

REPORT TO  
OFFICE OF LOCAL GOVERNMENT  
13 MARCH 2018

# DRAFT COMPANION ANIMALS REGULATION 2018

REGULATORY IMPACT STATEMENT





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# C O N T E N T S

<b>EXECUTIVE SUMMARY</b>	<b>I</b>
<b>1</b>	
<i>Introduction</i>	<i>1</i>
<b>2</b>	
<i>Nature and extent of the problem</i>	<i>1</i>
2.1 Number of animals registered	1
2.2 Euthanasia and reunion rates	3
2.3 Restricted breeds and dangerous dogs	4
2.4 Conclusion	10
<b>3</b>	
<i>The case for government intervention</i>	<i>11</i>
3.1 Market failure	11
3.2 Can the problem be addressed by non-legislative means?	12
3.3 Conclusion	14
<b>4</b>	
<i>Objectives of the proposed regulation</i>	<i>15</i>
<b>5</b>	
<i>Options considered</i>	<i>16</i>
5.1 Base case: letting the Regulation sunset	16
5.2 Option 1: remaking the existing Regulation without changes (status quo)	18
5.3 Option 2: remaking the existing Regulation with changes	18
<b>6</b>	
<i>Impact analysis</i>	<i>20</i>
6.1 Impacts of letting the Regulation sunset (the Base Case)	20
6.2 Impacts of the proposed Regulation (Option 1 and Option 2)	22
<b>7</b>	
<i>Conclusion</i>	<i>26</i>
<b>8</b>	
<i>Consultation</i>	<i>29</i>
<b>REFERENCES</b>	<b>30</b>
<b>A</b>	
<i>Stakeholder consultations</i>	<i>A-1</i>
A.1 Consultations undertaken as a part of this RIS	A-1
A.2 Issues raised by stakeholders for future consideration	A-2

# C O N T E N T S

## FIGURES

<b>FIGURE ES 1</b>	SUMMARY OF POTENTIAL RELATIVE IMPACTS OF THE PROPOSED DRAFT REGULATION ACROSS KEY AREAS OF CHANGE (RELATIVE TO THE STATUS QUO)	IV
<b>FIGURE 2.1</b>	NUMBER OF CATS (LEFT) AND DOGS (RIGHT) MICROCHIPPED AND REGISTERED ON THE COMPANION ANIMALS REGISTER, FY2008-FY2017	2
<b>FIGURE 2.2</b>	SHARE OF TOTAL MICROCHIPPED ANIMALS THAT ARE ALSO DESEXED	2
<b>FIGURE 2.3</b>	NUMBER OF RESTRICTED AND DANGEROUS DOGS ON THE REGISTER	5
<b>FIGURE 2.4</b>	NUMBER OF REPORTED DOG ATTACKS, DOGS INVOLVED AND VICTIMS	6
<b>FIGURE 2.5</b>	PROPORTION OF ATTACKING DOGS BY REGISTRATION STATUS	7
<b>FIGURE 2.6</b>	NUMBER OF ATTACKS BY DANGEROUS DOGS AND RESTRICTED BREEDS	7
<b>FIGURE 2.7</b>	CONTROL OF DOGS WHEN ATTACK OCCURRED	8
<b>FIGURE 2.8</b>	PROPORTION OF ATTACKS BY SEX OF DOG	9
<b>FIGURE 2.9</b>	PROPORTION OF ATTACKS BY DESEXED STATUS	9
<b>FIGURE 2.10</b>	SEVERITY OF INJURY ASSOCIATED WITH REPORTED DOG ATTACKS	10
<b>FIGURE 7.1</b>	SUMMARY OF POTENTIAL RELATIVE IMPACTS OF THE PROPOSED DRAFT REGULATION ACROSS KEY AREAS OF CHANGE (RELATIVE TO THE STATUS QUO)	27

## TABLES

<b>TABLE 2.1</b>	NUMBER OF DOGS REUNITED AND EUTHANISED, NSW, 2012-13 TO 2015-16	3
<b>TABLE 2.2</b>	NUMBER OF CATS REUNITED AND EUTHANISED, NSW, 2012-13 TO 2015-16	4
<b>TABLE 2.3</b>	NUMBER OF REPORTED DOG ATTACKS, DOGS INVOLVED AND VICTIMS	6
<b>TABLE 5.1</b>	SUMMARY OF AMENDMENTS PROPOSED FOR THE REGULATION	19
<b>TABLE A.1</b>	STAKEHOLDERS CONSULTED DURING PREPARATION OF THIS RIS	A-1

## BOXES

<b>BOX 1.1</b>	THE BETTER REGULATION PRINCIPLES	2
<b>BOX 3.1</b>	EXAMPLES OF MARKET FAILURE	12
<b>BOX 3.2</b>	CHECKLISTS FOR ASSESSMENT OF SELF AND QUASI-REGULATION	13



## EXECUTIVE SUMMARY

The identification, registration and management of companion animals (pet cats and dogs) in New South Wales (NSW) are regulated by the *Companion Animals Act 1998* (the Act) and the *Companion Animals Regulation 2008* (the Regulation). The Minister for Local Government is responsible for the Act and Regulation and it is administered by the Office of Local Government (OLG).

This Act covers responsibilities for pet owners and breeders in relation to registering and identifying companion animals, general responsibilities of dog owners and provisions for dogs declared to be dangerous as well as restricted dogs' breeds. However, matters of animal welfare are not covered by the Act. The Minister for Primary Industries is responsible for seeking to ensure the broader welfare of all animals including cats and dogs under the *Prevention of Cruelty to Animals Act 1979* (POCTA), which is administered by the Department of Primary Industries (Animal Welfare Branch).

The Regulation provides for the permanent identification of companion animals, their registration and the regulation of dangerous and restricted dogs. It also provides for other miscellaneous matters, such as registration fees and those offences for which penalties notices could be issued.

Under the provisions of the *Subordinate Legislation Act 1989*, the *Companion Animals Regulation 2008* is due for staged repeal in 2018. The *Subordinate Legislation Act 1989* states that the remaking of a statutory rule (even if it is to be remade without changes) requires the preparation of a Regulatory Impact Statement (RIS) and a period of public consultation. ACIL Allen Consulting (ACIL Allen) were commissioned by the OLG to conduct a RIS for the remake of the Regulation. A review of the Act or POCTA was outside the scope of this RIS.

### **Objectives sought to be achieved by the Draft Regulation**

Overall, the key objectives of the Draft Regulation can be seen to provide:

- legislative support and administrative detail for the operation of the Act
- clear requirements relating to:
  - the manner in which animals have to be identified, the identification process, the persons authorised to identify animals and the identification information that has to be provided for a companion animal
  - enclosures for dangerous or restricted dogs and distinctive collars for dangerous, menacing or restricted dogs
- a framework for adequate oversight of companion animals' management.

## Options considered

The options that have been identified through the process conducted with OLG in 2017 are the following.

- **Base Case** — best practice regulatory impact analysis suggests that a RIS should use as the base case the option whereby there is 'no Regulation'. As such, the Base Case for this RIS is to let the existing Regulation sunset (i.e. discontinue).
- **Option 1** — this option entails remaking the existing Regulation without any changes (the *status quo* option).
- **Option 2** — this option entails making the Draft Regulation, which would entail remaking the existing Regulation with several proposed amendments. Generally, the amendments fall within one or more of the following areas.
  - a) Minor rewording, renumbering, restructuring and clarifications that have no material effect on the obligations of councils, the industry, animal owners or the general public.
  - b) Removal/amendment of transitional provisions that are no longer relevant or needed.
  - c) Changes to fees in the Regulation.
  - d) Extension of the definition of eligible pound or shelter operator.
  - e) Changes to penalty notice offences.
  - f) The inclusion of a new Schedule to make provisions for the enactment of the *Greyhound Racing Act 2017*.

Overall, the amendments proposed under the Draft Regulation are considered minor. Additional details of the proposed changes under all of the above areas are provided in Chapter 5.

## Assessment of options

The following sections summarise the assessment of impacts of the regulatory options outlined above. The first section assesses the expected impacts of the Base Case (i.e. of letting the Regulation sunset) and the second section assesses the impacts of the proposed Draft Regulation (Option 2) against the status quo, i.e. the current Regulation (Option 1).

The benefits and costs associated with the options are not amenable to quantification as the proposed changes have a relatively marginal impact and it is unfeasible to measure the scale of avoidable harm and other costs and benefits that could be attributed to the proposed changes to the Regulation in a robust way. As such, the impacts of the proposed changes are discussed qualitatively. In addition, in preparing this RIS, selected stakeholder consultations were conducted with a number of organisations. Where relevant, key comments made by stakeholders have been included in the discussion. These views need to be further tested during the public consultation period before a decision is made about the remaking of the Regulation.

### Impacts of letting the Regulation sunset (the Base Case)

The likely general implications of letting the Regulation sunset are that:

- the Act would be unable to fully operate in the absence of legislative detail
- animal owners would still be required to identify companion animals under the Act, but there would be no prescriptive requirements about the manner in which animals have to be identified, the identification process, who can identify an animal or the identification information to be provided
- animal owners would still be required to register companion animals under the Act, but there would be no prescriptive requirements across a range of registration matters (including registration exemptions, information to be provided when registering an animal, registration fees, and restrictions on who can be the animal's registered owner)
- dangerous, menacing and restricted dogs' owners would still be required to display warning signs and put distinctive collars on these dogs, but there would be no statutory requirements to be met for these signs or collars

- dangerous and restricted dogs' owners would still be required to restrict access to these dogs through an enclosure that is 'sufficient to restrain the dog and prevent a child from having access to the dog', but there would be no minimum standards to be met in relation to this enclosure
- councils would have no ability to issue certificates of compliance of enclosures for dangerous or restricted dogs, penalty notices for non-compliance with the enclosure requirements or direct owners to comply with the prescribed requirements (as there would be none)
- councils would have no power to act or intervene in circumstances where a dangerous or restricted dog's enclosure is causing a risk to the public, as any enclosure that is deemed to be able to be 'sufficient to restrain the dog and prevent a child from having access to the dog' (which, without prescriptive requirements, would likely be subject to interpretation) would be deemed to comply with the requirements of the Act
- dangerous or restricted dogs' owners could seek advice about safe dog enclosures (either through the council or other means), however, it is unclear whether this advice would result in them following the current requirements in the Regulation or other 'less safe' alternatives.

Broadly, the benefits of discontinuing the Regulation would include:

- reduction of compliance and administrative costs for companion animal owners
- reduced regulatory costs for the NSW Government in administering the current regulatory regime, including administrative, monitoring and enforcement costs.

Notably, the compliance and administrative costs for companion animal owners would not be completely eliminated because, as noted before, they would still be required to identify and register companion animals and control dangerous, menacing and restricted dogs under the Act. In fact, as noted below, it is likely that owners of dangerous or restricted dogs concerned about safety would face increased transaction costs as they seek advice and information about what constitutes a safe dog enclosure.

The costs associated with eliminating the Regulation would include:

- increased risk of owners not being able to be reunited with their companion animal (or having longer delays in this reunion)
- a potential increase in the number of animals being euthanised
- potential increased risks to the health and safety of animals being microchipped (due to the absence of a prescriptive identification process to be followed and the requirement that these procedures are undertaken by authorised identifiers)
- increased risks of fatal and non-fatal dog attacks on both humans and other animals
- increased costs to the NSW community from increased dog attacks
- increased transaction costs for safety-concerned owners of dangerous or restricted dogs from seeking advice and information about what constitutes a safe dog enclosure
- increased risks to the integrity of the identification and registration scheme (due to the lack of prescriptive requirements about the information that needs to be entered into the Register when identifying and registering an animal)
- having a regulatory regime which is in effect unable to operate effectively.

Overall, letting the Regulation sunset is not considered appropriate as the risks and costs associated with eliminating statutory requirements for the identification and registration of companion animals, warning signs and collars for dangerous, menacing and restricted dogs, and enclosures for dangerous and restricted dogs are considered to significantly outweigh any potential benefits to Government and animal owners related to reduced compliance and administrative costs.

### **Impacts of the proposed Regulation (Option 1 and Option 2)**

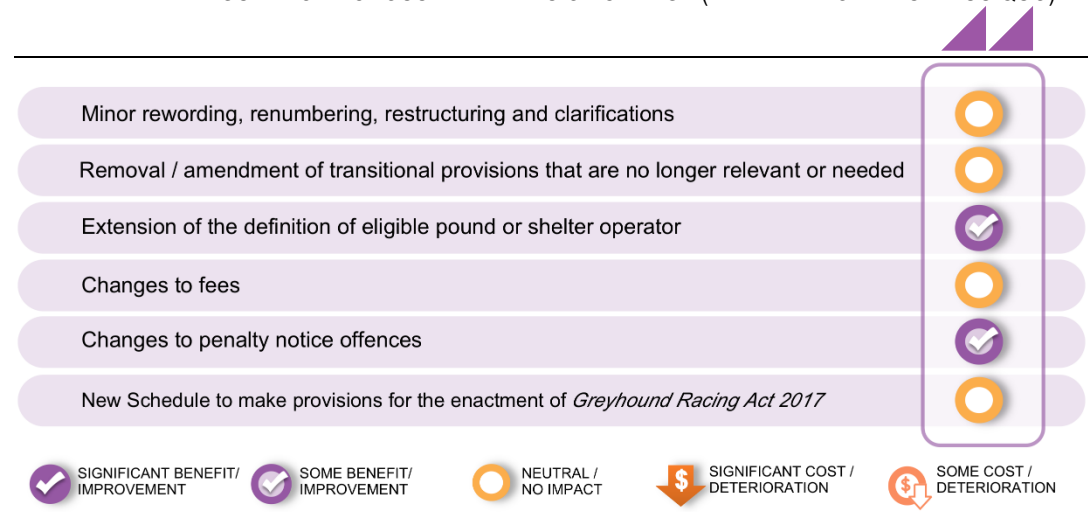
The amendments proposed under areas a) and b) outlined above leave the obligations for stakeholders largely unchanged. The proposed changes under area f) make amendments to provisions of the Regulation that refer to greyhounds and are a consequence of the enactment of the *Greyhound Racing Act 2017* (and hence not considered to impose any additional/different obligations

for greyhound owners other than what is already required under the *Greyhound Racing Act 2017*). Amendments under areas 3) to 5) may impact on some stakeholders.

In light of this, the analysis of the impacts of the proposed amendments to the Regulation (Option 2) against the *status quo* (i.e. the current Regulation, Option 1) has been structured around areas 3) to 5) above, rather than around each of the options.

As discussed before, the benefits and costs associated with the alternative options are not amenable to quantification. However, Figure ES 1 provides a summary of the relative nature of the benefits and costs of the changes proposed under Option 2 across all the proposed areas of change outlined above, with respect to Option 1 (i.e. the *status quo*).

**FIGURE ES 1** SUMMARY OF POTENTIAL RELATIVE IMPACTS OF THE PROPOSED DRAFT REGULATION ACROSS KEY AREAS OF CHANGE (RELATIVE TO THE STATUS QUO)



SOURCE: ACIL ALLEN CONSULTING.

