarily be imposed on an approval for the prescribed activity are stated in section 6 of schedule 1.
- (8) For section 13(a) of the authorising local law, the term of an approval for the prescribed activity is provided for in section 7 of schedule 1.
- (9) For section 14(1)(a) of the authorising local law, the further term for renewal or extension of an approval for the prescribed activity is provided for in section 8 of schedule 1.
- (10) For section 12 of the authorising local law, in Table 1 of schedule 1—
  - (a) column 1 lists the application requirements for which the local government may accept as evidence the certificate of a third party certifier; and
  - (b) column 2 lists the individuals or organisations that are declared to be third party certifiers for the corresponding application requirement in column 1; and
  - (c) column 3 lists the qualifications that are necessary for an individual or organisation to be a third party certifier for the corresponding application requirement in column 1.

## **6 Approvals that are non-transferable—Authorising local law, s 15(2)**

For section 15(2) of the authorising local law, it is declared that the categories of approval listed in schedule 2 are non-transferable.

## Schedule 1      Keeping of animals

### Section 5

#### 1.      Prescribed activity

Keeping of animals.

#### 2.      Activities that do not require an approval under the authorising local law

The keeping of animals at an animal entertainment park or an animal sanctuary.

#### 3.      Documents and materials that must accompany an application for an approval

(1)      An application detailing—

- (a)      the species, breed, age and gender of each animal for which the approval is sought; and
- (b)      the number of animals to be kept; and
- (c)      the nature of the premises at which the animal or animals are to be kept; and
- (d)      the area, or the part of the area, in which the animal or animals are to be kept; and
- (e)      the materials out of which any enclosure in which the animal or animals to be kept is (or is to be) constructed and any other details of the enclosure; and
- (f)      the location of the enclosure on the premises; and
- (g)      the name of each person who is to occupy any residence located on the premises on which the animal or animals are to be kept.

(2)      Proof that the applicant currently holds any development approval relating to the prescribed activity that is required under the *Planning Act 2016*.

(3)      If the applicant is not the owner of the premises on which the animal or animals are to be kept — the written permission of the owner of the premises to the keeping of the animal or animals on the premises.

(4)      If the application is for a vet care approval for an animal — written evidence from a veterinary surgeon detailing—

- (a)      the species, breed, age and gender of the animal; and
- (b)      whether the veterinary surgeon is responsible for the veterinary care of

- the animal; and
  - (c) why the veterinary surgeon is providing veterinary care for the animal, for example, the treatment of an injury or disease suffered by the animal; and
  - (d) why the treatment of the animal at the premises identified in the application will facilitate the care, treatment, or recovery, of the animal; and
  - (e) the period during which the veterinary surgeon is likely to provide veterinary care for the animal at the premises.
- (5) If an animal the subject of the application is required to be registered under the Animal Management Act — evidence that the animal is currently registered with the local government.
  - (6) A drawing showing the design and dimensions of any enclosure in which the animal or animals are to be kept.
  - (7) If the application is for a drought care approval for an animal (but limited to a cow or a horse) — written evidence from the applicant detailing—
    - (a) each place at which the animal is usually depastured by the applicant; and
    - (b) the carrying capacity of each place at which the animal is usually depastured; and
    - (c) the extent (if any) to which stock (other than the animal) are depastured, or permitted to be depastured, at each place; and
    - (d) how, and the extent to which, the carrying capacity of each place is impacted by drought conditions or the like.

#### **4. Additional criteria for the granting of an approval**

- (1) Whether the premises on which the animal or animals are to be kept is appropriately sized so that the animal or animals can be effectively and comfortably kept on the premises.
  - (2) Whether a residence exists on the premises.
  - (3) Whether a proper enclosure is maintained on the premises in accordance with the requirements of *Local Law No. 2 (Animal Management) 2017*.
  - (4) Whether the applicant for the approval or some other suitable person to supervise the animal or animals will be resident on the premises on which the animal or animals are to be kept.
  - (5) Whether the animal or animals will be properly supervised.
-

- (6) If the application relates to the keeping of dogs — whether the animals identified in the application are registered with the local government.
  - (7) If section 14 of the Animal Management Act applies to the applicant for the approval — whether the applicant has complied with the requirements of the section.
  - (8) Whether the applicant is a suitable person to hold the approval.
  - (9) Whether the grant of the approval for the prescribed activity on the premises is likely to —
    - (a) cause nuisance, inconvenience or annoyance to occupiers of adjoining land; or
    - (b) affect the amenity of the surrounding area; or
    - (c) have a deleterious effect on the local environment or cause pollution or other environmental damage.
  - (10) If the application relates to the keeping of dogs —
    - (a) whether the dogs (other than stock dogs) have been desexed; and
    - (b) whether the dogs have been fitted with an approved microchip.
  - (11) If the application is for a vet care approval for an animal—
    - (a) whether a veterinary surgeon is providing veterinary care for the animal; and
    - (b) whether the keeping of the animal at the premises identified in the application will facilitate the care, treatment, or recovery, of the animal; and
    - (c) the period during which the veterinary surgeon is likely to provide veterinary care for the animal at the premises.
  - (12) If the application is for a drought care approval for an animal (but limited to a cow or a horse)—
    - (a) whether the carrying capacity of each place at which the animal is usually depastured by the applicant is impacted by drought conditions or the like; and
    - (b) whether stock (other than the animal) are depastured, or permitted to be depastured, at each place at which the animal is usually depastured by the applicant.
  - (13) Where the animal or animals are to be kept on premises other than multi-residential premises and the applicant is not the owner of the premises —
-

whether the applicant has the written permission of the owner of the premises to keep the animal or animals on the premises.

- (14) Whether the applicant has been refused a similar type of approval by the local government or another local government.
- (15) If the application relates to the keeping of 1 or more sheep, alpaca or llama on premises in the St George residential area—
  - (a) whether the premises on which the animal or animals are to be kept is appropriately sized so as to be able to sustain the keeping of the animal or animals on the premises; and
  - (b) whether the premises on which the animal or animals are to be kept is appropriately sized so that the density of the animals on the premises is not more than 1 animal per 800m<sup>2</sup> of the area of the premises.
- (16) If the application relates to the keeping of animals on premises other than multi-residential premises—
  - (a) whether the premises on which the animal or animals are to be kept is appropriately sized so that the animal or animals can be effectively and comfortably kept on the premises; and
  - (b) whether the applicant has been granted, or refused, a similar type of approval by the local government in respect of the keeping of 1 or more other animals on the premises.

