

A change for the better, make no bones about it: the reforms to Dog and Cat Management laws in South Australia

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The anniversary of the commencement of significant and long-awaited changes to South Australia's Dog and Cat Management Act 1995 (SA) (the Act) recently passed. The administration and enforcement of the Act falls within the remit of South Australian councils and the changes are, for the most part, intended to assist councils in fulfilling the objectives of the Act, being:

- to encourage responsible dog and cat ownership
- to reduce public and environmental nuisance caused by dogs and cats
- to promote the effective management of dogs and cats

The first phase of changes took effect from 1 July 2017 and included increases to expiation fees, the conferral of additional powers on authorised officers to investigate and enforce breaches of the Act (including, but not limited to, seizing objects and requiring persons to answer questions) and refining councils' powers to issue various Control Orders in respect of dogs.

The second and more significant tranche of changes took effect from 1 July 2018 and included:

- the requirement for all dogs and cats to be microchipped
- mandatory desexing of all dogs and cats born after 1 July 2018 (some exemptions apply)
- registration requirements for breeders
- requirements relating to the sale of dogs and cats
- the transfer of the appeal jurisdiction under the Act from the District Court of South Australia to the review jurisdiction of the South Australian Civil and Administrative Tribunal (SACAT)

Each of these changes are outlined below.

Mandatory microchipping

The Act requires every dog and cat to be microchipped before it reaches 12 weeks of age or within 28 days of a person taking possession of the animal (whichever is the later).¹ Some exceptions apply, including where a veterinarian grants a written exemption from this require-

ment on the grounds that to microchip the animal would pose an undue risk to its health or, adversely affect its growth, development or wellbeing.

Owners who fail to microchip their dog or cat as required by the Act are guilty of an offence to which an expiation fee of \$170 applies (or a \$750 fee in the case of a dog of a prescribed breed, or an attack trained dog, guard dog or patrol dog). The Act establishes a continuing offence for every 3 months that the animal continues not to be microchipped.²

Microchip details must also be included in the state-wide database, Dogs and Cats Online (known as DACO). This ensures that information relating to owned dogs and cats is readily accessible by appropriate authorities to assist in identifying lost animals and reuniting them with their owners.

Mandatory desexing

One of the most significant (and controversial) changes to the Act is the requirement that all dogs and cats born after 1 July 2018 must be desexed.³ Specifically, pursuant to the Dog and Cat Management Regulations 2017 (SA) (the Regulations), all new puppies and kittens must be desexed before 6 months of age or within 28 days of an owner taking possession of the animal (whichever is the later). This requirement became enforceable as of 1 January 2019.

As with mandatory microchipping, there are some exceptions.⁴ This includes where a veterinarian grants a written exemption (which may be on the same grounds that apply to an exemption from microchipping as outlined above). In addition, exemptions apply for:

- working livestock dogs
- animal welfare organisations
- a greyhound (that has not been retired from racing) that is registered within the rules of Greyhound Racing SA
- a full member of Dogs SA
- a financial member of, and registered breeder with, the Feline Association of SA

- a member of The Governing Council of the Cat Fancy of SA
- a registered breeder with the Dog and Cat Management Board

Mandatory desexing is considered to have two benefits: a decrease in unwanted litters (which in the case of cats contributes to increased feral and stray cat numbers) and, in the case of dogs, desexing is thought to minimise aggressive behaviour.

Absent an exemption applying to an owner, the failure to desex a dog or cat as required by the Act is an offence — the expiation fees that apply for a failure to microchip a dog or cat (outlined above) also apply for this offence.

Breeder registration and sale of dogs and cats

Pursuant to the Act, a person can only sell a dog or cat that they have bred if they are a registered breeder.⁵ To register as a dog or cat breeder, a person must submit an application to the Dog and Cat Management Board and pay the applicable fee.

Importantly, “selling” a dog or cat is not restricted to receiving monetary payment in consideration for an animal. The Act broadly defines “sale” or “sell” to include circumstances where a person:

- offers a dog or cat for auction, barter, or exchange
- causes or permits a dog or cat to be offered for sale, auction, barter or exchange, or
- possesses a dog or cat for the purposes of sale, auction, barter or exchange

The broad definition of “sale” means that a person responsible for publishing an advertisement offering for sale a dog or cat that the person has bred (ie, and thereby causing the animal to be offered for sale) who is not a registered breeder commits an offence under the Act.

For the avoidance of doubt, giving a puppy or kitten away for free does not amount to the sale of the animal for the purposes of the Act. Accordingly, a person who gives puppies or kittens away for free is not required to register as a breeder. However, in this scenario, it may be open to the council to pursue enforcement action against the person for failing to desex their animal (depending on whether or not they had the benefit of an exemption under the Act).