In summary, in relation to the key areas of changes proposed for the Regulation:

1. The proposed **amendments to registration fees** are not expected to have any significant impacts on animal owners, councils or the public in general. These changes only reflect annual inflation adjustments to registration fees.
2. To the extent that allowing animals adopted from rescue groups to access subsidised registration (by **extending the definition eligible pound or shelter operator**) incentivises more people to acquire animals from such organisations, then the proposed change could result in an increase in the number of animals rehomed. This change would also level the playing field for organisations with similar objectives in terms of animal rehoming and would provide more choices of places to adopt a rescued animal for people seeking to pay discounted fees.
3. If the proposed **increases in penalty notice offences** result in increased compliance with requirements relating to dangerous, menacing or restricted dogs, then this change could result in a potential reduction in risks to people and other animals' safety and potential reductions in health and veterinary costs related to dog attacks. However, the extent of avoided injuries and associated treatment costs are unknown. Given that there are potential benefits of avoiding a dog attack (although the size of these benefits is uncertain) and given that there are no significant costs related to the proposed penalty increases, it is considered that this change is likely to be positive.

Given the above, and taking into account that the option of letting the Regulation sunset would likely result in more costs than benefits, the preferred regulatory option is to remake the existing Regulation with the proposed amendments (Option 2).



## Next steps

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Interested stakeholders are encouraged to consider aspects of the assessment contained within this RIS and the Draft Regulation and respond accordingly. Key issues on which stakeholder views are sought include the following:

- Are there any costs and benefits of the Draft Regulation that have not yet been considered, and how material are these impacts?
- Are there any risks of the Draft Regulation that have not yet been considered?
- Are the impacts discussed in this RIS genuinely reflective of stakeholder views?
- Are there any additional amendments which could have a net positive impact on the proposed Regulation?
- Could the results of the proposed Regulation be achieved through any alternative options?

Consistent with the *Subordinate Legislation Act 1998*, the RIS and Draft Regulation will be open for public consultation of at least 21 days. Submissions received as part of the consultation process will be considered in finalising the Draft Regulation.

There are two ways to provide your feedback:

1. Online via the OLG website  
OR
2. Print the feedback form from OLG's website and post or email it to:

Companion Animals Regulation Review

Locked Bag 3015

Nowra NSW 2541

Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Submissions can now be made and will be accepted until **5pm Tuesday 22 May 2018**.

Individuals and organisations should be aware that generally any submissions received will be publicly available under the *Government Information (Public Access) Act 2009* and may be published. OLG, in considering the submissions received may also circulate submissions for further comment to other interested parties or publish all, or parts, of the submissions. If you wish your submission (or any part of it) to remain confidential (subject to the *Government Information (Public Access) Act*), this should be clearly stated on the submission.



The identification, registration and management of companion animals (pet cats and dogs) in New South Wales (NSW) are regulated by the *Companion Animals Act 1998* (the Act) and the *Companion Animals Regulation 2008* (the Regulation).

Acts are broad laws and the regulations provide guidance that dictate how the provisions of the Act should be applied.

This Act covers responsibilities for pet owners and breeders in relation to registering and identifying companion animals, general responsibilities of dog owners and provisions for dogs declared to be dangerous as well as restricted dogs' breeds. However, matters of animal welfare are not covered by the Act. The Minister for Primary Industries is responsible for seeking to ensure the broader welfare of all animals including cats and dogs under the *Prevention of Cruelty to Animals Act 1979* (POCTA), which is administered by the Department of Primary Industries (Animal Welfare Branch).

The Regulation provides for the permanent identification of companion animals, their registration and the regulation of dangerous and restricted dogs. It also provides for other miscellaneous matters, such as registration fees and those offences for which penalties notices could be issued.

The key objectives of the companion animals regulatory framework are to:

- provide effective and responsible care and management of companion animals
- safely return lost animals to their homes
- keep the community and other animals safe
- reduce the number of animals admitted to pounds and shelters
- reduce the proportion of animals that are euthanised.

The Government's broader policy objective and key message is to promote responsible pet ownership, through a Responsible Pet Ownership (RPO) program. Responsible pet ownership is a concern for the community, regardless of whether they are pet owners. Euthanasia rates and dog attacks are issues of particular concern across the community.

Under the provisions of the *Subordinate Legislation Act 1989*, the *Companion Animals Regulation 2008* is due for staged repeal in 2018. The *Subordinate Legislation Act 1989* states that the remaking of a statutory rule (even if it is to be remade without changes) requires the preparation of a Regulatory Impact Statement (RIS) and a period of public consultation. ACIL Allen Consulting (ACIL Allen) were commissioned by the NSW Office of Local Government (OLG) to conduct a RIS for the remake of the Regulation. A review of the Act or POCTA was outside the scope of this RIS.

The primary purpose of a RIS is to ensure that the costs and benefits of regulatory proposals are fully examined so that affected stakeholders can be satisfied that the benefits of the regulation exceed the costs. To achieve these ends, the *Subordinate Legislation Act 1989* requires a RIS to contain certain information including:

- an analysis of the nature and extent of the problem sought to be addressed by the regulation and establishing the need for regulation
- a statement of the objectives sought to be achieved by the regulation
- the identification of the alternative options by which those objectives can be achieved
- an assessment of the costs and benefits of the impacts of the alternative options
- an assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community
- a statement of the consultation program to be undertaken.

In addition to the *Subordinate Legislation Act 1989*, the introduction of regulations in NSW is also governed by Better Regulation Principles. The principles (Box 1.1), introduced in 2008, are intended to be a best practice guide for policy development and regulatory design process and must be followed in the development of every regulatory proposal.

In light of this, the chapters in this report are structured around the RIS content requirements and the application of the Better Regulation Principles.

#### BOX 1.1 THE BETTER REGULATION PRINCIPLES

- **Principle 1:** The need for government action should be established
- **Principle 2:** The objective of government action should be clear
- **Principle 3:** The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- **Principle 4:** Government action should be effective and proportional
- **Principle 5:** Consultation with business and the community should inform regulatory development
- **Principle 6:** The simplification, repeal, reform or consolidation of existing regulation should be considered
- **Principle 7:** Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness

SOURCE: [HTTP://WWW.DPC.NSW.GOV.AU/PROGRAMS\\_AND\\_SERVICES/BETTER\\_REGULATION/REGULATORY\\_IMPACT\\_ASSESSMENT](http://www.dpc.nsw.gov.au/programs_and_services/better_regulation/regulatory_impact_assessment)



When conducting a review of a Regulation due to be repealed, it is important to clearly demonstrate that the Regulation is still relevant. This consists of two steps. First, it is necessary to identify that a problem exists. Second, the RIS should demonstrate that the problem is amenable to a government intervention and that a regulatory response is appropriate.

This chapter addresses the first requirement through outlining the nature and extent of the problem that the Regulation intends to address. Chapter 3 will assess the case for government intervention.

There are several issues related to companion animals for their owners and the community in general. These include:

- responsibly caring for companion animals, including ensuring keeping populations in check and keeping animals and people safe
- returning lost animals or rehoming unwanted animals, which helps with keeping them out of pounds and shelters and keeping euthanasia rates down.

To assess the nature and extent of these problems, where possible, ACIL Allen have used data available from the Companion Animals Register (the Register). This assessment has been done in three sections.

The first section (Section 2.1) looks at the number of animals registered and attempts to show the effectiveness of the regulation in increasing the numbers of animals microchipped and registered over time – which helps to address several problems related to companion animals, including keeping people safe, keeping animals safe and returning lost animals.

The second section (Section 2.2) examines euthanasia and reunion rates and provides evidence that over time the number of companion animals euthanised has been declining.

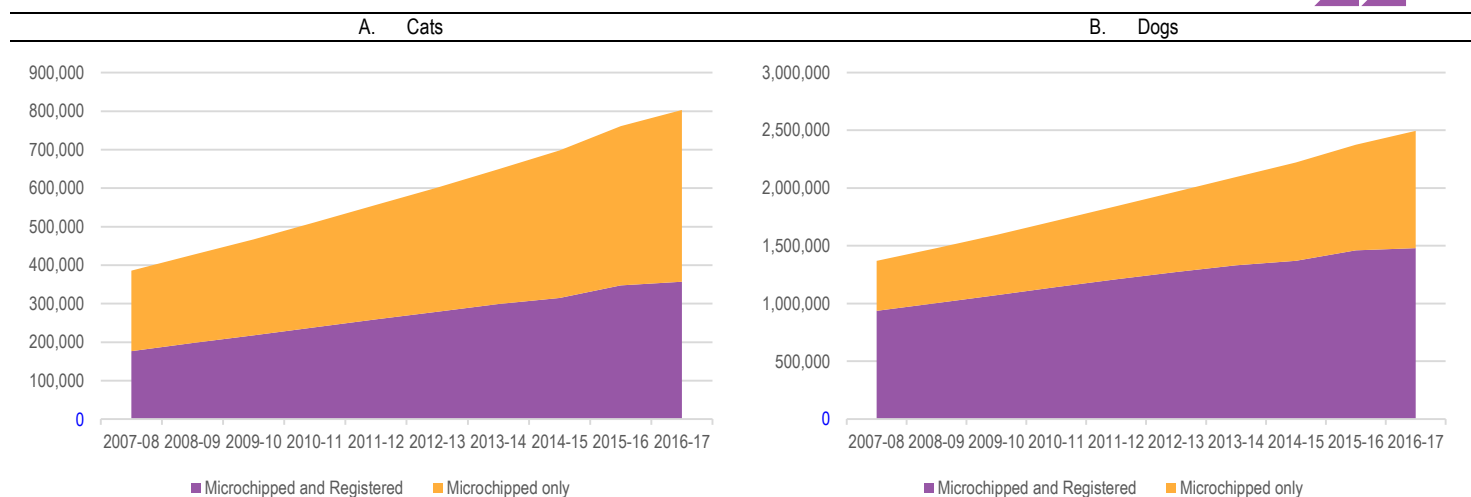
The third section (Section 2.3) assesses data on dog attacks and related information pertinent to human and animal safety. This data also shows that the number of attacks have been declining over time.

## 2.1 Number of animals registered

The Register shows that at 30 June 2017, there were at least 2.5 million dogs and 803 thousand cats microchipped in New South Wales (Figure 2.1).<sup>1</sup> Of these, 59 per cent of dogs and 45 per cent of cats were also registered, while 44 per cent of dogs and 45 per cent of cats were desexed (Figure 2.2).

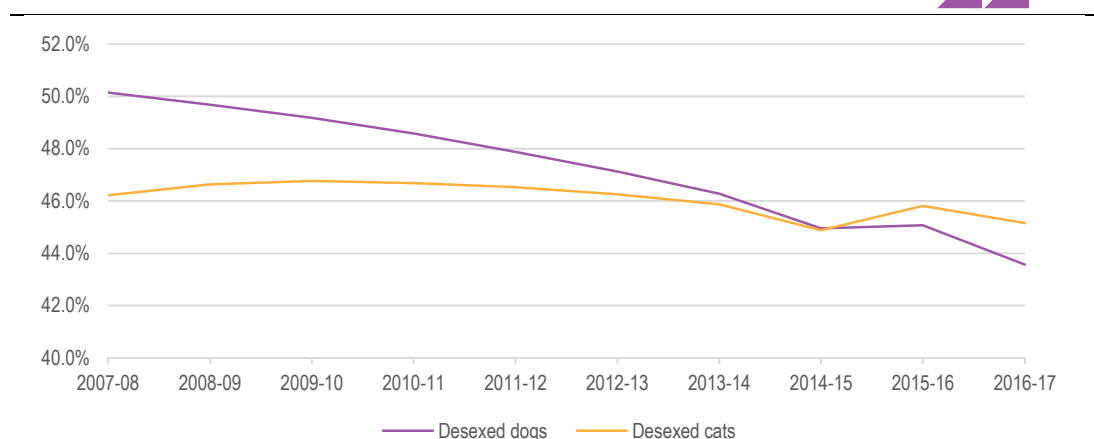
<sup>1</sup> Note there are issues with the data set provided including anomalies for the year 2011-12, and between 2013-14 and 2015-16. This made it difficult to examine the total flow of animals in and out of the Register. However, the data was sufficient to enable the analysis reported in this chapter to be conducted.

**FIGURE 2.1** NUMBER OF CATS (LEFT) AND DOGS (RIGHT) MICROCHIPPED AND REGISTERED ON THE COMPANION ANIMALS REGISTER, FY2008-FY2017



SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

**FIGURE 2.2** SHARE OF TOTAL MICROCHIPPED ANIMALS THAT ARE ALSO DESEXED



Note: Includes animals that are microchipped but not registered as well as animals microchipped and registered.

SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

Figure 2.1 clearly shows an increase over time on the numbers of animals microchipped and registered and microchipped only (as it would be fair to say that at least some of this increase is due to the effects of the Act and the Regulation). The problem with a large portion of animals being microchipped only means that there is little available information of the owners. To ensure that the system functions to achieve all its objectives, the process of microchipping and registration has to occur.

Under the *Companion Animals Act 1998*, barring some exemptions<sup>2</sup>, all dog and cat owners in NSW are supposed to have their pets permanently identified and registered, with the registration fee being a once-off fee for the life of the animal. Lifetime registration is currently a process that requires dog and cat owners to:

<sup>2</sup> Exemptions include all cats born before 1 July 1999 where ownership has not changed, a working dog used for tending stock on a rural property or a greyhound currently registered under the *Greyhound Racing Act 2017*.

- have their animals implanted with a microchip from the time they are 12 weeks of age, at point of sale or change of ownership (whichever occurs first)
- register their animals (and pay the registration fee) with their NSW local council by six months of age.

Pet owners are currently given six months to register their pet with the council to allow time for the animal to be desexed prior to registration.

Desexing is also important to keep down animal populations, minimise euthanasia rates, and can reduce the propensity for dogs to be involved in attacks.

## 2.2 Euthanasia and reunion rates

ACIL Allen obtained council pound data from the OLG. The data provided covers the four-year period 2012-13 to 2015-16 and is summarised in Table 2.1 and Table 2.2. It should be noted that the 2015-16 data is preliminary and may be incomplete.

In the case of both cats and dogs, the number of animals euthanised decreased noticeably over the period. The total number of dogs euthanised fell from 9,202 in 2012-13 to 7,817 in 2014-15 and to 6,373 in 2015-16. This fall was driven largely by a decrease in the number of dogs euthanised because they were unable to be rehomed and a reduction in the number of dogs euthanised due to owner's request.

The total number of cats euthanised fell from 13,410 in 2012-13 to 12,569 in 2014-15 and to 8,437 in 2015-16. This fall was also largely driven by a decrease in the number of cats euthanised because of an inability to rehome them and a reduction in the number of cats euthanised due to owner's request (but with mixed changes in the other categories).

Over the four years between 2012-13 and 2015-16 there were a far greater number of stray dogs that were successfully reunited with their owners than stray cats (over 20,000 dogs compared with just over 1,000 cats). Furthermore, the total number of cats successfully reunited with their owners was relatively constant over the period, while the number of dogs was relatively constant at just over 25,000 between 2012-13 and 2014-15 dropping to 20,846 in 2015-16. The reason for the large drop in the number of reunited dogs is unknown and may be due to the preliminary nature of the 2015-16 data.