## **5. Conditions that must be imposed on an approval**

No conditions prescribed.

## **6. Conditions that will ordinarily be imposed on an approval**

- (1) The conditions that will ordinarily be imposed on an approval to keep dogs (including, unless otherwise specified, both stock dogs and non-stock dogs) on premises are—
  - (a) a condition requiring that the approval holder take all reasonable steps to prevent the dogs from making a noise or disturbance that causes a nuisance or disturbance to the occupiers of other premises; and
  - (b) a condition requiring that the approval holder ensure that any enclosure in which the dogs are kept is properly drained and that run-off is kept off adjoining premises; and
  - (c) a condition requiring that the approval holder ensure that excreta, food scraps and other material that is, or is likely to become, offensive is collected daily and, if not immediately disposed of, is kept in a waste container of a kind approved by an authorised person; and

- (d) a condition requiring that the approval holder ensure that any enclosure in which the dogs are kept is maintained in—
    - (i) a clean and sanitary condition and disinfected regularly; and
    - (ii) an aesthetically acceptable condition; and
  - (e) a condition limiting the approval to the number of dogs specified in the approval; and
  - (f) a condition requiring that the approval holder —
    - (i) ensure that—
      - (A) each dog (regardless of whether the dog is a stock dog or a non-stock dog) is registered with the local government within a specified period; and
      - (B) each dog (regardless of whether the dog is a stock dog or a non-stock dog) is fitted with an approved microchip within a specified period; and
    - (ii) deliver to the local government written evidence that each dog is fitted with an approved microchip within a specified period; and
  - (g) a condition requiring that the approval holder—
    - (i) if the approval authorises the keeping of 3 non-stock dogs on premises—ensure that 1 of the non-stock dogs is desexed within a specified period; and
    - (ii) if the approval authorises the keeping of 4 non-stock dogs on premises—ensure that 2 of the non-stock dogs are desexed within a specified period; and
    - (iii) deliver to the local government written evidence of the desexing within a specified period.
- (2) The conditions of a vet care approval may limit the term of the approval to the period during which ongoing veterinary care of the animal identified in the approval by a veterinary surgeon at the premises is reasonably necessary.
  - (3) The conditions of a drought care approval for an animal (but limited to a cow or a horse) may limit the term of the approval to the period during which each place at which the animal is usually depastured by the approval holder is impacted by drought conditions or the like.
  - (4) The conditions that will ordinarily be imposed on an approval to keep an animal (other than a dog) are—
    - (a) if minimum standards for the keeping of the species or breed of the
-



animal are prescribed in schedule 5 of *Subordinate Local Law No. 2 (Animal Management) 2017*—the animal must be kept in accordance with the minimum standards for the species or breed of animal prescribed in schedule 5 of *Subordinate Local Law No. 2 (Animal Management) 2017*; and

- (b) if the approval relates to the keeping of 1 or more animals and the animal or animals are identified in the approval—a condition limiting the approval to the animal or animals identified in the approval.

## **7. Term of an approval**

- (1) The term of an approval must be determined by the local government having regard to the information submitted by the applicant.
- (2) The term of the approval must be specified in the approval.
- (3) An approval may be granted for a term of up to 1 year.

## **8. Term of renewal of an approval**

- (1) The term for which an approval may be renewed or extended must be determined by the local government having regard to the information submitted by the approval holder.
- (2) The term for which an approval may be renewed or extended must not exceed 1 year.
- (3) If the local government grants the application, the local government must specify in the written notice, the term of the renewal or extension.

**Table 1 – Third party certification**

<b>Column 1 Application requirement</b>	<b>Column 2 Individuals or organisations that are third party certifiers</b>	<b>Column 3 Qualifications necessary to be a third party certifier</b>
No application requirements stated.		

## **Schedule 2      Categories of approval that are non-transferable**

### **Section 6**

Every approval for the prescribed activity named in schedule 1, section 1 is non-transferable.

## Schedule 3      Dictionary

### Section 4

**animal entertainment park** means a public place which includes, as part of its entertainment, the exhibiting of animals for the amusement or entertainment of the public.

**Animal Management Act** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**animal sanctuary** means a park, reserve or other place used for the preservation, protection or rehabilitation of animals.

**approved microchip** (for an animal)—

- (a) means a microchip which—
  - (i) is capable of being read by the local government's microchip reader; and
  - (ii) bears an electronic code which permanently identifies the animal for identification purposes; and
- (b) includes a permanent identification device.

**development approval** has the meaning given in the *Planning Act 2016*.

**drought care approval** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**multi-residential premises** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**non-stock dog** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**owner** (of an animal) has the meaning given in *Local Law No. 2 (Animal Management) 2017*.

**owner** (of land) includes—

- (a) the registered proprietor of freehold land; and
- (b) the purchaser of land to be held as freehold land that is being purchased from the State under an Act; and
- (c) the holder of a leasehold interest from the State; and
- (d) the holder of a mining claim or a mining lease to which the *Mineral Resources Act 1989* applies; and
- (e) another person who is entitled to receive the rent for the land.

**owner** (of premises) means the person for time being entitled to receive the rent for the premises or who would be entitled to receive the rent for it if it were let to a tenant at a rent.

**permanent identification device** has the meaning given in the *Animal Management Act*.

**premises** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**proper enclosure** has the meaning given in *Local Law No. 2 (Animal Management) 2017*.

**public place** has the meaning given in *Local Law No. 1 (Administration) 2017*.

**registered** has the meaning given in the Animal Management Act.

**residence** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**stock dog** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**vet care approval** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**veterinary surgeon** has the meaning given in *Subordinate Local Law No. 2 (Animal Management) 2017*.

**waste** has the meaning given in the *Environmental Protection Act 1994*.

This and the preceding 11 pages bearing my initials is a certified copy of *Subordinate Local Law No. 1.5 (Keeping of Animals) 2017* made in accordance with the provisions of the *Local Government Act 2009* by Balonne Shire Council by resolution dated the                      day of *(insert the date of the relevant resolution of Council)* 2017.