Further, the Act distinguishes between “breeders” and “sellers”. Only a breeder who wishes to sell an animal they have bred must be registered. Conversely, a person who wishes to sell a dog or cat in the person’s possession (for example, this may occur after the animal was initially purchased from a breeder) is permitted to do so without being registered under the Act provided that they have not bred the animal.

Any person selling a dog or cat (whether or not they are a registered breeder) must provide the purchaser with a written notice containing prescribed information, including:

- the name and phone number of the seller
- the name and phone number of each breeder and if the breeder is registered, the breeder identification number issued to the breeder
- a statement setting out whether or not the dog or cat has been vaccinated and, if so, which vaccinations were administered
- a statement setting out whether or not the dog or cat has been desexed and, if it has, the following information:
 - the name and business address of the registered veterinary surgeon who desexed the dog or cat
 - the date on which the dog or cat was desexed
 - the age of the dog or cat at the time it was desexed
 - the nature of the desexing procedure
- information specifying any other veterinary treatment the dog or cat has received
- a statement setting out whether or not the dog or cat has been microchipped and, if it has, the following information:
 - the name and address of the person who microchipped the dog or cat
 - the date on which the dog or cat was microchipped
 - the microchip number
 - the registry or registries in which information in respect of the dog or cat is stored
- details of any illness or medical condition from which the dog or cat is known to be suffering
- in the case of a dog subject to a control order under s 50 of the Act — details of the order

A dog or cat must not be sold unless it is desexed and microchipped.⁶

In addition, a person who advertises the sale of a dog or cat must ensure that the advertisement contains the following information:

- the name and telephone number of the seller
- the name and telephone number of each breeder and, if a breeder is a registered breeder, the identification number issued to the breeder

A failure to provide a written notice containing the required information to a purchaser of a dog or cat or, to include the required information in an advertisement relating to the sale of a dog or cat, is an offence to which an expiation fee of \$315 applies.

Reviews to SACAT

As and from 1 July 2018, decisions in respect of which a right of appeal to the District Court previously applied under the Act (including decisions by councils to issue Destruction and Control Orders in respect of dogs) now constitute a “reviewable decision” under the Act in respect to which a right of review to SACAT applies.

This change in jurisdiction brings about a change to the legal test that applies for an oversight body to overturn or depart from a council decision. Previously, an appeal to the District Court against a council decision under the Act could only succeed if the court found there were “cogent reasons” to depart from the original decision. By comparison, SACAT has broader powers to vary a council decision — SACAT is bound to give “appropriate weight” to the council’s decision but, on any hearing of the matter, is free to depart from the decision and substitute any new decision that it considers to be the “correct or preferable decision”.⁷

The authors have already noted an increase in challenges to council decisions to issue Control Orders since the change in jurisdiction, and are involved in a number of review proceedings being brought before SACAT at the time of writing. Insight into how SACAT applies the “correct or preferable decision” test to such matters can be gleaned from the few matters that have progressed to a hearing and been determined.⁸

As with all changes to regulatory legislation, it is expected to take time for the public to become accustomed to the new requirements under the Act. To ease the transition and ensure the changes to the Act highlighted above effectively operate to achieve their intended objectives, South Australian councils have played (and continue to play) an important role in educating dog and cat owners in their area regarding the new requirements. Where necessary, councils have also taken appropriate enforcement action to address contraventions of the Act. Developing and implementing appropriate policies and procedures for investigating and enforcing contraventions of the Act is encouraged to ensure a consistent and equitable approach.

Ultimately, effective enforcement of the requirements under the Act is critical to achieve the goals underpinning the reforms including: reuniting lost pets quickly with their families; reducing unplanned litters of kittens and puppies; providing better information to new dog and cat owners; and improving the oversight of breeders — thereby bringing about a change for the better in the context of dog and cat management.



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Footnotes

1. Dog and Cat Management Act, s 42A.
2. Above, s 42B.
3. Above n 1, s 42E.
4. Above n 1, s 42E; Dog and Cat Management Regulations, reg 12.
5. Above n 1, s 69.
6. Above n 1, s 70.
7. Section 34(4) of the South Australian Civil and Administrative Tribunal Act 2013 (SA).
8. At the date of writing, SACAT determinations relating to review proceedings under the Dog and Cat Management Act include *Selmanera v City of West Torrens* [2018] SACAT 14 and *Ivka v City of Charles Sturt* [2019] SACAT 5.