Rehoming for dogs was generally constant at 13,500 a year between 2012-13 and 2014-15, while rehoming for cats increased from 8,006 in 2012-13 to 10,416 in 2014-15 before dropping to 9,148 in 2015-16.

**TABLE 2.1** NUMBER OF DOGS REUNITED AND EUTHANISED, NSW, 2012-13 TO 2015-16

Dogs	2012-13	2013-14	2014-15	2015-16
	No.	No.	No.	No.
Reunited with owners	25,435	25,241	25,465	20,846
– Prior to entering facility	6,047	5,835	5,801	4,591
– After entering facility	19,388	19,406	19,664	16,255
Rehomed	13,445	13,525	13,488	11,268
Euthanised	9,202	8,679	7,817	6,373
– Due to illness or unsuitable to rehome	4,419	4,600	4,384	3,441
– Due to owner request	1,075	995	790	703
– Due to Restricted/Dangerous status or Feral/infant animal	588	812	641	463
– Unable to Rehome	3,120	2,272	2,002	1,766
Escaped	34	13	20	17

SOURCE: OLG AND ACIL ALLEN CONSULTING.

**TABLE 2.2** NUMBER OF CATS REUNITED AND EUTHANISED, NSW, 2012-13 TO 2015-16

Cats	2012-13	2013-14	2014-15	2015-16
	No.	No.	No.	No.
Reunited with owners	1,056	1,020	1,076	1,078
– Prior to entering facility	159	123	184	122
– After entering facility	897	897	892	956
Rehomed	8,006	10,269	10,416	9,148
Euthanised	13,410	13,313	12,569	8,437
– Due to illness or unsuitable to rehome	6,979	6,601	4,831	2,959
– Due to owner request	253	296	223	140
– Due to Feral/infant animal status	3,851	4,178	6,031	4,411
– Unable to Rehome	2,327	2,238	1,484	927
Escaped	65	66	41	58

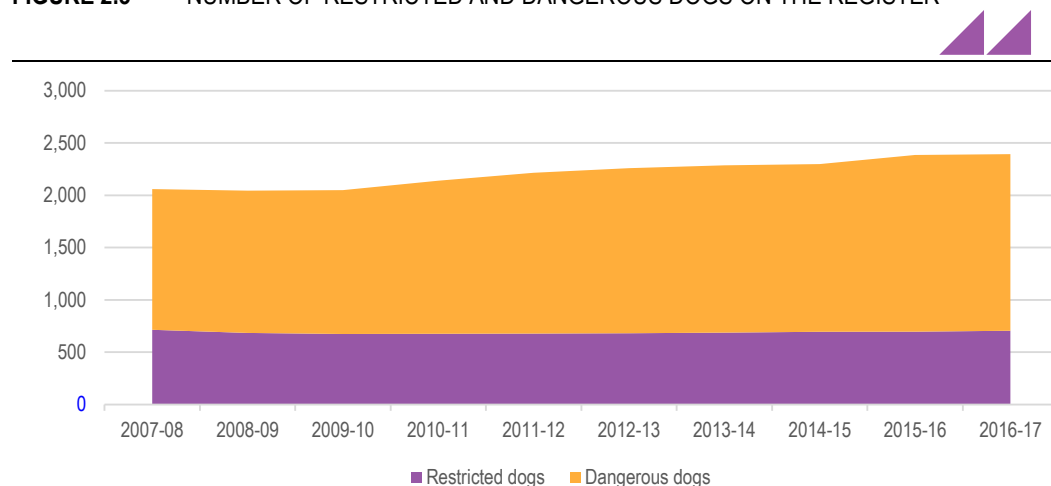
SOURCE: OLG AND ACIL ALLEN CONSULTING.

## 2.3 Restricted breeds and dangerous dogs

### 2.3.1 Number of restricted and dangerous dogs

Figure 2.3 presents the historical number of dogs on the Register classed as Restricted or Dangerous. As shown in this figure, the number of Restricted dogs has remained relatively stable over the past decade at around 700 dogs. In 2007-08 there were 714 Restricted dogs while in 2016-17 there were 705 Restricted dogs. The number of dogs classified as Dangerous has increased by 26 per cent from 1,345 dogs in 2007-08 to 1,688 in 2016-17.

On November 2013, the *Companion Animals Amendment Act 2013* came into effect. This Act introduced several new provisions to regulate dogs considered to be aggressive, including compulsory desexing, enclosure provisions, mandatory use of leash and muzzle, increased penalties for dog attacks and the delivery of education programs. In the four years since the amendment of the Act, the total number of dogs classified as Dangerous grew by just under 7 per cent, which is less than half the growth in the preceding four years. This indicates that the additional regulation associated with owning dogs classified as Dangerous seems to have had an effect on owner's willingness to own actually or potentially dangerous dogs, or has incentivised owners to ensure they are more effectively controlled so as to not risk their animal being classed as Dangerous.

**FIGURE 2.3** NUMBER OF RESTRICTED AND DANGEROUS DOGS ON THE REGISTER

SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

### 2.3.2 Reported dog attacks

Under the *Companion Animals Act 1998*, a dog attack can include any incident where a dog rushes at, attacks, bites, harasses or chases any person or animal (other than vermin), whether or not any injury is caused to the person or animal.<sup>3</sup>

While data has been gathered by councils for many years, reporting of attacks using the Companion Animals Register only began in February 2009. Consequently, this is the earliest date available for a consistent time series of the number and nature of dog attacks across New South Wales.

The data used for the reporting and analysis in this section was provided to ACIL Allen in February 2018. It should be noted that councils report any relevant information about dog attacks, using the Companion Animals Register, within 72 hours of receiving the information, along with any additional information received in the course of investigating or monitoring an attack. In some cases, records may be incomplete, or subject to change, as they have been reported prior to the completion of an investigation. In some cases, the record of a reported attack will be permanently incomplete because investigating council officers have been unable to locate the dog(s) involved, or, in some cases, the victim.<sup>4</sup>

Table 2.3 and Figure 2.4 present the number of reported dog attacks that occurred between 2009-10 and 2016-17. As shown in these, the total number of reported attacks, and human and animal victims, have fallen gradually since the peak in the period FY2011–FY2013. This is despite there being an overall increase in the number of dogs in New South Wales over this period.

The peak also corresponds with the introduction of the *Companion Animals Amendment Act 2013* which came into effect on 19 November 2013.

Since the introduction of the 2013 amendments:

- the number of reported incidents fell by 15 per cent from 5,556 to 4,703
- the number of dogs involved in attacks fell by 15 per cent from 7,236 to 6,161
- the number of human victims decreased by 16 per cent from 3,188 to 2,663
- the number of animal victims decreased by 11 per cent from 5,186 to 4,649.

<sup>3</sup> NSW Division of Local Government, Department of Premier and Cabinet (2013), *Council reports of dog attacks in NSW 2011/12*, October.

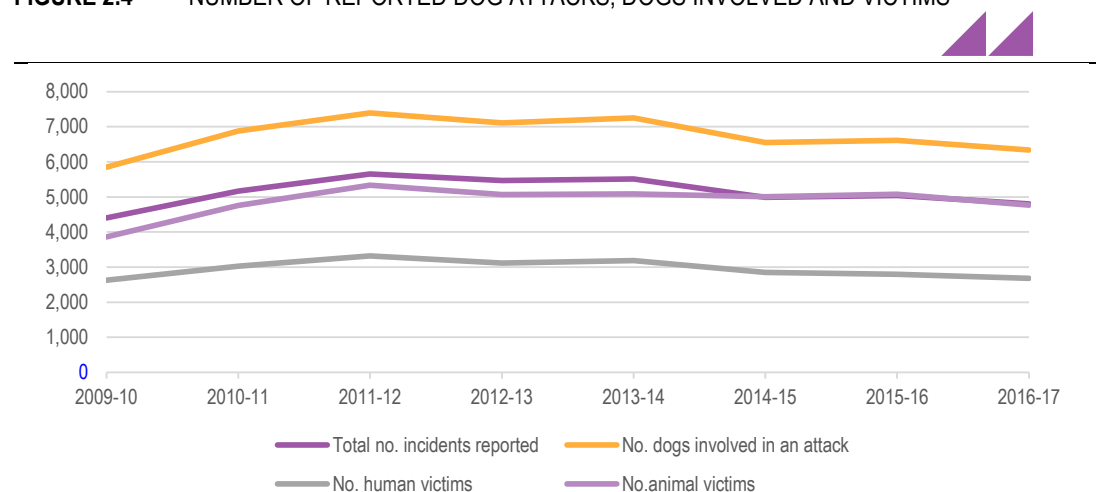
<sup>4</sup> NSW Division of Local Government, Department of Premier and Cabinet (2013), *Council reports of dog attacks in NSW 2011/12*, October.



**TABLE 2.3** NUMBER OF REPORTED DOG ATTACKS, DOGS INVOLVED AND VICTIMS

	Total no. incidents reported	No. dogs involved in an attack	No. human victims	No. animal victims
<b>Financial years</b>				
2009-10	4,405	5,852	2,624	3,859
2010-11	5,164	6,876	3,029	4,759
2011-12	5,656	7,393	3,322	5,333
2012-13	5,466	7,107	3,120	5,072
2013-14	5,511	7,256	3,185	5,087
2014-15	4,986	6,553	2,852	5,006
2015-16	5,038	6,609	2,800	5,075
2016-17	4,798	6,338	2,680	4,763
<b>Calendar years</b>				
2009	3,517	4,700	2,147	2,950
2010	5,053	6,739	2,979	4,607
2011	5,568	7,313	3,289	5,099
2012	5,406	7,098	3,101	5,073
2013	5,556	7,236	3,188	5,186
2014	5,145	6,772	2,978	4,913
2015	5,071	6,639	2,838	5,178
2016	4,937	6,552	2,724	4,949
2017	4,703	6,161	2,663	4,649

SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

**FIGURE 2.4** NUMBER OF REPORTED DOG ATTACKS, DOGS INVOLVED AND VICTIMS

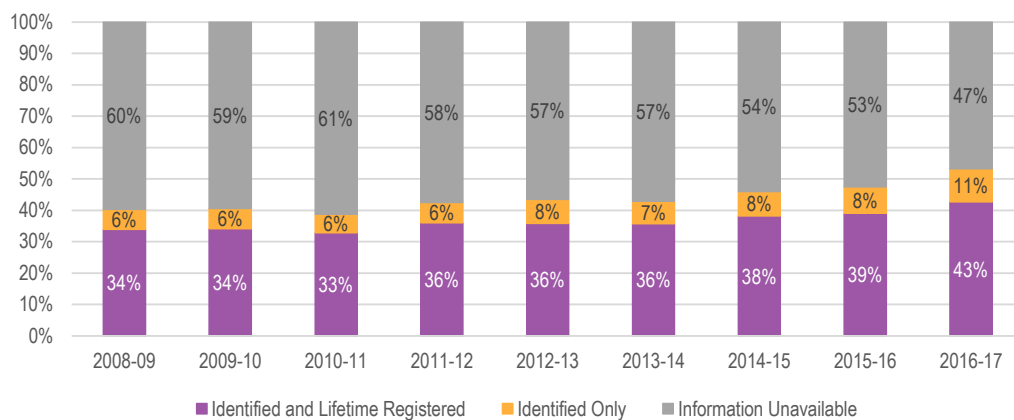
SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

**Registration status**

Figure 2.5 shows that the proportion of attacking dogs where their registration status is unavailable has been consistently declining since 2010-11. This is a promising sign that a greater share of total

dogs in New South Wales are being properly microchipped and/or registered, potentially indicating a greater understanding or acceptance of owner’s responsibilities under the Companion Animals Act.

**FIGURE 2.5** PROPORTION OF ATTACKING DOGS BY REGISTRATION STATUS



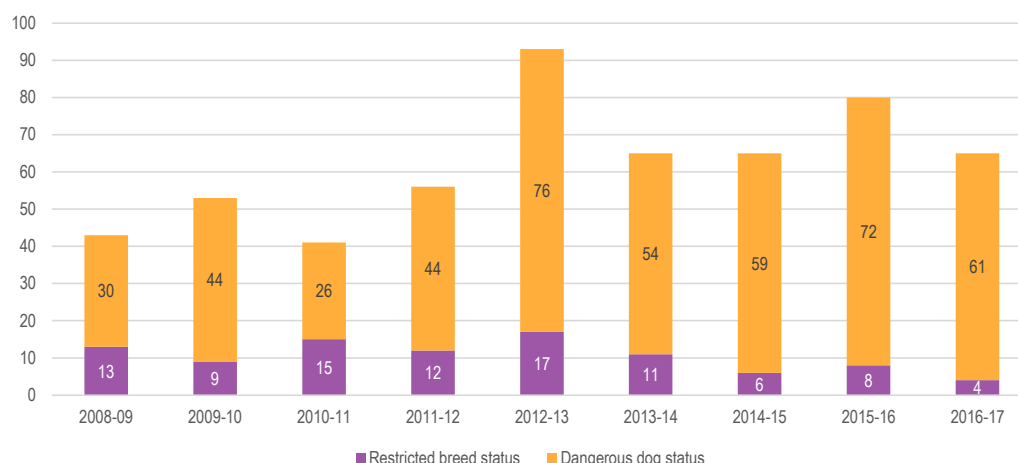
SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

**Dangerous dogs and restricted breed status of attacking dogs**

Figure 2.6 shows the number of attacking dogs which had already been declared dangerous or which belonged to a restricted breed.

Although 2012-13 seems to have been an abnormally big year, the decrease in the number of attacks by dogs declared as dangerous despite the growth in numbers (see Figure 2.3) would indicate that the Act and the Regulation have been working effectively. Similarly, the decline in attacks by restricted breeds since 2012-13 despite the relative constant numbers on the Register (see Figure 2.3) seems to indicate that the regulations on Restricted breeds have also been working.