.....  
Chief Executive Officer

507681\_1

# Local Law No. 2 (Animal Management) 2017

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# Part 1 Preliminary

## 1 Short title

This local law may be cited as *Local Law No. 2 (Animal Management) 2017*.

## 2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to regulate and manage the keeping and control of animals in the local government's area in a way that—
  - (a) balances community expectations with the rights of individuals; and
  - (b) protects the community against risks to health and safety; and
  - (c) prevents pollution and other environmental damage; and
  - (d) protects the amenity of the local community and environment.
- (2) The purpose is to be achieved by providing for—
  - (a) the regulation of the keeping of animals in terms of how many, what type, how, and where animals can be kept; and
  - (b) the prescription of minimum standards for keeping animals; and
  - (c) the proper control of animals in public places and koala conservation areas; and
  - (d) the management of dangerous or aggressive animals other than dogs;<sup>3</sup> and
  - (e) the seizure and destruction of animals in certain circumstances; and
  - (f) the establishment and administration of animal pounds.

## 3 Definitions—the dictionary

The dictionary in the schedule defines particular words used in this local law.

## 4 Relationship with other laws<sup>4</sup>

This local law is—

- (a) in addition to, and does not derogate from—
  - (i) laws regulating the use or development of land; and
  - (ii) other laws about the keeping or control or welfare of animals; and
- (b) to be read with *Local Law No. 1 (Administration) 2017*.

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<sup>3</sup> The *Animal Management (Cats and Dogs) Act 2008* provides for the management of **regulated dogs**, comprising declared dangerous dogs, declared menacing dogs and restricted dogs.

<sup>4</sup> This local law and any subordinate local law made under it do not apply to the extent of any inconsistency with a law of the State or Commonwealth. See the Act, section 27.





## Part 2                      Keeping of animals

### Division 1                Prohibition on keeping animals

#### 5      Prohibition on keeping animals in prescribed circumstances

- (1) The local government may, by subordinate local law, prohibit the keeping of animals in prescribed circumstances.
- (2) The circumstances in which the keeping of animals is prohibited may be specified by reference to 1 or more of the following factors—
  - (a) species;
  - (b) breed;
  - (c) sex;
  - (d) age;
  - (e) number;
  - (f) whether an animal is a restricted dog;<sup>5</sup>
  - (g) the locality in which the animal would be kept;
  - (h) the nature of the premises in which the animal would be kept, including the size of the enclosure or the size of the allotment;<sup>6</sup>
  - (i) the primary purpose for which the animal would be kept on premises.

*Example for subsection (2)—*

A prohibition may be imposed in relation to keeping certain species or a prescribed number of animals of a certain species in an urban locality.

- (3) A person must not keep an animal in contravention of a prohibition under this section.

Maximum penalty for subsection (3)—50 penalty units.

### Division 2                Animals for which approval is required

#### 6      Requirement for approval

- (1) Subject to subsections (3) and (4), the local government may, by subordinate local law, require an approval<sup>7</sup> for keeping an animal or animals in prescribed

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<sup>5</sup> Section 72(3) of the *Animal Management (Cats and Dogs) Act 2008* provides: “A permit application may be made for more than 1 restricted dog for the same place only if the keeping of more than 1 restricted dog and more than 1 dog of any breed is permitted under a local law.”

<sup>6</sup> See the *Animal Management (Cats and Dogs) Act 2008*, chapter 4, regarding particular conditions on keeping regulated dogs, including requirements about enclosures.

<sup>7</sup> Keeping an animal for which an approval is required under this local law is a **prescribed activity** under schedule 2 of *Local Law No. 1 (Administration) 2017*. The process for obtaining an approval for a prescribed

circumstances.

- (2) The circumstances in which an approval is required may be specified by reference to 1 or more of the following factors—
  - (a) species;
  - (b) breed;
  - (c) sex;
  - (d) age;
  - (e) number;
  - (f) the locality in which the animal is to be kept, including whether it is an urban or non-urban locality;
  - (g) the nature of the premises in which the animal is to be kept, including the size of the enclosure or the size of the allotment;<sup>8</sup>
  - (h) the primary purpose for which the animal is to be kept on premises.
- (3) An approval under this section is not required for the keeping of animals on land if the keeping of the animals on the land is authorised by a development approval under the Planning Act<sup>9</sup>.
- (4) Under this section, the local government may not require an approval for keeping a restricted dog.<sup>10</sup>

## **Division 3                      Animals for which desexing is required**

### **7      Requirement to desex an animal**

- (1) The local government may, by subordinate local law, require an animal of a particular species or breed to be desexed.
- (2) The subordinate local law may—
  - (a) specify that the requirement for desexing only applies once an animal reaches a certain age; and
  - (b) exempt animals under particular circumstances.

*Example for paragraph (b)—*

Exemption might be provided for an animal that is owned by a member of a recognised breeders' association for the purposes of breeding or showing.

- (3) A person must not keep an animal that is required to be desexed unless the animal

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activity is set out in part 2 of that local law and section 6 creates an offence for a person undertaking a prescribed activity without a current approval.

<sup>8</sup> See note 4.

<sup>9</sup> See the definition of **Planning Act** in the Act, schedule 4.

<sup>10</sup> Section 71 of the *Animal Management (Cats and Dogs) Act 2008* requires a permit issued by the local government for a person to own or be responsible for a restricted dog. The processes for the granting of restricted dog permits are set out under chapter 4, part 3 of that Act.

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has been desexed.

**Maximum penalty for subsection (3)—20 penalty units.**

## Division 4 Minimum standards

### 8 Minimum standards for keeping animals

- (1) The local government may, by subordinate local law, specify minimum standards for the keeping of animals or a particular species or breed of animal.
- (2) A person who keeps an animal must ensure that the relevant minimum standards prescribed by a subordinate local law are complied with.<sup>11</sup>

Maximum penalty for subsection (2)—20 penalty units.

- (3) If a person is required to hold an approval to keep an animal, the obligation to comply with the minimum standards prescribed by a subordinate local law is in addition to an obligation imposed by a condition of the approval.

## Division 5 Identification of registered dogs

### 9 Identification for dogs in certain circumstances

The local government may, by subordinate local law, prescribe the identification required by the *Animal Management (Cats and Dogs) Act 2008* for a dog that is at a place other than the address stated in the registration notice for the dog.<sup>12</sup>

## Part 3 Control of animals

### Division 1 Animals in public places

#### 10 Exclusion of animals

- (1) The local government may, by subordinate local law, specify public places where animals, or animals of a particular species or breed, are prohibited.
- (2) The owner or responsible person for an animal must ensure that the animal is not in a public place in contravention of a prohibition specified under subsection (1).

Maximum penalty for subsection (2)—20 penalty units.

- (3) The local government must take reasonable steps to provide notice to members of the public regarding the animals that are prohibited in a particular public place.
- (4) In this section—

***reasonable steps*** include, as a minimum, the display of a notice at a prominent place within the particular public place, stating—

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<sup>11</sup> See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, sections 4 to 5, regarding the requirements about enclosures for declared dangerous dogs, declared menacing dogs and restricted dogs.

<sup>12</sup> Section 45 of the *Animal Management (Cats and Dogs) Act 2008* requires a person who keeps a dog at a place other than the address in the registration notice to ensure it bears the identification prescribed by the local government under a local law.

- (a) the animals that are prohibited in the place; and
- (b) in general terms, the provisions of subsection (2).

## 11 Dog off-leash areas

- (1) The local government may, by subordinate local law, designate an area within a public place as an area where a dog is not required to be on a leash (a ***dog off-leash area***).
- (2) The local government must take reasonable steps to provide notice to members of the public regarding the designation of an area as a dog off-leash area.
- (3) In this section—  
***reasonable steps*** include, as a minimum, the display of a notice at a prominent place within the dog off-leash area indicating the extent of the area.

## 12 Control of animals in public places<sup>13</sup>

- (1) The owner or responsible person for an animal must ensure that the animal is not in a public place—
  - (a) unless the animal is under the effective control of someone; and
  - (b) if the animal is a declared dangerous animal<sup>14</sup>—unless the animal is securely restrained to prevent it from—
    - (i) attacking a person or animal; or
    - (ii) acting in a way that causes fear to a person or animal; or
    - (iii) causing damage to property.

Maximum penalty for subsection (1)—20 penalty units.

- (2) The owner or responsible person for a dog that is on heat must ensure that the animal is not in a public place.

Maximum penalty for subsection (2)—20 penalty units.

- (3) An animal is under the ***effective control*** of someone only if—
  - (a) a person who is physically able to control the animal—
    - (i) is holding it by an appropriate leash, halter or rein; or
    - (ii) has appropriately tethered it to an object fixed to a place from which the object can not be moved by the animal and is continuously supervising the animal; or
    - (iii) has corralled it in a temporary enclosure adequate to contain the

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<sup>13</sup> See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, section 3, regarding the requirement for muzzling and effective control of regulated dogs in public and section 93, which applies this requirement where a dog is subject to a proposed declaration notice.

<sup>14</sup> See the definition of ***declared dangerous animal*** in the schedule.

animal and is continuously supervising the animal; or

(b)

the animal is tethered in or on a vehicle and unable to reach beyond the vehicle extremities; or

- (c) the animal is a dog in a dog off-leash area and under the supervision of a person who is able to control the animal by voice command; or
- (d) the animal is participating in, or being exhibited or trained at, an exhibition or an obedience trial supervised by a body recognised for this section by the local government; or
- (e) the animal is a working animal actually engaged in moving livestock and under the supervision of a person who is able to control the animal by voice command.

### **13 Person in control of dog or prescribed animal to clean up faeces**

If a dog or any other animal prescribed by subordinate local law defecates in a public place, the person who has control of the dog or animal must immediately remove and dispose of the faeces in a sanitary way.

Maximum penalty—20 penalty units.

## **Division 2 Restraint of animals**

### **14 Duty to provide proper enclosure and prevent animal from wandering**

- (1) A person who keeps an animal must maintain a proper enclosure to prevent the animal from wandering or escaping from the person's land.<sup>15</sup>

Maximum penalty for subsection (1)—20 penalty units.

- (2) The local government may, by subordinate local law, prescribe requirements for a proper enclosure for an animal or species or breed of animal.
- (3) The owner of the animal must ensure that it is not wandering at large.<sup>16</sup>

Maximum penalty for subsection (3)—20 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) for the defendant to prove that—
  - (a) the defendant maintained a proper enclosure for the animal and could not, by the exercise of reasonable diligence, have prevented the escape of the animal; or
  - (b) the animal was wandering at large in circumstances authorised by the conditions of an approval granted under a local law.

*Example for paragraph (b)—*

The conditions of an approval to keep racing pigeons might authorise the approval holder to release the pigeons from their enclosure for a certain amount of time each day and during official

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<sup>15</sup> See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, sections 4 to 5, regarding the requirements about enclosures for declared dangerous dogs, declared menacing dogs and restricted dogs.

<sup>16</sup> See the definition of *wandering at large* in the schedule.

pigeon racing events.

## 15 Koala conservation requirements

- (1) The local government may, by subordinate local law, prescribe requirements for keeping a dog on land that is within a koala area.
- (2) The prescribed requirements may relate to—
  - (a) the enclosure in which the dog must be kept between sunset and sunrise; or
  - (b) tethering the dog between sunset and sunrise to prevent it from attacking a koala; or
  - (c) fencing that must be in place to separate dogs from koalas on the land or on a part of the land; or
  - (d) other measures that will be likely to prevent an attack by the dog on a koala between sunset and sunrise.
- (3) A person who keeps a dog on land that is within a koala area must comply with requirements prescribed under this section.

Maximum penalty for subsection (3)—20 penalty units.

- (4) In this section—

***koala area*** means—

- (a) a koala habitat area; or
- (b) an area designated by subordinate local law as a koala area.

***koala habitat area*** means an area designated as a koala habitat by—

- (a) a conservation plan made under the *Nature Conservation Act 1992*; or
- (b) a State planning instrument.

## Division 3 Aggressive behaviour by animals other than dogs

### 16 Limited application of division to dogs<sup>17</sup>

- (1) Unless otherwise indicated, this division does not apply in relation to aggressive behaviour by a dog.
- (2) In this section—

***aggressive behaviour*** means attacking, or acting in a way that causes fear to, someone else or another animal.

### 17 Animals not to attack or cause fear to persons or animals

- (1) A responsible person for an animal must take reasonable steps to ensure the animal does not attack, or act in a way that causes fear to, someone else or another animal.