**FIGURE 2.6** NUMBER OF ATTACKS BY DANGEROUS DOGS AND RESTRICTED BREEDS



SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

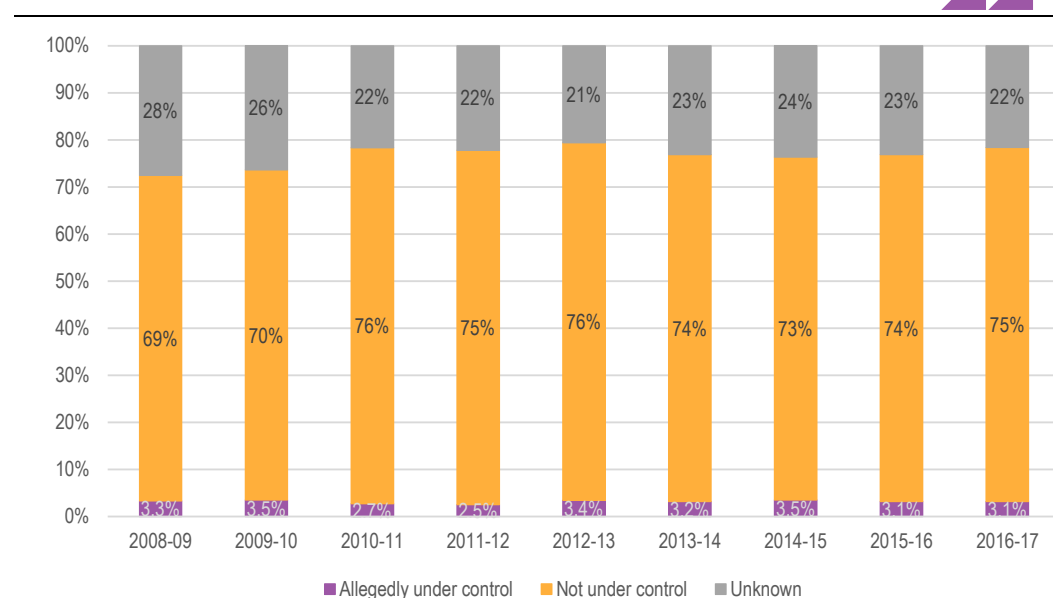
In terms of the rate of attacks, in 2016-17 there were 0.57 attacks per hundred Restricted dogs on the register and 3.61 attacks per hundred Dangerous dogs on the Register. This compares to an average attack rate of 0.17 attacks per hundred total dogs on the Register highlighting fact that the Restricted

and Dangerous dogs do represent a substantially higher risk to the community compared to other dogs.

### Control of dogs

Figure 2.7 shows that in 2016-17, 75 per cent of reported dog attacks occurred when the dogs were known to not be under the control of the owner or some other competent person. This has been broadly the same since 2010-11.

**FIGURE 2.7** CONTROL OF DOGS WHEN ATTACK OCCURRED



SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

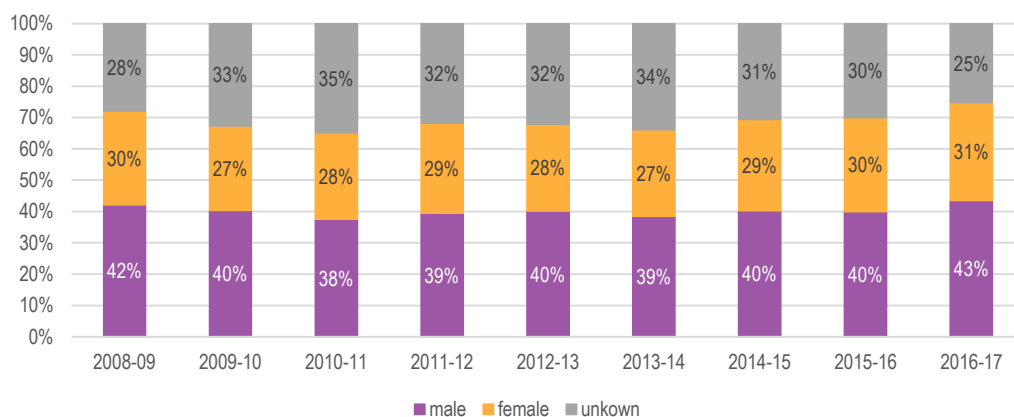
While there are a lot of reported attacks where the control of the dog is unknown, the percentage of cases that occurred while allegedly under control of the owner has remained roughly steady and was 3.1 per cent of cases in 2016-17.

### Sex of dog

Figure 2.8 shows that historically there have been substantially more male dogs involved in attacks than female dogs (approximately 1.4 times as many males versus females). This ratio has remained relatively constant over the years.

However, these results should be interpreted with some caution as there have been a high proportion of attacking dogs where the sex was unknown (25 per cent of all attacking dogs in 2016-17). The fact that the ratio has remained relatively constant despite the share of unknown's falling from 35 per cent in 2010-11 to 25 per cent in 2016-17, gives some credibility to the observation that male dogs seem to be involved in a greater number of attacks than female dogs.

**FIGURE 2.8** PROPORTION OF ATTACKS BY SEX OF DOG



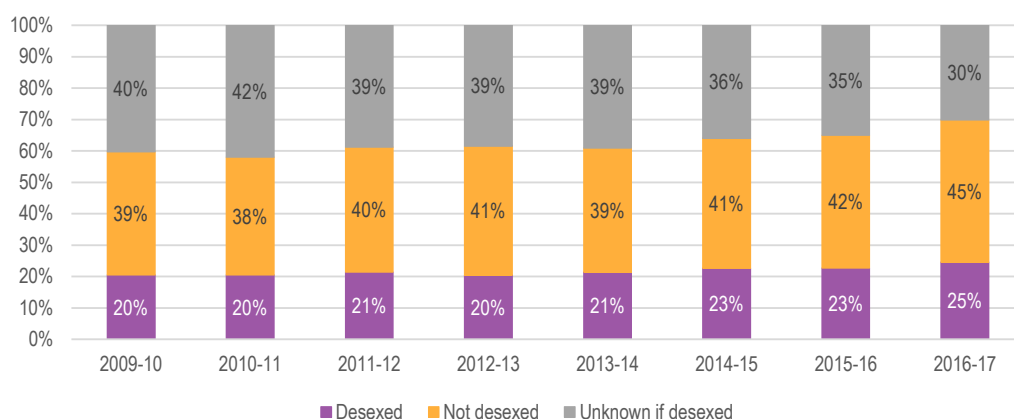
SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

Figure 2.9 shows that, in 2016-17, there were 1.84 times as many dogs not desexed involved in attacks than dogs that were desexed.

Despite the large number of unknown's, the fact that the share of desexed animals has consistently been much less than the share of animals that have not been desexed despite the share of unknown falling from 42 per cent in 2010-11 to 30 per cent in 2016-17, gives some credibility to the observation that desexed animals seem to be involved in fewer reported attacks than animals that have not been desexed.

This observation is given further credibility by the fact that the ratio of dogs known not to be desexed to the number desexed was 1.3 in 2016-17 (as per the information in Figure 2.2). To put this another way, in 2016-17 the rate of attacks per hundred dogs was 0.14 for dogs known to be desexed, but 0.20 for dogs known not to be desexed (i.e. 42 per cent higher). In comparison, in 2010-11 the rate of attacks per hundred dogs was 0.17 for dogs known to be desexed, but 0.29 for dogs known not to be desexed (i.e. 73 per cent higher).

**FIGURE 2.9** PROPORTION OF ATTACKS BY DESEXED STATUS



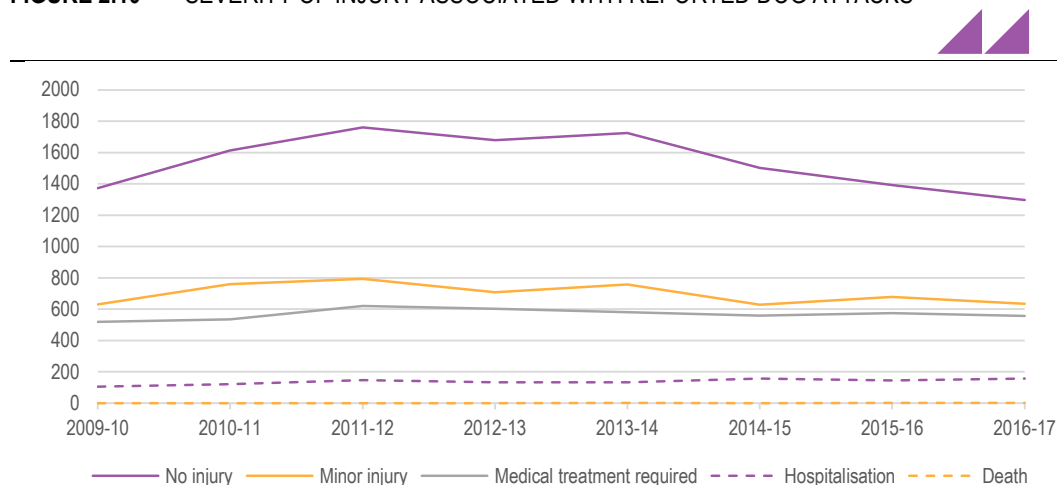
SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

**Severity of injury**

Figure 2.10 shows the severity of the injuries associated with reported attacks on humans. The trends show that the number of hospitalisations have been increasing gradually but that the number of Minor injuries and the number of Medical treatment required have been trending down since the peak in the

2010-11 to 2012-13 period. The number of reported deaths was one death in 2013-14 and 2015-16, two deaths in 2016-17 and zero deaths otherwise. The two years with a single death occurred with a supervised child (aged up to 16 years). The two deaths in 2016-17 occurred with adults.

**FIGURE 2.10** SEVERITY OF INJURY ASSOCIATED WITH REPORTED DOG ATTACKS



SOURCE: COMPANION ANIMALS REGISTER AND ACIL ALLEN CONSULTING.

### Summary

In summary, many of the objectives and practices of the Act and the Regulation seem to be appropriately geared towards reducing the number of dog attacks, with the number of reported attacks successfully decreasing since a peak around 2011-2013 despite there being a significant increase in the total number of dogs. These include:

- the classification and restrictions around owning Dangerous and Restricted dogs as these animals present a significantly higher risk to people and other animals than other dogs
- the regulations encouraging Dangerous and Restricted dogs to be under the control of the owner as this presents a significantly lower risk of dogs being involved in an attack
- the encouragement to desex animals, as this tends to reduce the risk of dogs being involved in an attack.

## 2.4 Conclusion

Overall, the evidence presented in this chapter suggests that the Regulation has made a positive impact on the issues relating to companion animals outlined before and consequently, that without the Regulation all these trends may be reversed to the detriment of companion animals, their owners and the broader community.



The NSW Government Better Regulation Office's *Guide to Better Regulation* (2016) states that demonstrating that a problem exists (in this case, safety risks associated with dangerous, menacing and restricted dogs and lost animals which cannot be reunited with their owners and may face death) by itself is insufficient to justify regulation. Rather, the case for government intervention would need to be established on the basis that the problem is either created by market failure and/or institutional failure, and that it is unlikely to be resolved without intervention.

Importantly, where government action is required, may be that regulation is not the most appropriate course of action. A well-designed regulation can help deliver significant economic and social benefits. On the other hand, a poorly designed regulation could inadvertently create further inefficiencies in a market as well as impose administrative and compliance burdens for businesses, consumers and government.

### 3.1 Market failure

When markets are unable to function efficiently to produce and allocate goods and services desired by consumers at the quantities demanded, it is generally the consequence of 'market failures'.

Broadly speaking, market intervention, either directly or indirectly through government (or regulators), is considered acceptable when aimed at addressing the following four market failures: public goods, externalities, information asymmetries and natural monopolies (see Box 3.1).

In the context of companion animals, the economic and policy rationale for government intervention is most likely to be justified on the grounds of negative externalities and information asymmetries. These are discussed in the following sections. In addition, the Regulation, in giving effect to the Act, provides a social objective (protecting public safety and amenity) that cannot be achieved by the market.

#### 3.1.1 Externalities

As noted in Box 3.1, externalities arise when private decision makers do not incur all the costs or receive all the benefits of their decisions. Negative externalities arise when there is detriment or costs imposed on third parties. In the context of companion animals, these occur when persons (or other animals) are attacked by dogs, annoyed by nuisance cats or dogs or animals affect the amenity of others and the enjoyment of various activities.

#### 3.1.2 Information asymmetry

Another form of market failure is lack of full consumer information. Lack of information is particularly important in those transactions that a consumer enters rarely (e.g. buying a house), so that there is no opportunity to build up experience about the quality of the goods or services being acquired. In the case of companion animals, information asymmetry would apply to many animal owners seeking to

microchip their pets for the purposes of identification, which occurs once in the life of an animal. In this case, owners could take their pets to be identified by people who are not qualified to undertake such a procedure and/or who are not aware of the minimum standards of hygiene and care required by the animal codes of practice under the *Prevention of Cruelty to Animals Act 1979*.

In addition, information asymmetry may occur when animal owners are not fully aware that the lack of information (due to a poorly fitted microchip which fails to identify an owner when needed), or incorrect information about the owner's identity may lead to the animal being permanently separated from its owner and possibly being euthanised.

### BOX 3.1      EXAMPLES OF MARKET FAILURE

#### **Information asymmetries**

In some markets it can be difficult for consumers to be certain about the quality of a good or service before they consume it (NSW Department of Finance, Services and Innovation, 2016). This can disadvantage suppliers of better quality products because they will find it difficult to convince customers to pay the higher prices, which are necessary to cover any additional costs the producers have incurred.

Another way in which information asymmetry may manifest is when consumers purchase/consume a good or service without fully being aware of the consequences of their decisions/actions. High sugar diets and obesity-related health issues are good example, where the quantity of unhealthy food consumed by an individual may be more than they otherwise would if they were aware of the illnesses such diets are known to cause.

#### **Externalities**

Externalities exist when the welfare of some agent, or group of agents, is affected by the actions of another and this is not reflected in market prices. When the effects of one economic agent on another are not taken into account, market prices will not reflect the true marginal cost/benefit of the good or service traded. A common example is pollution, where unless a producer is required to compensate society for the pollution they generate (by internalising the cost of mitigating/remediating in their production cost), they would produce more of that good than at the socially optimum level. (Note, in the presence of a well-functioning, accessible legal system, the cost of preventing serious pollutants impacting on the welfare of others, is captured in market prices.)

#### **Public goods**

Examples of public goods include, roads, public parks, national security, public schools and other intangible goods such as clean air and waterways. These goods are unique in that they are both non-excludable and non-rivalrous. Unlike private goods where non-paying consumers can be prevented from accessing it, both paying and non-paying consumers can access a public good. The non-rivalrous nature of public goods also means that use/consumption of the good by one agent (typically) does not reduce the ability for others to use/consume it. As a result, an unregulated market will lead to an undersupply of public goods at the detriment of social welfare, and thus, require governments to intervene in their provision.

#### **Natural monopolies**

In theory, natural monopolies exist in industries that are more efficient when only one (or few) firm(s) produces a good rather than multiple firms. This typically occurs where there are large initial costs associated with setting up the infrastructure needed for production and delivery or significant legal barriers to potential competition; for example, water and energy networks. Where there is a single monopoly firm, governments may also choose to regulate market power more directly – for example, through ex-ante price controls.

SOURCE: ACIL ALLEN CONSULTING.

## 3.2 Can the problem be addressed by non-legislative means?

Having established a justification for government action arising from market failure and the presence of a social outcome likely not delivered by the market alone, it is necessary to consider whether there are non-regulatory or quasi-regulatory responses the government could pursue, or whether the market may self-correct through its normal functioning (NSW DFSI, 2016).

### 3.2.1 Is there scope for self-regulation or quasi-regulation?

According to the *Australian Government Best Practice Regulation Handbook*, self-regulation is typically characterised by the industry formulating rules and codes of conduct, with industry itself being solely responsible for monitoring and enforcing them (Commonwealth of Australia, 2007).

Quasi-regulation includes a wide range of rules and/or arrangements where governments influence businesses/industry to comply, but which do not form part of explicit government regulation (Commonwealth of Australia, 2007). Examples of quasi-regulation include accreditation schemes and codes of conduct/practice developed with government involvement. Box 3.2 outlines the circumstances in which self or quasi-regulation may be appropriate.