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<sup>17</sup> Aggressive behaviour by dogs is covered by the *Animal Management (Cats and Dogs) Act 2008*, sections 194 to 196.



Maximum penalty for subsection (1)—

- (a) if the attack causes the death of or grievous bodily harm to a person—300 penalty units; or
  - (b) if the attack causes the death of or grievous bodily harm to another animal—100 penalty units; or
  - (c) if the attack causes bodily harm to a person or another animal—50 penalty units; or
  - (d) otherwise—20 penalty units.
- (2) A person must not allow or encourage an animal to attack, or act in a way that causes fear to, a person or another animal.

Maximum penalty for subsection (2)—

- (a) if the attack causes the death of or grievous bodily harm to a person—300 penalty units; or
  - (b) if the attack causes the death of or grievous bodily harm to another animal—100 penalty units; or
  - (c) if the attack causes bodily harm to a person or another animal—50 penalty units; or
  - (d) otherwise—20 penalty units.
- (3) In this section—

***allow or encourage***, without limiting the *Criminal Code*, sections 7 and 8, includes cause to allow or encourage.

***another animal*** does not include vermin that are not the property of anyone.

*Examples of vermin that are someone's property—*

- a pet mouse or guinea pig
- vermin that are protected animals under the *Nature Conservation Act 1992*.<sup>18</sup>

## 18 Defences for offence against s 17

It is a defence to a prosecution for an offence against section 17 for the defendant to prove that the animal attacked, or acted in a way that caused fear to, the person or other animal—

- (a) as a result of the animal being attacked, mistreated, teased, or provoked by the person or other animal, including a dog; or
- (b) to protect the responsible person, or a person accompanying the responsible person (the ***accompanying person***), or the responsible person's or accompanying person's property.

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<sup>18</sup> See section 83 of that Act.

## **Division 4                      Dangerous animals other than dogs<sup>19</sup>**

### **19    Declaration of dangerous animal other than a dog**

- (1) A local government may, by subordinate local law, specify criteria for an authorised person to declare an animal other than a dog to be a declared dangerous animal.
- (2) An authorised person may declare an animal other than a dog to be a declared dangerous animal if the animal meets the criteria prescribed by subordinate local law.
- (3) A declaration under subsection (2) takes effect at the time the local government gives the responsible person for the animal an information notice<sup>20</sup> about the declaration.

### **20    Power to require responsible person for declared dangerous animal to take specified action**

An authorised person may, by giving a compliance notice,<sup>21</sup> require the responsible person for a declared dangerous animal to take specified action—

- (a) to warn persons who enter land on which the animal is kept of the presence of a declared dangerous animal on the land; and
- (b) to ensure that the animal remains in secure custody and is unable to attack or cause fear to persons or other animals or cause damage to another person's property.

## **Part 4                              Seizure, impounding or destruction of animals**

### **Division 1                      Seizure of animals**

#### **21    Seizure of animals**

- (1) An authorised person may seize<sup>22</sup> an animal, other than a dog,<sup>23</sup> in the following circumstances—

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<sup>19</sup> Dangerous dogs are dealt with in the *Animal Management (Cats and Dogs) Act 2008*.

<sup>20</sup> See the definition of **information notice** in *Local Law No. 1 (Administration) 2017*, schedule 1.

<sup>21</sup> See *Local Law No. 1 (Administration) 2017*, section 27 regarding the requirements for compliance notices and the offence for not complying with a compliance notice.

<sup>22</sup> See the *Local Government Act 2009*, chapter 5, part 2, division 1 in relation to authorised persons' enforcement powers, including entry to land.

<sup>23</sup> See the *Animal Management (Cats and Dogs) Act 2008*, section 125, for seizure of a dog.

- (a) the animal is found wandering at large; or
- (b)

- the responsible person for the animal has not complied with a compliance notice that has been issued in relation to compliance with this local law; or
- (c) the animal has attacked, threatened to attack, or acted in a way that causes fear to, a person or another animal; or
  - (d) the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995*.<sup>24</sup>
- (2) An authorised person may seize a dog in the following circumstances—
- (a) the dog is found wandering at large; or
  - (b) the responsible person for the dog has not complied with a compliance notice that has been issued in relation to compliance with this local law; or
  - (c) the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995*.
- (3) The authorised person may seize an animal under subsection (1)(a) or a dog under subsection (2)(a) where—
- (a) another person has found the animal or dog wandering at large and delivered it to the authorised person; or
  - (b) an occupier of private land has found the animal or dog wandering at large on the land, taken it under effective control and requested the authorised person to enter the land to seize it.
- (4) However, an authorised person is not obliged to accept the custody of an animal under this section.
- (5) For the purposes of seizing an animal, an authorised person may take any action, including the use of force, which is reasonable in the circumstances to capture or control the animal.

## **Division 2                      Destruction of animal without notice**

### **22    Power to immediately destroy seized animal**

- (1) This section applies where an authorised person has seized an animal, other than a regulated dog,<sup>25</sup> under this local law or another law.
- (2) The authorised person may, without notice, immediately destroy the animal if—

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<sup>24</sup> The *Transport Operations (Road Use Management) Act 1995*, section 100(13) provides: “If a local law provides for a matter mentioned in subsection (12), subsections (3) to (11) no longer apply in the local government’s area.”

<sup>25</sup> See the *Animal Management (Cats and Dogs) Act 2008*, section 127, for power to destroy a seized regulated dog.

- (a) the authorised person reasonably believes the animal is dangerous and the authorised person can not control it; or
- (b) the animal is significantly suffering as a result of disease, severe emaciation or serious injuries; or
- (c) an owner of the animal has requested the authorised person to destroy it.

## Division 3                      Return or impounding of animals

### 23    Immediate return of animal seized wandering at large

- (1) This section applies where—
  - (a) an animal has been seized under section 21(1)(a) or section 21(2)(a); and
  - (b) the authorised person who seizes the animal knows, or can readily find out, the name and address of the owner or responsible person for the animal.
- (2) The authorised person may return the animal to the owner or responsible person.