Self-regulation is appropriate when the health and safety concerns are relatively low or when the problem has low impact or significance. Further, self-regulation may be feasible if the market is capable of stepping in to develop a solution, for instance in order to ensure industry survival or where there is a particular market advantage to a proactive response. Self-regulation is likely to be successful where a sufficient proportion of the industry participates, the industry is cohesive and there is evidence that a voluntary approach can work.

Quasi-regulation is likely to be successful when government is not convinced of the need to develop or mandate a code for the whole industry, flexible, tailor-made solutions and less formal mechanisms bring cost advantages, and the industry is capable of engaging in a cohesive response.

A discussion of these potential alternative responses is provided in the sections below.

#### BOX 3.2 CHECKLISTS FOR ASSESSMENT OF SELF AND QUASI-REGULATION

##### ***Self-regulation should be considered where:***

- there is no strong public interest concern, in particular, no major public health and safety concern
- the problem is a low-risk event, of low impact or significance
- the problem can be fixed by the market itself.

##### ***Quasi-regulation should be considered where:***

- there is a public interest in some government involvement in addressing a community concern and the issue is unlikely to be addressed by self-regulation
- there is a need for an urgent, interim response to a problem in the short term, while a long-term regulatory solution is being developed
- government is not convinced of the need to develop or mandate a code for the whole industry
- there are cost advantages from flexible, tailor-made solutions and less formal mechanisms
- there are advantages in the government engaging in a collaborative approach with industry, with industry having substantial ownership of the scheme. For this to be successful, there needs to be:
  - a specific industry solution rather than regulation of general application
  - a cohesive industry with like-minded participants, motivated to achieve the goals
  - a viable industry association with the resources necessary to develop and/or enforce the scheme
  - effective sanctions or incentives to achieve the required level of compliance, with low scope for benefits being shared by non-participants
  - effective external pressure from industry itself (survival factors), or threat of consumer or government action.

As in the case of self-regulation, proposed approaches should not restrict competition.

SOURCE: BEST PRACTICE REGULATION HANDBOOK (COMMONWEALTH OF AUSTRALIA, 2007).

#### **Self-regulation**

Self-regulation is not appropriate in relation to companion animals' identification, registration and management as:

- there is a strong public interest concern, in particular, a public health and safety concern
- the problem is a low-risk event, but there is high impact and significance associated with dog attacks



- the information asymmetries discussed above imply that the problem cannot be fixed by the market itself, particularly because there is a lack of strong incentives for private entities to address information asymmetries by encouraging and monitoring adequate animal identification and management
- there is not a cohesive industry that can develop an effective solution to the safety risks associated with dangerous dogs or the reductions in amenity and enjoyment associated with nuisance animals as these issues relate more specifically to ‘consumers’ (owners) of companion animals.

### Quasi-regulation

The NSW Government Better Regulation Office’s *Guide to Better Regulation* (2016) refers to quasi-regulation as:

*the range of rules, arrangements or standards which governments pressure businesses to comply with but which are not legally binding. Quasi-regulation can include industry codes of practice which the government has endorsed but is not responsible for enforcing, negotiating directly with industry on agreed standards of behaviour, or making compliance with such codes or agreements necessary in order to compete for government contracts or funding.*

*NSW DFSI 2016, p. 29.*

Given that this type of regulation is most useful where an industry specific solution to a problem is required and the issue at hand relates more specifically to ‘consumers’ of companion animals and not an industry, quasi-regulation is not considered an appropriate approach for responding to the issue of safety risks associated with dangerous dogs or the reductions in amenity and enjoyment associated with nuisance animals.

Furthermore, to the extent that the test for adopting quasi-regulation requires the problem at hand to pass the assessment checklist for self-regulation (i.e. no strong public interest concern, low-risk problem, and market mechanism to fix problem), this approach is clearly not appropriate either.

### 3.2.2 Provision of information

If the key issue associated with the problem arises from information asymmetry in the market, then a possible non-regulatory response by Government might be to increase information disclosure and provision to help companion animals’ owners and users make more informed decisions.

For example, the provision of information to dog and cat owners may increase social awareness of the potential consequences of lack of appropriate pet identification and the importance of having qualified people implanting animals’ microchips.

The NSW Government already partners with local councils to encourage responsible pet ownership through programs such as the Responsible Pet Ownership Grants Program.<sup>5</sup> This program is for councils to deliver targeted microchipping, registration and desexing programs. It aims to fund responsible pet ownership projects with a focus on innovation and collaboration and provide opportunities to promote better practice in responsible pet ownership. These grants are expected to involve demonstrated collaboration between councils and other agencies.

However, these approaches are unlikely to be enough to completely overcome the information asymmetry problem and would not address the existence of negative externalities. Whilst they are important approaches, information provision is probably best suited as a complementary approach to direct market intervention.

## 3.3 Conclusion

In light of the discussion in the sections above, it is suggested that regulation of companion animals, complemented by information provision, is the appropriate government response.

<sup>5</sup> See: <https://www.olg.nsw.gov.au/councils/responsible-pet-ownership-grants-program>



An important goal of a regulatory impact statement is to clearly identify the objective of the regulatory intervention.

The current and Draft Regulation have been designed to give effect to particular provisions of the Act that seek to ensure that responsibilities for pet owners and breeders in regards to identifying, registering and managing companion animals (pet cats and dogs), and provisions for dogs declared to be dangerous as well as restricted dog breeds.

The objectives of the Draft Regulation remain the same as the *Companion Animals Regulation 2008*. These are to make provisions with respect to:

- a) the permanent identification of companion animals (providing the mechanism for the return of a companion animal to its rightful owner and supporting enforcement action under the Act through identification of the owner of a companion animal)
- b) the registration of companion animals (for efficiency and consistency across the state in the management of the registration scheme for companion animals in support of the provisions in the Act)
- c) the Register of Companion Animals (the Register)
- d) the regulation of dangerous or restricted dogs (providing protection to members of the general public from attacks by dangerous and restricted dogs)
- e) the fees payable for registration of animals and penalty notice offences.

Overall, the key objectives of the Draft Regulation can be seen as to provide:

- legislative support and administrative detail for the operation of the Act
- clear requirements relating to:
  - the manner in which animals have to be identified, the identification process, the persons authorised to identify animals and the identification information that has to be provided for a companion animal
  - enclosures for dangerous or restricted dogs and distinctive collars for dangerous, menacing or restricted dogs
- a framework for adequate oversight of companion animals' management.

As noted before, matters of animal welfare are not covered by the *Companion Animals Act 1998* or the Regulation and are not the responsibility of the Minister for Local Government.



A RIS should identify and assess the policy options that could achieve the objectives of government action outlined in Chapter 4. The options that have been identified by OLG are the following.

- **Base Case** — best practice regulatory impact analysis suggests that a RIS should use as the base case the option whereby there is ‘no Regulation’. As such, the Base Case for this RIS is to let the existing Regulation sunset (i.e. discontinue).
- **Option 1** — this option entails remaking the existing Regulation without any changes (the *status quo* option).
- **Option 2** — this option entails making the Draft Regulation, which would entail remaking the existing Regulation with several proposed amendments.

Each of these options are discussed in more detail in the sections below.

## 5.1 Base case: letting the Regulation sunset

This option entails letting the Regulation sunset, which means that the Regulation would be repealed and not replaced.

In considering this option it is useful to outline a view of the likely general implications of such a regulatory change, as this will provide a basis for assessing the range of potential costs and benefits under this scenario.

If the Regulation were discontinued, the *Companion Animals Act 1998* would be unable to fully operate in the absence of legislative detail, as the Regulation is required to specify some parts of how the Act operates. In particular, the Regulation outlines prescriptive requirements regarding:

1. the permanent identification of companion animals (Part 2)
2. the registration of companion animals (Part 3)
3. the regulation of dangerous, menacing and restricted dogs (Part 4)
4. other administrative matters (Part 3A and Part 5).

The likely general implications under each of these areas if the Regulation were discontinued are discussed in the sections below.

### 5.1.1 Permanent identification of companion animals

If the Regulations were discontinued, owners would still be required to identify companion animals under the Act, but there would be no prescribed requirements to meet in relation to this identification. This includes no prescriptive requirements regarding:

- the manner in which animals have to be identified (i.e. the use of a microchip for identification)

- the identification process (i.e. the procedure to be followed when implanting a microchip for identification)
- the identification to be performed only by an authorised identifier
- the identification information to be provided for a companion animal.

In the absence of a requirement to use a microchip for identification, animal owners may use other (less effective) forms of identification (to avoid the microchipping costs or due to inconvenience or ethical considerations). Notably, Section 12 (1) of the Act requires dogs to wear a collar and tag at all times while not on their owner's property (except working dogs) and Section 29 (2) suggests that a collar with relevant information could be used for identification of cats.

In the case where animal owners decide to use a microchip as a means of identification, there would not be a mandated set of procedures that identifiers have to follow. While it is likely that many identifiers would follow the procedures currently set by the Regulation and the guidelines issued by the Departmental Chief Executive, there would not be any legal requirement to do so.

Finally, in the absence of a statutory scheme for authorised identifiers, owners seeking to implant a microchip on an animal could do so through:

- a veterinary practitioner, which could result in increased costs of identification (under the current Regulation identification does not necessarily have to be done by a veterinarian)
- a non-authorised identifier, which could result in microchips being implanted by people who are not qualified to undertake such a procedure and/or who are not aware of the minimum standards of hygiene and care required to undertake the procedure
- available animal identification days held by councils where they could do so at discounted rates. However these are not available at all times or in all local council areas.

### **5.1.2 Registration of companion animals**

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Registration of companion animals is a requirement under Section 9 of the Act. In addition, the Act states that the Regulation:

- may require a particular class or description of companion animals (not otherwise required to be registered) to be registered (Section 10 of the Act)
- may provide for the following regarding the registration of companion animals (Section 71 of the Act):
  - a) the information concerning a companion animal that is to be the registration information for the animal
  - b) the making of an application for registration (including the form of an application, the information and evidence to accompany an application, the persons to whom application can be made)
  - c) the fee to be paid for registration (including exemptions from the payment of a fee and reductions in fees)
  - d) pre-conditions to registration (such as compulsory identification)
  - e) restrictions on who can be the registered owner of a companion animal.

Similar to the identification of companion animals, if the regulations were discontinued, owners would still be required to register companion animals under the Act. However, there would be no prescriptive requirements across a range of matters (including those outlined above and others, like exemptions from registration requirements).

Part 3 of the Regulation (Registration of companion animals) prescribes a range of matters for the smooth operation of the registration scheme to help support meeting the objectives of the Act. In the absence of the Regulation, and of registration requirements to be met by owners and identifiers, it is likely that the registration scheme would be unable to operate properly, likely resulting in a deterioration of the outcomes that the Act is designed to achieve.

### **5.1.3 Regulation of dangerous, menacing and restricted dogs**

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Section 51 and Section 56 of the Act provide for control requirements for dangerous, menacing and restricted dogs, including (amongst others) requirements regarding:

- the enclosure where the dog is ordinarily kept
- warning signs to be displayed at the property where the dog is ordinarily kept
- distinctive collars to be used by dangerous or menacing dogs.

While the requirements for dangerous, menacing and restricted dogs to be kept in an enclosure, to display warning signs where these dogs are kept and for dogs to use distinctive collars are set in the Act, the Regulation contains prescriptive requirements that these enclosures, signs and collars must meet.

If the regulations were discontinued, owners would still be required to keep dangerous, menacing and restricted dogs in an enclosure, display warning signs and put them distinctive collars, however there would be no statutory requirements for:

- enclosures for dangerous or restricted dogs. Hence, any enclosure that is deemed to be able to be 'sufficient to restrain the dog and prevent a child from having access to the dog' (Section 51 (c1) of the Act) would comply with the Act (which, without prescriptive requirements, would likely be subject to interpretation)
- warning signs for dangerous, menacing or restricted dogs. Hence any sign showing the words 'Warning Dangerous Dog' that is deemed to be clearly visible from the boundaries of the property would comply with the Act (which, without prescriptive requirements, would likely be subject to interpretation)
- distinctive collars to be used by dangerous, menacing or restricted dogs. If there are no regulations prescribing the characteristics of these distinctive collars, then in fact, any collar complies with Section 51 (d1) of the Act (the term 'distinctive' is not defined in the Act).

In the absence of the Regulation, and of standards to be met for dangerous and restricted dog enclosures, councils would have no ability to issue certificates of compliance of prescribed enclosures, penalty notices for non-compliance with the enclosure requirements or direct owners to comply with the prescribed requirements (as there would be none), resulting in a regulatory regime unable to be properly enforced.

Under this scenario, companion animal owners may seek advice about safe dog enclosures (either through the council or other means), however, it is unclear whether this advice would result in them following the requirements in the current Regulation or other 'less safe' alternatives. While this may promote the safety of a number of dangerous and restricted dog enclosures across NSW, as there would be no references to the standards of such enclosures, councils would be unable to actually enforce anything other than a dog being kept in an enclosure even in circumstances where a dangerous or restricted dog is a risk to the public.

#### **5.1.4 Other administrative matters**

In addition to the matters discussed in the sections above, without the Regulation, there would be an absence of detail for the requirements to be met in relation to persons who can access the Register, prescribed fees payable for animal registration and penalties payable for prescribed offences.

## **5.2 Option 1: remaking the existing Regulation without changes (status quo)**

This option entails remaking the existing Regulation without any changes, which means that the obligations of companion animal owners would remain unchanged relative to the *status quo*.

## **5.3 Option 2: remaking the existing Regulation with changes**

Option 2 entails remaking the Regulation with several amendments contained in the *Companion Animals Regulation 2018* (Draft Regulation). Generally, the amendments proposed in the Draft Regulation fall within one or more of the following areas.

1. Minor rewording, renumbering, restructuring and clarifications that have no material effect on the obligations of councils, the industry, animal owners or the general public.
2. Removal/amendment of transitional provisions that are no longer relevant or needed.

3. Changes to fees in the Regulation.
4. Extension of the definition of eligible pound or shelter operator.
5. Changes to penalty notice offences.
6. The inclusion of a new Schedule to make provisions for the enactment of *Greyhound Racing Act 2017*.

Additional details of the proposed changes under each of these areas are provided in Table 5.1 below.

The amendments proposed under areas 1) and 2) above leave the obligations for stakeholders largely unchanged. The proposed changes under area 6) make amendments to provisions of the Regulation that refer to greyhounds and are a consequence of the enactment of the *Greyhound Racing Act 2017* (and hence not considered to impose any additional/different obligations for greyhound owners other than what is already required under the *Greyhound Racing Act 2017*). Amendments under areas 3) to 5) may impact on some stakeholders (although these changes are considered minor). The impacts of these changes are explored in more detail in the following chapter.