### 24    Impounding of seized animal

An authorised person who seizes an animal under this local law or another law may impound the animal at a place of care for animals operated by—

- (a) the local government; or
- (b) another organisation or local government prescribed by subordinate local law.

*Example for paragraph (a)—*

An animal pound.

*Example for paragraph (b)—*

A veterinary surgery or an animal refuge.

### 25    What is a notice of impounding

- (1) A ***notice of impounding*** means a written notice, given to the owner or responsible person for an animal, stating that—
  - (a) the animal has been impounded; and
  - (b) the animal may be reclaimed within the prescribed period provided that—
    - (i) the cost-recovery fee is paid; and
    - (ii) if an approval or registration is required for the keeping of the animal and the owner or responsible person does not have the approval or registration— the approval or registration is obtained; and
    - (iii) if the animal has been seized under section 21(1)(b) or 21(2)(b)— the owner or responsible person has complied with the relevant

- compliance notice; and
  - (iv) continued retention of the animal is not needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; and
  - (v) no destruction order has been made for the animal.
- (2) In this section—
- relevant compliance notice*** means the compliance notice mentioned in section 21(1)(b) or 21(2)(b).

## **26 Dealing with animal seized and impounded for wandering at large**

- (1) Subsection (2) applies where—
- (a) an authorised person has impounded an animal seized under section 21(1)(a) or 21(2)(a); and
  - (b) the animal was not a declared dangerous animal at the time of being seized; and
  - (c) the authorised person knows, or can readily find out, the name and address of the owner or responsible person for the animal.
- (2) The authorised person must give the owner or responsible person a notice of impounding.
- (3) Subsection (4) applies where—
- (a) an authorised person has impounded a declared dangerous animal seized under section 21(1)(a); or
  - (b) an authorised person has impounded an animal that has been seized more than 3 times during a 12 month period.
- (4) The authorised person may—
- (a) give the owner or responsible person for the animal a notice of impounding; or
  - (b) make a destruction order for the animal under section 30.

## **27 Dealing with animal seized and impounded for non-compliance with local law**

- (1) This section applies where an authorised person has impounded an animal seized under section 21(1)(b) or 21(2)(b).
- (2) The authorised person may—
- (a) give the owner or responsible person for the animal a notice of impounding; or
  - (b) if the animal was being kept in contravention of section 5 of this local law or is an animal for which an approval cannot be granted under this local law

or is an animal for which an application for approval under this local law has been rejected— dispose of the animal under division 5.

**28**

## **Dealing with animal seized and impounded for attacking etc a person or another animal**

- (1) This section applies where an authorised person has impounded an animal seized under section 21(1)(c).
- (2) The authorised person may<sup>26</sup>—
  - (a) make a destruction order for the animal under section 30; or
  - (b) give the owner or responsible person a notice of impounding.

## **29 Reclaiming an impounded animal**

- (1) This section applies where—
  - (a) the owner or responsible person for an animal has been given a notice of impounding; or
  - (b) an authorised person does not know, and cannot readily find out, the name and address of an owner or responsible person for the animal.
- (2) The animal may be reclaimed by an owner or responsible person if the owner or responsible person—
  - (a) reclaims the animal within the prescribed period; and
  - (b) pays the cost-recovery fee; and
  - (c) if an approval or registration is required for the keeping of the animal and the owner or responsible person does not have the approval or registration—obtains the approval or registration; and
  - (d) if the responsible person has not complied with a current compliance notice that has been issued in relation to compliance with this local law—complies with the compliance notice.
- (3) However, the animal may not be reclaimed by an owner or responsible person if—
  - (a) continued retention of the animal is needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; or
  - (b) a destruction order has been made for the animal.
- (4) The animal may be reclaimed by an owner or responsible person for the animal if an event as follows happens—
  - (a) if subsection (3)(a) applies—
    - (i) an authorised person advises the owner or responsible person that the animal's continued retention as evidence is no longer required; and
    - (ii) the owner or responsible person has satisfied subsection (2)(b)-(d);

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<sup>26</sup> An authorised person may also declare an animal as a declared dangerous animal under section 19 if specified criteria are met.



- (b) if subsection (3)(b) applies—
  - (i) an application for a review or an appeal is made relating to the destruction order and, as a result of the review or appeal, the order is no longer in force; and
  - (ii) the owner or responsible person has satisfied subsection (2)(b)-(d).

## Division 4                      Destruction of animal following notice

### 30 Destruction orders

- (1) An authorised person may make an order (a ***destruction order***) stating the person proposes to destroy an animal 14 days after the order is served.
- (2) A destruction order may only be made in 1 or more of the following circumstances—
  - (a) the animal has attacked, threatened to attack, or acted in a way that causes fear to, a person or another animal; or
  - (b) the animal is a declared dangerous animal and was found wandering at large; or
  - (c) the animal has been seized more than 3 times during a 12 month period.
- (3) The destruction order must—
  - (a) be served on a person who owns, or is a responsible person for, the animal; and
  - (b) include or be accompanied by an information notice.<sup>27</sup>
- (4) If a destruction order is made for the animal, the person may destroy the animal 14 days after the order is served if no review application has been made relating to the decision to make the order.
- (5) If an application for review has been made relating to the decision to make the order, the person may destroy the animal if—
  - (a) the review is finally decided or is otherwise ended; and
  - (b) the order is still in force; and
  - (c) the time allowed for filing a notice of appeal has expired and no notice of appeal has been filed.
- (6) If an appeal is made relating to the decision to make the order, the person may destroy the animal if—
  - (a) the appeal is finally decided or is otherwise ended; and
  - (b) the order is still in force.

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<sup>27</sup> See note 17.