**TABLE 5.1** SUMMARY OF AMENDMENTS PROPOSED FOR THE REGULATION

Area of change	Proposed change (All clauses refer to the current Regulation. Corresponding clauses in the Draft Regulation – if number has changed – are provided in underlined text in brackets)
1. Minor rewording, renumbering, restructuring and clarifications	<ul style="list-style-type: none"> <li>– Minor changes to Part 1, Clause 1 and 2 (Definitions).</li> <li>– Clauses throughout the Regulation have been renumbered when required.</li> <li>– Part 1, Clause 3 (Definitions) — definition of recognised breeder changed to reflect current trading names:               <ul style="list-style-type: none"> <li>– paragraph (a) to include the words Royal New South Wales Canine Council Limited (trading as Dogs New South Wales)</li> <li>– paragraph (c) amended to delete the reference to Waratah State Cat Alliance Inc. and substitute it for the Australian National Cats Inc.</li> </ul> </li> <li>– Part 4, Clause 28 (<u>Part 5, Clause 33 in the Draft Regulation</u>) — clause amended to record that the Royal New South Wales Canine Council Limited now trades as Dogs New South Wales.</li> </ul>
2. Removal/amendment of transitional provisions that are no longer relevant	<ul style="list-style-type: none"> <li>– Part 3, Clause 16 (<u>Clause 17 in the Draft Regulation</u>) — Subclause (2) added to provide for a repeal of Subclause (1) (a) on 1 January 2020.</li> <li>– Part 3, Clause 17 (a) (<u>Clause 18 in the Draft Regulation</u>) — relevant desexing age for cats to be 4 months regardless of their birth date.</li> <li>– Schedule 2 (Adjustment for inflation of certain fees), Clause 2 — Clause 2(6) removed as is no longer relevant.</li> </ul>
3. Changes to fees in the Regulation	<ul style="list-style-type: none"> <li>– Part 3, Clause 17(1) (<u>Clause 18 in the Draft Regulation</u>) — Clause amended to reflect annual inflation adjustments to registration fees.</li> </ul>
4. Extension of the definition of eligible pound or shelter operator	<ul style="list-style-type: none"> <li>– Part 3, Clause 17 (7) (<u>Clause 18 in the Draft Regulation</u>) — Clause amended to extend the definition of 'eligible pound or shelter operator' to include an organisation approved by the Chief Executive for the purposes of Clause 16(d) of the Regulation (<u>Clause 17(d) of the Draft Regulation</u>).</li> </ul>
5. Changes to penalty notice offences	<ul style="list-style-type: none"> <li>– Schedule 1 (Penalty notices offences) — penalty notices for the majority of offences have been increased to:               <ul style="list-style-type: none"> <li>– reflect inflation adjustments</li> <li>– reduce high rate of offending which is occurring in relation to certain offences</li> <li>– ensure a uniform parity with the maximum penalties prescribed by the Act.</li> </ul> </li> </ul>
6. New Schedule	<p><u>Schedule 3</u> (Amendment of this Regulation as a consequence of enactment of <i>Greyhound Racing Act 2017</i>) has been added to the Draft Regulation to make amendments to provisions of the Regulation that refer to greyhounds. These amendments are consequential on the enactment of the <i>Greyhound Racing Act 2017</i>.</p> <p>Schedule 3 commences on the date of commencement of Section 42 of the <i>Greyhound Racing Act 2017</i>.</p>

SOURCE: ACIL ALLEN CONSULTING BASED ON THE DRAFT COMPANION ANIMALS REGULATION 2018 (AS AT 20 FEBRUARY 2018).



This chapter assesses the impacts of the regulatory options outlined in Chapter 5. It first assesses the expected impacts of the Base Case (i.e. of letting the Regulation sunset) and then assesses the impacts of the proposed Draft Regulation (Option 2) against the *status quo*, i.e. the current Regulation (Option 1).

Notably, the benefits and costs associated with the alternative options are not amenable to quantification as it is unfeasible to measure the scale of avoidable harm and other costs and benefits that could be attributed to the proposed changes to the Regulation in a robust way, and the relatively marginal impact of the proposed changes. As such, these impacts are discussed qualitatively.

Further, in preparing this RIS, selected stakeholder consultations were conducted with a number of organisations. Where relevant, key comments made by stakeholders have been included in the discussion. Further information about the stakeholder consulted can be found in Appendix A.

## 6.1 Impacts of letting the Regulation sunset (the Base Case)

As noted in Section 5.1, the likely general implications of letting the Regulation sunset are that:

- the Act would be unable to fully operate in the absence of legislative detail
- animal owners would still be required to identify companion animals under the Act, but there would be no prescriptive requirements about the manner in which animals have to be identified (i.e. there will be no requirement to use a microchip), the identification process, who can identify an animal or the identification information to be provided for a companion animal
- animal owners would still be required to register companion animals under the Act, but there would be no prescriptive requirements across a range of registration matters (including exemptions from registration requirements, information to be provided when registering an animal, the fees to be paid for registration and restrictions on who can be the animal's registered owner)
- dangerous, menacing and restricted dogs' owners would still be required to display warning signs and put distinctive collars on these dogs. However, there would be no statutory requirements to be met for these signs or collars
- dangerous and restricted dogs' owners would still be required to restrict access to these dogs through an enclosure that is 'sufficient to restrain the dog and prevent a child from having access to the dog', but there would be no minimum standards that they would have to meet in relation to this enclosure
- councils would have no ability to issue certificates of compliance of enclosures for dangerous or restricted dogs, penalty notices for non-compliance with the enclosure requirements or direct owners to comply with the prescribed requirements (as there would be none)
- councils would have no power to act or intervene in circumstances where a dangerous or restricted dog's enclosure is causing a risk to the public, as any enclosure that is deemed to be able to be 'sufficient to restrain the dog and prevent a child from having access to the dog' (which, without

prescriptive requirements, would likely be subject to interpretation) would be deemed to comply with the requirements of the Act

- dangerous or restricted dogs' owners could seek advice about safe dog enclosures (either through the council or other means), however, it is unclear whether this advice would result in them following the current requirements in the Regulation or other 'less safe' alternatives.

### Benefits

Broadly, the benefits of discontinuing the Regulation would include:

- reduction of compliance and administrative costs for companion animal owners
- reduced regulatory costs for the NSW Government in administering the current regulatory regime, including administrative, monitoring and enforcement costs.

Notably, the compliance and administrative costs for companion animal owners would not be completely eliminated because, as noted before, they would still be required to identify and register companion animals and control dangerous, menacing and restricted dogs under the Act. In fact, as noted in the following section, it is likely that owners of dangerous or restricted dogs concerned about safety would face increased transaction costs as they seek advice and information about what constitutes a safe dog enclosure.

### Costs

The costs associated with eliminating the Regulation include:

- increased risk of owners not being able to be reunited with their companion animal (or having longer delays in this reunion)
- a potential increase in the number of animals being euthanised
- potential increased risks to the health and safety of animals being microchipped (due to the absence of a prescriptive identification process to be followed and the requirement that these procedures are undertaken by authorised identifiers)
- increased risks of fatal and non-fatal dog attacks on both humans and other animals
- increased costs to the NSW community from increased dog attacks
- increased transaction costs for safety-concerned owners of dangerous or restricted dogs from seeking advice and information about what constitutes a safe dog enclosure
- increased risks to the integrity of the registration scheme (due to the lack of prescriptive requirements about the information that needs to be entered into the Register when identifying and registering an animal)
- councils would not be able to issue penalty notices
- having a regulatory regime which is in effect unable to operate effectively.

As discussed in Chapter 2 the number of animals euthanised decreased noticeably between 2012-13 to 2015-16. The total number of dogs euthanised fell from 9,202 in 2012-13 to 7,817 in 2014-15 and to 6,373 in 2015-16.<sup>6</sup> The total number of cats euthanised fell from 13,410 in 2012-13 to 12,569 in 2014-15 and to 8,437 in 2015-16.<sup>7</sup>

In addition, the evidence assessed in Chapter 2 shows that, with regards to dog attacks, since 2013:

- the number of reported incidents fell by 15 per cent from 5,556 to 4,703
- the number of dogs involved in attacks fell by 15 per cent from 7,236 to 6,161
- the number of human victims decreased by 16 per cent from 3,188 to 2,663
- the number of animal victims decreased by 11 per cent from 5,186 to 4,649.

It is safe to assume that at least some of these positive impacts have been due to the Regulation.

In a world without Regulation, many stray animals would still be reunited with their owners, but this may take longer (increasing the distress to both owner and animal and potentially the costs of

<sup>6</sup> This was driven largely by a decrease in the number of animals euthanised because of an inability to rehome and a reduction in the number euthanised due to owner's request.

<sup>7</sup> As above.



searching for animal). Many other animals would not be reunited and if an alternative home is not found for them, they would be euthanised.

In addition, as mentioned before, in the absence of the Regulation (and of standards to be met for enclosures by dangerous and restricted dogs' owners), it is likely that a deterioration of the quality of dangerous and restricted dogs' enclosures across NSW would occur. The extent of this deterioration would depend on individual dog owners and the way they choose to construct dog enclosures. While some owners may seek advice about safe dog enclosures and adopt the safety requirements outlined in the current Regulation, inevitably some dog owners would install enclosures that are unsafe.

Although it is uncertain how many dog enclosures would not be built adequately in a world without the Regulation, it is likely that the positive impact that the Regulation has had in reducing the number of dog attacks (noted above) would be significantly reduced and the costs to the NSW community from increased fatal and non-fatal dog attacks on both humans and other animals would increase.

In addition to the costs related to increased number of animals not reunited with their owners and increased number of dog attacks, there would be significant costs related to having a regulatory regime which is in effect unable to operate.

### Conclusion

Overall, letting the Regulation sunset is not considered appropriate as the risks and costs associated with eliminating statutory requirements for the identification and registration of companion animals, warning signs and collars for dangerous, menacing and restricted dogs, and enclosures for dangerous and restricted dogs are considered to significantly outweigh any potential benefits to Government and animal owners related to reduced compliance and administrative costs.

It is noted that all stakeholders consulted for the RIS agreed that letting the Regulation sunset is not an appropriate option as the Regulation is central to the operation of the Act and to maintaining adequate identification and registration of companion animals and safety standards for dangerous, menacing and restricted dogs.

## 6.2 Impacts of the proposed Regulation (Option 1 and Option 2)

As noted before, some of the amendments proposed for the Regulation under Option 2 leave the obligations of companion animal owners largely unchanged, except for amendments under areas 3 to 5 in Table 5.1, which relate to:

- changes to fees
- changes to the definition of eligible pound or shelter operator
- changes to penalty notice offences.

Given this, the analysis of the impacts of the Draft Regulation (Option 2) against the *status quo* (i.e. the current Regulation, Option 1) has been structured around the above areas, rather than around each of the changes.

Notably, all clauses noted in this section refer to the current Regulation. Corresponding clauses in the Draft Regulation (if the clause number has changed) are provided in underlined text in brackets.

### 6.2.1 Changes to fees

Companion animal owners in NSW pay a one-off fee for a lifetime registration of each pet. Registration fees are set by the Regulation and adjusted annually in line with the Consumer Price Index (CPI).

Lifetime registration fees are used by councils to provide animal management related services to the community. These include ranger services, pound facilities, the State-wide *We are Family* educational program and other companion animal related activities, all designed to keep the community and pets safe (OLG 2017, p.18). A proportion of fees are retained by OLG to maintain the Register and for the Education Program.

Clause 17 of the Regulation (Clause 18 in the Draft Regulation) establishes the fees that are required to be paid in connection with the registration of a companion animal by the time the animal reaches the age of 6 months.

The following amendments are proposed to Clause 17 of the Regulation under Option 2.

- Increasing the registration fee for companion animals (except in the case of a companion animal referred to in Clause 17(1)(b) or Clause 17(1)(c) of the Regulation) from \$53 to \$55.
- Increasing the registration fee for a desexed companion animal owned by an eligible pensioner from \$22 to \$23.
- Increasing the registration fee for a companion animal that has not been desexed at the relevant desexing age from \$142 to \$146.

As noted above, the registration fees outlined in the Regulation are adjusted annually for inflation in accordance with the formula in Schedule 2 to the Regulation. The annual adjustments occur prior to the commencement of each financial year and are notified in the Companion Animals (Adjustable Fee Amounts) Notice.

The fees proposed under Option 2 reflect the annual inflation adjustments to registration fees.

### **Benefits**

Fee increases reflecting inflation are routine and machinery in nature. Given that the proposed change in fees is only to reflect the impact of inflation (i.e. it leaves the registration fees in real terms unchanged), there is no basis to expect any change in behaviour of animal owners.

### **Costs**

The proposed increase in fees are not considered a cost of Option 2 because of the following reasons.

- Best practice regulatory impact analysis suggests that administrative costs incurred by regulated entities to demonstrate compliance with the regulation should be included as a cost of a regulatory proposal, including the costs incurred in complying with government taxes, fees, charges and levies (for example, the time taken to pay a licence fee is a compliance cost), *but excluding the actual amount paid* (OBPR 2014, p.2). This is because fees charged by councils are a transfer of funds between the consumers of regulated goods and services and the provider of goods and services (government).
- The Commonwealth Government's agreed Regulatory Burden Measurement (RBM) framework used to quantify the regulatory impact of regulatory proposals on businesses, individuals and community organisations explicitly notes that charges attached to a regulation that are payable to government are not required to be considered in the costs of a regulatory proposal (OBPR 2014, p.4).

### **Conclusion**

The proposed amendments to registration fees are not expected to have any significant impacts on animal owners, councils or the public in general.

## **6.2.2 Changes to the definition of eligible pound or shelter operator**

In Clause 17 of the Regulation (Clause 18 in the Draft Regulation), discounted registration fees are offered:

- for animals desexed before six months for dogs and four months for cats (to encourage pet desexing)
- to pensioners (to reduce the barriers to pet ownership by this group within the community)
- to those who adopt animals from *eligible pounds or shelters* (to help improve animal outcomes by lowering the euthanasia rates of unwanted animals).

In this clause, *eligible pound or shelter operator* is defined as meaning any of the following:

- a) a council (including a council pound),
- b) the Animal Welfare League NSW,
- c) the RSPCA,

d) the Cat Protection Society of NSW Inc.

Under Option 2 it is proposed that the definition of eligible pound or shelter operator is extended to organisations that have been approved by the Departmental Chief Executive for the purposes of Clause 16 (d) (Clause 17 (d) in the Draft Regulation).

In effect, the proposed change in the Regulation would extend the subsidised registration fees of pounds and shelters to animals adopted from other rehoming bodies/rescue groups (approved by the Departmental Chief Executive).

In essence, rescue groups take animals from council pounds and animal shelter operators for the purpose of rehoming such animals. Currently there is a disincentive for people to acquire animals from such organisations as opposed to acquiring animals from pounds or shelters as the 50 per cent registration fee discount does not apply. The change proposed under Option 2 aims to remove this disincentive and encourage people to acquire animals from such organisations.

### **Benefits**

The main benefits related to the proposed changes to the definition of eligible pound or shelter operator would include:

- 'levelling the playing field' for organisations with similar objectives in terms of animal rehoming
- a potential increase in the number of animals acquired from rescue groups
- increased choice for people looking to adopt a rescued animal who are seeking to pay discounted fees.

### **Costs**

The effect of the proposed extension to registration discounts on council revenue is not considered a cost of Option 2 because, as noted in Section 6.2.1, fees charged by councils are a transfer of funds between the consumers of regulated goods and services and the provider of goods and services (government).

To the extent that the aim of amending the definition of eligible pound or shelter operator in the Regulation is to encourage people to acquire animals from rescue groups, this change is unlikely to have any significant costs for companion animal owners, industry, the NSW Government or the community in general.

### **Conclusion**

To the extent that allowing animals adopted from rescue groups to access subsidised registration incentivises more people to acquire animals from such organisations, then the proposed change could result in an increase in the number of animals rehomed.

Notably, stakeholders consulted for this RIS supported the proposed changes as a way to remove an anomaly in the way rescue groups are considered for the purposes of registration fees under the Regulation.

## **6.2.3 Changes to penalty notice offences**

Schedule 1 of the Regulation outlines penalty notices for offences under the Act and under the Regulation. Under Option 2, penalty notices for the majority of offences have been increased to:

- reflect inflation adjustments
- reduce the high rate of offending which is occurring in relation to certain offences, particularly with regards to:
  - dog attacks on persons or animals
  - failure to comply with control requirements for dangerous, menacing or restricted dogs
  - sale or advertising of dangerous, menacing or restricted dogs
  - acceptance of ownership of a dangerous, menacing or restricted or proposed dangerous, menacing or restricted dog
  - breeding of a restricted dog or proposed restricted dog

- ensure a uniform parity with the maximum penalties prescribed by the Act.

### **Benefits**

The proposed increases in penalty notice offences beyond inflation adjustments are intended to change behaviour (i.e. reduce the high rate of offending in relation to certain offences, particularly offences relating to dangerous, menacing or restricted dogs).

The main benefit of the increases above inflation proposed for certain penalty offences would be a reduction in risks of dog attacks on persons and animals, and the corresponding reductions in health and veterinary costs related to these attacks. However, the extent of these benefits is unclear because the effect of increased fines on deterrence of unwanted behaviour by animal owners is uncertain (i.e. some owners would change behaviour, but inevitably some would not regardless of the size of the fine<sup>8</sup>). Further the extent of the injuries beyond the classifications provided in Section 2.3.2 are uncertain and the costs of treatment are unknown.

Nevertheless, even if the likelihood of comprehensively changing behaviour of non-compliant owners of dangerous, menacing or restricted dogs through increased penalties were low, the consequences (i.e. the benefits for the public) of avoiding a single serious dog attack are potentially high.

### **Costs**

The proposed increases in penalties (including those that are beyond inflation adjustments) are not considered a cost of Option 2 because non-compliance costs (including fines for failing to comply with a regulation and legal fees, including costs incurred in court and tribunal processes) are not considered a regulatory burden as these are avoidable costs caused by deviant behaviour (OBPR 2014).

### **Conclusion**

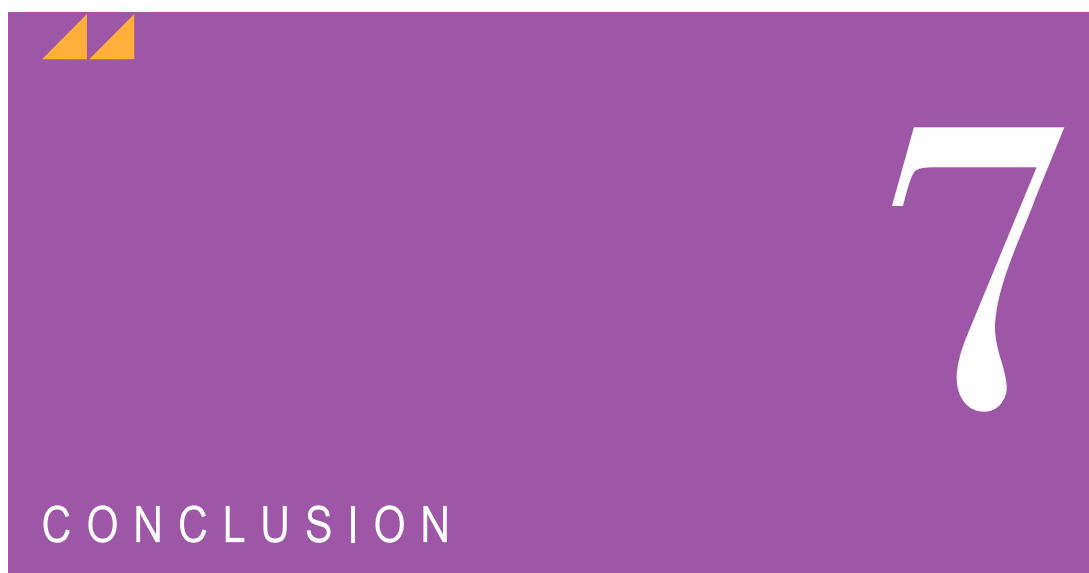
To the extent that the proposed increases in penalty notice offences result in increased compliance with requirements relating to dangerous, menacing or restricted dogs, then the proposed increase in penalties could result in a potential reduction in risks to people and other animals' safety and potential reductions in health and veterinary costs related to dog attacks.

As noted above, given that there are no significant costs related to the proposed penalty increases and that the potential benefits of avoiding even a single dog attack are positive (although the size of these benefits is uncertain), it is considered that this change is likely to be positive.

We note that stakeholders consulted for this RIS had mixed views about this issue but these views were related more to encouraging compliance with and enforcement of the regulations, rather than an understanding of the costs and benefits.

<sup>8</sup> Although a great deal of research has been conducted into the deterrent effect of criminal penalties (particularly imprisonment and capital punishment — for a review of these see Nagin 2013), there is little theory and research surrounding the deterrent effectiveness of high fines (and to our knowledge, no specific research focusing on deterrence effects of fines on animal owners' behaviour).

As limited as it is, some of the existing evidence casts doubt on the deterrent effectiveness of high fines (see for instance Moffatt and Poynton, 2007; and Weatherburn and Moffatt, 2011 — although these studies analysed the effects of higher fines on driving behaviour) (Donnelly et al. 2016, p. 2). Other studies note that the effect of penalties on behaviour depend on the type of crime (i.e. that the penalty should 'fit the crime', Andreoni 1991) and/or the type of person committing the crime (e.g. risk loving individuals are more deterred by the increase in the likelihood of being fined, than the size of the fine, Earnhart and Firesen 2012).



OLG has identified the following options to be considered in this RIS.

- **Base Case** — best practice regulatory impact analysis suggests that a RIS should use as the base case the option whereby there is ‘no Regulation’. As such, the Base Case for this RIS is to let the existing Regulation sunset (i.e. discontinue).
- **Option 1** — this option entails remaking the existing Regulation without any changes (the *status quo* option).
- **Option 2** — this option entails making the Draft Regulation, which would entail remaking the existing Regulation with several proposed amendments.

The Base Case option is not considered appropriate as discontinuing the Regulation would mean that the Act would be unable to fully operate in the absence of legislative detail, in particular:

- animal owners would still be required to identify companion animals under the Act, but there would be no prescriptive requirements about the manner in which animals have to be identified, the identification process, who can identify an animal or the identification information to be provided
- animal owners would still be required to register companion animals under the Act, but there would be no prescriptive requirements across a range of registration matters (including registration exemptions, information to be provided when registering an animal, registration fees, and restrictions on who can be the animal’s registered owner)
- dangerous, menacing and restricted dogs’ owners would still be required to display warning signs and put distinctive collars on these dogs. However, there would be no statutory requirements to be met for these signs or collars
- dangerous and restricted dogs’ owners would still be required to restrict access to these dogs through an enclosure that is ‘sufficient to restrain the dog and prevent a child from having access to the dog’, but there would be no minimum standards to be met in relation to this enclosure
- councils would have no ability to issue certificates of compliance of enclosures for dangerous or restricted dogs, penalty notices for non-compliance with the enclosure requirements or direct owners to comply with the prescribed requirements (as there would be none)
- councils would not be able to issue penalty notices
- councils would have no power to act or intervene in circumstances where a dangerous or restricted dog’s enclosure is causing a risk to the public, as any enclosure that is deemed to be able to be ‘sufficient to restrain the dog and prevent a child from having access to the dog’ (which, without prescriptive requirements, would likely be subject to interpretation) would be deemed to comply with the requirements of the Act.

The risks and costs associated with eliminating statutory requirements for the identification and registration of companion animals, warning signs and collars for dangerous, menacing and restricted dogs, and enclosures for dangerous and restricted dogs are considered to significantly outweigh any

potential benefits to Government and animal owners related to reduced compliance and administrative costs stemming from the discontinuance of the Regulation.

Generally, the amendments proposed to the Regulation under Option 2 fall within one or more of the following areas.

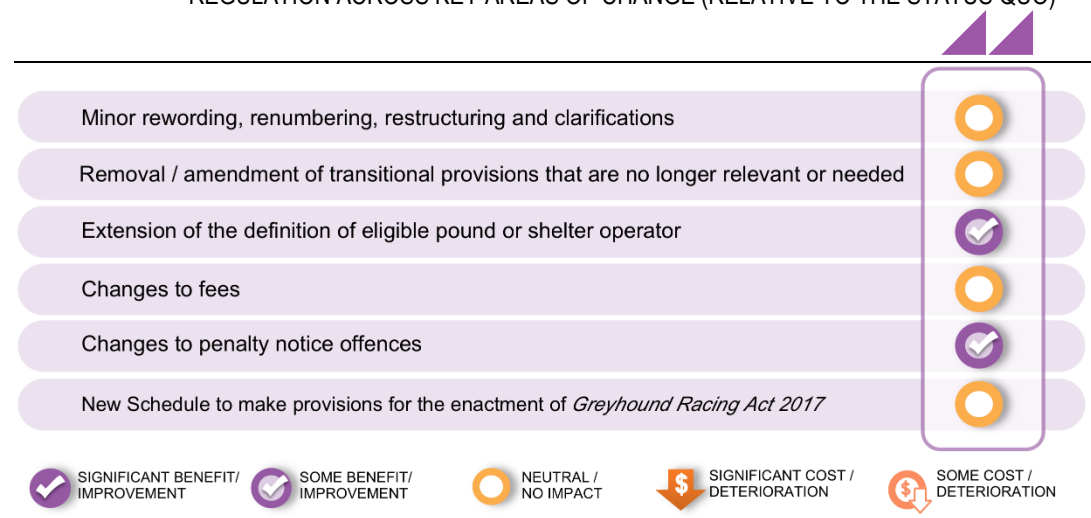
1. Minor rewording, renumbering, restructuring and clarifications that have no material effect on the obligations of councils, the industry, animal owners or the general public.
2. Removal/amendment of transitional provisions that are no longer relevant or needed.
3. Changes to fees in the Regulation.
4. Extension of the definition of eligible pound or shelter operator.
5. Changes to penalty notice offences.
6. The inclusion of a new Schedule to make provisions for the enactment of *Greyhound Racing Act 2017*.

The amendments proposed under areas 1) and 2) above leave the obligations for stakeholders largely unchanged. The proposed changes under area 6) make amendments to provisions of the Regulation that refer to greyhounds and are a consequence of the enactment of the *Greyhound Racing Act 2017* (and hence not considered to impose any additional/different obligations for greyhound owners other than what is already required under the *Greyhound Racing Act 2017*). Amendments under areas 3) to 5) may impact on some stakeholders.

In light of this, the analysis of the impacts of the proposed amendments to the Regulation (Option 2) against the *status quo* (i.e. the current Regulation, Option 1) has been structured around areas 3) to 5) above, rather than around each of the options.

As discussed before, the benefits and costs associated with the alternative options are not amenable to quantification due to the unfeasibility of measuring the scale of avoidable harm and other costs and benefits that could be attributed to the proposed changes to the Regulation in a robust way, and the relatively marginal impact of the proposed changes. However, Figure 7.1 provides a summary of the relative nature of the benefits and costs of the changes proposed under Option 2 across the areas outlined above, with respect to Option 1 (i.e. the *status quo*).

**FIGURE 7.1** SUMMARY OF POTENTIAL RELATIVE IMPACTS OF THE PROPOSED DRAFT REGULATION ACROSS KEY AREAS OF CHANGE (RELATIVE TO THE STATUS QUO)



SOURCE: ACIL ALLEN CONSULTING.

In summary, in relation to the key areas of changes proposed for the Regulation:

1. The proposed **amendments to registration fees** are not expected to have any significant impacts on animal owners, councils or the public in general. These changes only reflect annual inflation adjustments to registration fees.

2. To the extent that allowing animals adopted from rescue groups to access subsidised registration (by **extending the definition eligible pound or shelter operator**) incentivises more people to acquire animals from such organisations, then the proposed change could result in an increase in the number of animals rehomed. This change would also level the playing field for organisations with similar objectives in terms of animal rehoming and would provide more choices of places to adopt a rescued animal for people seeking to pay discounted fees.
3. If the proposed **increases in penalty notice offences** result in increased compliance with requirements relating to dangerous, menacing or restricted dogs, then this change could result in a potential reduction in risks to people and other animals' safety and potential reductions in health and veterinary costs related to dog attacks. However, the extent of avoided injuries and associated treatment costs are unknown. Given that there are potential benefits of avoiding a dog attack (although the size of these benefits is uncertain) and given that there are no significant costs related to the proposed penalty increases, it is considered that this change is likely to be positive.

Given the above, and taking into account that the option of letting the Regulation sunset would likely result in more costs than benefits, the preferred regulatory option is to remake the existing Regulation with the proposed amendments (Option 2).

Notably, stakeholder consultations revealed a number of other refinements to the overall companion animals regulatory framework which could have a positive impact. These are presented for future consideration in Appendix A.



The *Subordinate Legislation Act 1989* states that the remaking of a statutory rule (even if it is to be remade without changes) requires the preparation of a RIS and a period of public consultation.

Consistent with the *Subordinate Legislation Act 1998*, the Draft Regulation and RIS will be open for public consultation for a period of at least 21 days.

There are two ways to provide your feedback:

1. Online via the OLG website  
OR
2. Print the feedback form from OLG's website and post or email it to:

Companion Animals Regulation Review

Locked Bag 3015

Nowra NSW 2541

Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Submissions can now be made and will be accepted until **5pm Tuesday 22 May 2018**.

Individuals and organisations should be aware that generally any submissions received will be publically available under the *Government Information (Public Access) Act 2009* and may be published. OLG, in considering the submissions received may also circulate submissions for further comment to other interested parties or publish all, or parts, of the submissions. If you wish your submission (or any part of it) to remain confidential (subject to the *Government Information (Public Access) Act*), this should be clearly stated on the submission.

Interested stakeholders are encouraged to consider aspects of the assessment contained within this RIS and the Draft Regulation. Key issues on which stakeholder views are sought include the following:

- Are there any costs and benefits of the Draft Regulation that have not yet been considered, and how material are these impacts?
- Are there any risks of the Draft Regulation that have not yet been considered?
- Are the impacts discussed in this RIS genuinely reflective of stakeholder views?
- Are there any additional amendments which could have a net positive impact on the proposed Regulation?
- Could the results of the proposed Regulation be achieved through any alternative options?





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## A.1 Consultations undertaken as a part of this RIS

As part of the development of this RIS, ACIL Allen undertook informal consultations during August 2017 through a series of workshops to gather stakeholder views about the impacts of potential amendments to the Regulation. OLG attended these workshops.