- (7) If the animal has been impounded, the owner or responsible person for an animal may reclaim the animal if—
- (a)

- a review relating to the decision to make the order is finally decided or is otherwise ended; and
  - (b) no application for an appeal has been made against the order; and
  - (c) the order is no longer in force; and
  - (d) the owner or responsible person has satisfied section 29(2)(b)-(d).
- (8) If the animal has been impounded, the owner or responsible person for an animal may reclaim the animal if—
- (a) an appeal relating to the decision to make the order is finally decided or is otherwise ended; and
  - (b) the order is no longer in force; and
  - (c) the owner or responsible person has satisfied section 29(2)(b)-(d).
- (9) In this section—

**review** means a review conducted under the process mentioned in part 4 of *Local Law No. 1 (Administration) 2017*.

**appeal** means an appeal under part 4 of this local law.

## **Division 5                      Disposal of impounded animals**

### **31    Application of this division**

This division applies where—

- (a) an impounded animal has not been reclaimed within the prescribed period under section 29(2); or
- (b) if section 29(3)(a) applies— the impounded animal has not been reclaimed within 3 days of an authorised person’s advice to the owner or responsible person that the animal’s continued retention as evidence is no longer required; or
- (c) if section 29(3)(b) applies—the impounded animal has not been reclaimed within 3 days of the completion of a review or appeal that caused a destruction order to no longer be in force; or
- (d) an authorised person has seized an animal mentioned in section 27(2)(b); or
- (e) the owner of an animal has surrendered the animal to the local government.

### **32    Sale, disposal or destruction of animals**

- (1) The local government may—
  - (a) offer the animal for sale by public auction or by tender; or
  - (b) if the animal is an animal mentioned in section 27(2)(b) or is of a species, breed or class specified by subordinate local law for this paragraph—

- (i) sell the animal by private agreement; or
- (ii) dispose of the animal in some other way without destroying it; or
- (iii) destroy the animal.

*Example for paragraph (b)—*

The subordinate local law might specify dogs, cats and other small domestic animals, for which a public auction or tender might not be practicable.

- (2) An animal may only be sold or disposed of under subsection (1) if the local government is satisfied that this will not result in the animal being kept in contravention of the requirements of this local law.

*Examples—*

- A pig that has been seized because it is being kept in an urban area in contravention of a prohibition under a subordinate local law could be sold to a person outside the urban area but not to another person in an urban area.
  - An animal that a subordinate local law has prohibited in any part of the local government area could not be sold to a person who resides within the local government area.
  - A declared dangerous animal could only be sold to a person who has complied with any specified requirements for keeping such an animal.
- (3) If an animal is to be offered for sale at a public auction under this section, notice of the time and place of the auction must be exhibited at the local government's public office for at least 2 days before the date of the auction.
  - (4) An amount realised on sale of an impounded animal must be applied—
    - (a) first, towards the costs of the sale; and
    - (b) second, towards the cost-recovery fee for impounding; and
    - (c) third, in payment of the remainder to the former owner of the animal, unless the owner had surrendered the animal to the local government.
  - (5) If no person establishes a valid claim to the amount to which the former owner is entitled under subsection (4)(c) within 1 year of the date of the sale, the amount becomes the property of the local government.
  - (6) If an animal that is offered for sale by public auction or tender is not sold through the auction or tender process, the local government may dispose of the animal as it considers appropriate.

*Examples—*

- The local government may give the animal away.
- The local government may have the animal destroyed.

## **Division 6                      Other impounding matters**

### **33    Register of impounded animals**

- (1) The local government must ensure that a proper record of impounded animals (the

*register of impounded animals*) is kept.

- (2) The register of impounded animals must contain the following information about each impounded animal—
  - (a) the species, breed and sex of the animal; and
  - (b) the brand, colour, distinguishing markings and features of the animal; and
  - (c) if applicable—the registration number of the animal; and
  - (d) if known—the name and address of the responsible person; and
  - (e) the date and time of seizure and impounding; and
  - (f) the name of the authorised person who impounded the animal; and
  - (g) the reason for the impounding; and
  - (h) a note of any order made by an authorised person relating to the animal; and
  - (i) the date and details of whether the animal was sold, released, destroyed or disposed of in some other way.
- (3) The register of impounded animals must be kept available for public inspection at the place of care for animals or, if the place has no public office, at an office prescribed by subordinate local law.

### **34 Access to impounded animal**

- (1) This section applies to an animal impounded under section 24.
- (2) The local government must allow the owner of the animal to inspect it at any reasonable time, from time to time.
- (3) Subsection (2) does not apply if it is impracticable or would be unreasonable to allow the inspection.
- (4) The inspection must be provided free of charge.

### **35 Unlawful removal of seized or impounded animal**

- (1) A person must not, without the authority of an authorised person, remove or attempt to remove—
  - (a) a seized animal from the custody or control of an authorised person; or
  - (b) an impounded animal from the local government's facility for keeping impounded animals.

Maximum penalty for subsection (1)—50 penalty units.

- (2) Any costs arising from damage or loss caused by a person contravening subsection (1) are recoverable by the local government as a debt.

## **Part 5 Appeals against destruction orders**

### **36 Who may appeal**

An owner or responsible person for an animal the subject of a destruction order may appeal to the Magistrates Court against the decision to make the destruction order.

### **37 Starting appeal**

- (1) An appeal must not be started unless a review of the decision to make the destruction order has been finally decided or otherwise ended.
- (2) An appeal is started by—
  - (a) filing notice of appeal with the Magistrates Court; and
  - (b) serving a copy of the notice of appeal on the local government; and
  - (c) complying with rules of court applicable to the appeal.
- (3) The notice of appeal must be filed within 14 days after the appellant is given notice by the local government about the finalisation of the review of the decision to make a destruction order.
- (4) However, the court may, at any time, extend the time for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

### **38 Stay of destruction order**

Upon filing the notice of appeal, the destruction order is stayed until the court decides the appeal.

### **39 Hearing procedures**

- (1) In deciding an appeal, the Magistrates Court—
  - (a) has the same powers as the local government; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing, unaffected by the decision appealed against.

### **40 Court's powers on appeal**

- (1) In deciding an appeal, the Magistrates Court may—
  - (a) confirm the decision appealed against; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the matter to the local government with directions the court considers appropriate.

- (2) If the court substitutes another decision, the substituted decision is, for the purposes of this local law, other than this part, taken to be the decision of the local government.
- (3) An order for the costs of an appeal may only be made against the local government if the court is satisfied that the animal was unlawfully seized or there was no reasonable basis for making the decision subject to the appeal.

#### **41 Appeal to District Court**

An appeal lies to a District Court from a decision of the Magistrates Court, but only on a question of law.