In addition to their views about potential amendments to the Regulation, through these workshops OLG sought stakeholders' views about a number of other issues related to the overall companion animals regulatory framework (noting that there will be no regulatory changes associated with these issues at this time). These issues are outlined for future consideration in the following section.

The stakeholders consulted through these workshops are outlined in the table below.

TABLE A.1 STAKEHOLDERS CONSULTED DURING PREPARATION OF THIS RIS

Stakeholder group	Representative
	<ul style="list-style-type: none"> <li>- RSPCA NSW</li> <li>- Cat Protection Society</li> <li>- Australian Veterinary Association</li> <li>- Pet Industry Association of Australia</li> <li>- Veterinary Practitioners Board of NSW</li> <li>- Animal Welfare Advisory Council</li> <li>- Cat Fanciers Association</li> <li>- Member for Terrigal</li> </ul>
Local Government	<ul style="list-style-type: none"> <li>- Albury City Council</li> <li>- Bathurst Council</li> <li>- Blacktown City Council</li> <li>- Gilgandra Shire Council</li> <li>- Port Stephens Council</li> <li>- Sutherland Shire Council</li> <li>- Wentworth Shire Council</li> <li>- Australian Institute of Local Government Rangers (NSW)</li> <li>- Councils Unite for Pets</li> </ul>

Stakeholder group	Representative
NSW Government	<ul style="list-style-type: none"> <li>– Local Government NSW</li> <li>– Department of Primary Industries</li> <li>– Department of Justice</li> <li>– Office for the Police</li> <li>– Department of Family and Community Services</li> <li>– Department of Premier and Cabinet</li> <li>– NSW Ombudsman</li> <li>– NSW National Parks and Wildlife Services</li> </ul>

*SOURCE: ACIL ALLEN CONSULTING.*

## A.2 Issues raised by stakeholders for future consideration

Stakeholder consulted for this RIS suggested a number of other refinements to the overall companion animals regulatory framework which could have a positive impact (but which would require substantive legislative change beyond the re-making of the Regulation). These include proposed changes around:

- requirements for authorised identifiers
- registration exemptions
- identification of animals
- offences and penalties for obstructing authorised officers
- public interest considerations and definitions of ‘serious injury’ in relation to dangerous and menacing dogs.

These issues are important and could be considered in future reviews of the Act and the regulation. Additional discussion about these issues is provided in the sections below.

### A.2.1 Authorised identifiers

Stakeholder suggested that the Regulation specify either/or:

- the qualifications and competencies for authorised identifiers to provide a stronger basis for withdrawing accreditation or taking other action under the Regulation
- the requirement for authorised identifiers to state that they have implanted a minimum number of microchips each year
- an alternative means for improving industry standards.

‘Authorised identifiers’ are currently only veterinarians and other accredited individuals who are trained to microchip animals (such as local council employees or breeders). The Chief Executive of the OLG accredits authorised identifiers via delegation to training bodies. The principle is that the accreditation balances the need to meet demand at an appropriate cost for pet owners with the need to meet service and welfare standards. The OLG also provides ‘Guidelines for Authorised Identifiers’.

OLG’s Guidelines for Authorised Identifiers state that each identifier must ‘maintain a reasonable level of competency by properly inserting a microchip into at least fifteen companion animals for the purposes of section 8 of the Act per year’ (OLG 2001, p.5).

There is anecdotal evidence that some authorised identifiers have gone for long periods (up to ten years) without microchipping an animal and failed to comply with the Guidelines for Authorised Identifiers and demonstrate ongoing competency. The implication is that they are not practised and as a result may not microchip correctly or follow the associated protocols properly. This causes difficulties for councils, OLG and pet owners and could undermine the accuracy of the Register. It is also possible that an unpractised identifier may potentially harm an animal.

Since 2008, OLG has received around 10 complaints and have withdrawn the accreditation of six authorised identifiers.<sup>9</sup> Further, failure to keep details up to date in the Register is also creating additional burden for councils and pet owners if data is incorrect.

There are also issues around whether a qualification ‘expires’ and instances where the authorised identifier may have not used their skills for a period of time due to being in a remote location (e.g. Far West NSW) and/or moving interstate/overseas.

During the workshops it was noted that a focus on improving the currency of an authorised identifier’s skills would address more of the concerns than other options. This may include specifying and/or adjusting additional competencies if there are difficulties establishing a basis to withdraw accreditation in response to complaints.

In the absence of regulatory change addressing this concern at this stage, OLG has proposed to provide further guidance material regarding current qualifications and competencies on the OLG website.

### **A.2.2 Registration exemptions**

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A large number of animal rescue/foster organisations in NSW re-home thousands of animals from pounds and shelters at no cost to ratepayers. This has driven significantly lower euthanasia rates.

Organisations that care for animals prior to rehoming can apply for a 12-month exemption from paying registration fees under Section 16(d) of the Regulation. Many, but not all, rescue groups councils deal with have obtained this exemption.

Organisations eligible for Section 16(d) exemptions must document their governing framework and commitment to rehoming. If fostering animals from a pound, they must also provide written council endorsement. Exemptions last for 5 years. OLG also issues guidelines for approval of these organisations. These guidelines set out conditions for these organisations, including keeping records of the animals that come into their care (which may be requested by relevant local councils they work with and/or OLG) and submitting an annual report to OLG and, if requested, each council.

If an organisation does not demonstrate the required capabilities, a Section 16(d) exemption may be revoked. OLG noted that since 2008, six exemptions have been revoked.

A number of stakeholders raised concerns about the conditions of authorisation and monitoring arrangements for rehoming organisations with Section 16(d) exemptions. The issues of concern included animal welfare, failure to rehome within 12 months and veterinary care about a small number of groups approved for a Section 16(d) exemption.

Against this background, stakeholders suggested to add conditions of authorisation for organisations granted a Section 16(d) exemption and clarifying the grounds for removal of this exemption. Adding conditions of authorisation will mean that failure to meet the conditions can be effectively used to remove the exemption.

The new Register will enable animals to be assigned to Section 16(d) bodies, improving the capacity to monitor animals in care by animal welfare enforcement agencies.

It is envisaged that the new Register will enable animals to be assigned to organisations with Section 16(d) exemptions, improving the capacity to monitor animals in care by animal welfare enforcement agencies.

### **A.2.3 Identification**

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There were two key issues raised for regulatory change relating to identification:

- tattooing de-sexed female cats and dogs
- removing collar and tag requirements for dogs.

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<sup>9</sup> Communication with the Office of Local Government, 2017.

## Tattooing

Historically, cats and dogs that were de-sexed were marked by an ear tattoo. However, this practice is not legislated.

Some stakeholders suggested that the Regulation requires veterinarians to tattoo the ears of de-sexed female cats and dogs under anaesthetic, where that can be safely and humanely done at the time of de-sexing.

Animal welfare groups and councils raised concerns that tattooing following de-sexing of an animal is no longer routinely undertaken by vets. As a result, animals from pounds and shelters, who have no microchips and/or are not identified on the Register as de-sexed, are being put under general anaesthetic again for de-sexing a second and unnecessary time. This causes the animal unnecessary stress and health risk and costs to pounds and shelters.

Other key points raised in workshops as reasons to support this change were:

- the cost and time of tattooing is minor for veterinarians
- there is no evidence that animals feel pain from tattooing under anaesthetic
- the proposal to apply this only to female pets to limit red tape
- the Register will also enable animals to be marked as de-sexed after registration has been paid
- other jurisdictions follow this practice (e.g. QLD and the ACT require all de-sexed cats and dogs to be tattooed to indicate they are de-sexed).

Some vets were concerned about the potential for an animal to be unnecessarily 'harmed' due to the tattooing process. However, it was proposed that tattooing would only be conducted at the time of de-sexing, while under general anaesthetic, and if safe to do so.

This change will require amendment of the Act and so should be considered when the Act is next reviewed.

## Collar and tag

A small number of pet owners suggested to remove the requirement for dogs to have a tag and collar if they are microchipped. The requirement for dogs to wear a collar is provided in Section 12 of the Act, and hence removing it would require amendment of the Act.

Other stakeholders provided the following reasons in support of keeping this requirement in the Act:

- rescue groups and the public return many animals without contacting ranger services and would be unable to do so without a collar or tag
- councils have also advised that a collar assists in controlling and seizing dogs.

However, there is merit in considering further proposals that the current 'collar and tag' requirements have not kept pace with use of harnesses and other similar alternatives.

## A.2.4 Offences and penalties

### Obstructing Officers

Local councils proposed that penalty notices be issued for obstructing authorised officers under the Regulation as it can be difficult and costly to bring these matters before a court and it often delays other compliance action.

Although not stipulated in the Regulation, under Section 69 of the Act, 'a person who wilfully obstructs an authorised officer in the exercise of any function under this Act is guilty of an offence.' The maximum penalty is \$1,650.

This proposal would require further consideration in light of criminal law policy and procedure.

### **Failure to register**

Councils report a significant number of instances where a pet is found to be unregistered more than once. A higher penalty where owners are advised to take action and fail to do so more than once, will clearly signal that the law must be complied with.

This change will require amendment of the Act and so should be considered when the Act is next reviewed.

### **Nuisance orders**

Councils report that under the former *Dog Act 1966* second and subsequent offences for non-compliance with a nuisance order were a successful deterrent because of an escalation of penalties and hence it was suggested to amend the Regulation to reinstate these offences.

Section 31(5) of the Act provides that the penalty for failing to comply with a nuisance order is 3 penalty units for a first offence or 8 penalty units for a second or subsequent offence. However, the schedule of penalty notices in the Regulation specifies only one penalty notice amount for any failure to comply with a nuisance order. It was suggested to amend the Act and/or the Regulation to allow for higher penalties for a second or subsequent notice amount commensurate with the second penalty.

This would need to be considered in light of the Government's criminal law policy.

### **Refusing entry/service to those with an assistance animal**

Stakeholders (including the Minister for Disability Services) also raised the issue of increasing penalties for offences involving assistance animals (refusal of entry or service to a person with a disability). It was noted that these penalties have not been increased for a significant period and no longer provide a meaningful deterrent to discrimination. Penalty notice amounts for on the spot fines could also be increased if agreed.

This change will require amendment of the Act and so should be considered when the Act is next reviewed.

## **A.2.5 Dangerous and menacing dogs**

### **Public interest**

Some stakeholders suggested to include in the Regulation a reference to considering the 'public interest' for determining menacing and dangerous dog orders and whether the Executive Functions Guidelines are satisfactory. Public interest is defined in Section 9.5 of the Executive Functions Guidelines<sup>10</sup> as:

*Factors to be considered when determining the public interest may include:*

- a) the harm or potential harm to the public that may be caused if a declaration is not made*
- b) any mitigating or aggravating circumstances*
- c) the prevalence of public risk circumstances and the need for deterrence*
- d) the length and expense of a court hearing*
- e) whether the consequences of any declaration would be unduly harsh or oppressive.*

At this stage, there are guidelines only, and although these are useful, a reference to the capacity to consider public interest factors in making a decision may assist authorised officers. These guidelines however, state that in taking into account any complaints, the key factor in exercising this discretion is the public interest and the safety of the community. Further, Authorised Officers have discretion in their decision making to consider the specific circumstances of the incident.

After the consultations the OLG concluded that it is important that council officers retain discretion to apply the law to unique and differing circumstances, and as a result no change was done to the Regulation in this respect.

<sup>10</sup> Available at: <http://www.olg.nsw.gov.au/sites/default/files/Guidelins-on-the-Exercise-of-Functions-under-the-CAA-November-2013.pdf>

## Serious injury

Section 34 of the Act enables an authorised officer to declare a dog to be menacing or dangerous.

When making a menacing dog determination, a council ranger must consider whether or not the animal in question has caused serious injury. Currently, the term 'serious injury' is not defined in the Act or Regulation, so the common meaning of the words applies.

The Exercise of Functions Guidelines state that attacks resulting in serious injury may include those where a human or animal victim has required medical treatment or hospitalisation. However, how the human victim or owner of an animal victim perceives the seriousness of any injury can also be considered.

Some stakeholders proposed that a definition of serious injury be included in the Regulation to assist in managing dog attacks. This would not be an exhaustive list of all potential serious injuries.

Equivalent legislation in other jurisdictions has defined the term serious injury. For instance, in Victoria 'serious injury' means an injury requiring medical or veterinary attention in the nature of:

- a broken bone
- a laceration (a wound caused by the tearing of body tissue or multiple punctures caused by more than one bite from a dog)
- a partial or total loss of sensation or function in a part of the body, or
- an injury requiring cosmetic surgery.

Stakeholder consultation noted that it should be made clear that 'laceration' clearly excludes minor cuts that do not require the attention of a vet or medical professional. This change will require amendment of the Act and so should be considered when the Act is next reviewed.

### A.2.6 Exemptions for assistance animals and working dogs

Currently there are a range of animals exempt from registration fees under Clause 16 of the Regulation, including assistance animals and working dogs. However, if an animal normally exempt from registration is the subject of a nuisance order, a council has discretion to order that the animal be identified and registered.

#### Definitions of assistance animals

Assistance animals are defined in Section 9 of the *Disability Discrimination Act 1992* (Cth), where an assistance animal is a dog or other animal that:

- a) is accredited under a State or Territory law to assist a person with a disability to alleviate the effects of disability; or
- b) is accredited by an animal training organisation prescribed in the regulations; or
- c) is trained to assist a person with a disability to alleviate the effect of the disability and meets standards of hygiene and behaviour that are appropriate for an animal in a public place.

There is significant uncertainty around the definition of assistance animals. There is also a growing use of animals to support people with disabilities, and courts have confirmed that pet owners can train their own pets to act as assistance animals.

Councils, and other stakeholders consulted for this RIS discussed the need for clarity of the definition of 'assistance animal' and the requirements for reasonable proof required to make this judgement. There were requests to make this clear in the Regulation.<sup>11</sup>

It is proposed, that due to the current uncertainty, that OLG will update its guidance material and this proposed change will be considered at a later stage as collaboration with other NSW Government Departments, other States and the Commonwealth is required.

<sup>11</sup> Other stakeholders have also raised this issue at other times including pet owners, Transport for NSW, disability advocacy groups, Family and Community Services and National Parks and Wildlife Service.



**Definition of working dog**

Clause 5 of the Regulation states that a working dog means 'a dog used primarily for the purpose of droving, tending, working or protecting stock, and includes a dog being trained as a working dog.'

Stakeholders, particularly rural and regional councils, requested regulatory change as well as further guidance around the issue of defining a working dog for the purposes of exemption from registration fees. There are also some dogs that councils believe should be entitled to this exemption that are not within scope of the current definition. Another key concern is to ensure that working dogs are registered, even if at no cost, as this impacts the accuracy of the Register, council capacity to return animals and revenue.

There is anecdotal evidence that some people are abusing this exemption which is having an adverse impact on smaller (usually regional or rural) councils where a larger proportion of animals are 'working dogs'. For example, some owners apply for dogs that reside in metro areas and breeds that cannot work as working dogs.

OLG has committed to reviewing its guidance on this topic and updating information on its website.

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