## **Part 6 Miscellaneous**

#### **42 Sale of animals**

- (1) The local government may, by subordinate local law, specify conditions to be complied with by persons who offer animals, or a particular species of animal, for sale.
- (2) Conditions specified under subsection (1) are in addition to requirements of the *Animal Management (Cats and Dogs) Act 2008* in relation to the supply of cats and dogs.
- (3) A person must not offer or display animals for sale in the area unless the person complies with conditions specified under subsection (1).

Maximum penalty for subsection (3)—50 penalty units.

#### **43 Subordinate local laws**

The local government may make subordinate local laws about—

- (a) the circumstances in which the keeping of animals is prohibited;<sup>28</sup> or
- (b) the circumstances in which an approval is required for the keeping of animals;<sup>29</sup> or
- (c) the circumstances in which desexing of an animal is required;<sup>30</sup> or
- (d) minimum standards for keeping animals generally or animals of a particular species or breed;<sup>31</sup> or
- (e) the identification for dogs required under the *Animal Management (Cats and Dogs) Act 2008*;<sup>32</sup> or

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<sup>28</sup> See section 5(1).

<sup>29</sup> See section 6(1).

<sup>30</sup> See section 7(1).

<sup>31</sup> See section 8(1).

<sup>32</sup> See section 9.

- (f) the exclusion of animals, or animals of a specified species, from public places;<sup>33</sup> or
- (g) designated dog off-leash areas;<sup>34</sup> or
- (h)

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<sup>33</sup> See section 10(1).

<sup>34</sup> See section 11(1)



animals whose faeces in public places must be removed and disposed of;<sup>35</sup>  
or

- (i) proper enclosure requirements;<sup>36</sup> or
- (j) requirements for keeping a dog within a koala area;<sup>37</sup> or
- (k) designation of an area as a koala area;<sup>38</sup> or
- (l) the criteria for declaring an animal other than a dog to be a declared dangerous animal;<sup>39</sup> or
- (m) the organisation or local government that operates a place or care for impounded animals;<sup>40</sup> or
- (n) the species, breed or class of animal that may be disposed of other than by public auction or tender;<sup>41</sup> or
- (o) the office at which the register of impounded animals is available for public inspection;<sup>42</sup> or
- (p) the conditions to be complied with by persons who offer animals, or a particular species of animal, for sale;<sup>43</sup> or
- (q) the exclusion of animals of a particular species from the application of this local law;<sup>44</sup> or
- (r) the declaration of a species of animal as a declared dangerous animal;<sup>45</sup> or
- (s) the period within which an impounded animal may be reclaimed.<sup>46</sup>

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<sup>35</sup> See section 13.

<sup>36</sup> See section 14(2).

<sup>37</sup> See section 15(1).

<sup>38</sup> See section 15(4).

<sup>39</sup> See section 19(1).

<sup>40</sup> See section 24(b).

<sup>41</sup> See section 32(1)(b).

<sup>42</sup> See section 33(3).

<sup>43</sup> See section 42(1).

<sup>44</sup> See the definition of *animal* in the schedule.

<sup>45</sup> See the definition of *declared dangerous animal* in the schedule.

<sup>46</sup> See the definition of *prescribed period* in the schedule.

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## Schedule Dictionary

### Section 3

**animal** includes a mammal, fish, bird, reptile, amphibian or insect but does not include an animal of a species excluded by subordinate local law from the application of this local law.

**attack**, by an animal, means—

- (a) aggressively rushing at or harassing any person or animal; or
- (b) biting, butting, kicking, or otherwise causing physical injury to, a person or an animal; or
- (c) tearing clothing on, or otherwise causing damage to the property in the immediate possession of, a person.

**compliance notice** means a compliance notice mentioned in *Local Law No. 1 (Administration) 2017*, section 27.

**cost-recovery fee** means the fee fixed by the local government to cover the costs associated with impounding an animal.<sup>47</sup>

**declared dangerous animal** means an animal—

- (a) of a species declared by subordinate local law as a declared dangerous animal; or
- (b) declared under section 19 of this local law to be a declared dangerous animal.

**destroy**, an animal, includes causing it to be destroyed.

**destruction order** see section 30(1).

**dog off-leash area** see section 11(1).

**effective control** see section 12(3).

**notice of impounding** see section 25(1).

**owner**, of an animal, means

- (a) its registered owner;
- (b) a person who owns the animal, in the sense of it being the person's personal property;
- (c) a person who usually keeps the animal, including through an agent, employee or anyone else;
- (d) if a person mentioned in paragraphs (a) to (c) is a minor—a parent or guardian of the minor.

**prescribed period** means the period, fixed by subordinate local law, of not less than—

- (a) if the animal is registered with the local government—5 days; or
- (b) if the animal is not registered with the local government—3 days;

and commencing on the day a notice of impounding is given to a person or, if no notice is given to a person, on the day of the seizure.

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<sup>47</sup> See the Act, section 97 for the power of a local government to fix a cost recovery fee.

**registered owner**, of an animal, means a person recorded as being the owner of the animal in a registry kept by a local government.

**responsible person**, for an animal, means—

- (a) the person, or the person's employee acting within the scope of the employment, who has immediate control or custody of the animal; or
  - (b) the parent or guardian of a minor who has immediate control or custody of the animal; or
  - (c) the person who occupies the place at which the animal is usually kept,
- but does not include—

- (a) a person who occupies the place at which the animal is usually kept, if someone else who is an adult and lives at the place keeps the animal; or
- (b) a person who has the control or custody of or keeps the animal as an employee of someone else, if the person is acting within the scope of the employment.

**restricted dog** see *Animal Management (Cats and Dogs) Act 2008*, section 63.

**State planning instrument** see *Planning Act 2016*, schedule 2.

**the Act** means the *Local Government Act 2009*.

**wandering at large** means—

- (a) the animal is not under the effective control of someone; and
- (b) the animal is in either—
  - (i) a public place; or
  - (ii) a private place without the consent of the occupier.

## Certification

This and the preceding 23 pages bearing my initials is a certified copy of *Local Law No. 2 (Animal Management) 2017* made in accordance with the provisions of the *Local Government Act 2009* by Balonne Shire Council by resolution dated the                      day of                      , 2017.

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Chief Executive Officer

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## CONFIDENTIAL ITEMS

# INFORMATION REPORTS